

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

PRETRIAL FROM RICHLAND COUNTY

Court of General Sessions

Indictment No. 2014-GS-40-5760, 5761, 5762, 5763  
and 2015-GS-40-4641, 4642

RECEIVED  
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SC Court of Appeals

State of South Carolina

Respondent,

vs.

Caleb Blocker,

Petitioner.

**STATE'S RETURN TO PETITIONER'S MOTION TO SUPPRESS AND  
STATE'S MOTION TO DENY PETITIONER'S MOTION TO SUPPRESS**

The undersigned counsel for the State of South Carolina respectfully moves this Court to deny the Petitioner's Motion to Suppress, which challenges statements made by Petitioner during the course of recorded phone conversations while Petitioner was incarcerated at the Alvin S. Glenn Detention Center.

As stated by Petitioner in his pretrial Motion to Suppress, the Petitioner's statements sought to be suppressed were made during a series of recorded phone conversations while Petitioner was incarcerated at the Alvin S. Glenn Detention Center. The recording of these jail phone calls is governed by South Carolina Code section 17-30-10, et seq. (Supp. 2012)

(hereinafter the “S.C. Homeland Security Act” or the “Act”), which controls the interception and disclosure of telephone communications.

### FACTS

On July 14, 2014, the Petitioner, Caleb Blocker, was arrested and charged with Murder and three counts of Attempted Armed Robbery in Richland County. Petitioner was later indicted on two counts of Armed Robbery. As a result of these charges, Petitioner was detained and held at the Alvin S. Glenn Detention Center, then transferred to the Department of Corrections, and subsequently returned to the Alvin S. Glenn Detention Center. During this time period, Petitioner made numerous phone calls to third parties that were monitored and recorded subsequent to written and/or audio advisements that informed Petitioner and third parties of the monitoring and recording of telephone calls from the Alvin S. Glenn Detention Center. The telephone calls from the Alvin S. Glenn Detention Center include a warning given both to the detainee and to the third party receiving the call, that all calls are subject to monitoring and recording. SEE ATTACHED EXHIBIT A. In addition, the telephone systems at Alvin S. Glenn Detention Center include an additional warning in print—on the face of the phone unit itself—which states the following: “ALL CALLS SUBJECT TO RECORDING AND MONITORING.” No court order was sought by the State in this matter.

To date, the State has turned over to Petitioner a series of phone recordings from the Alvin S. Glenn Detention Center—portions of which may or may not be used at trial in Richland County General Sessions Court.

### ANALYSIS

The South Carolina Wiretap Statute was passed as part of the Homeland Security Act in 2002. See S.C. Code Ann. §§ 17-30-10 et seq; South Carolina Homeland Security Act, 2002 Act No. 339. This Act is modeled after the Omnibus Crime Control Act and Safe Streets Act of 1968 (hereinafter the “Federal Act”), and like a vast majority of similar state statutes, the relative provisions of these Acts remain substantially similar in their purpose and effect. Moreover, because few South Carolina cases have addressed similar issues in the recording of jail phone calls, the Court has previously referred to the Federal Courts when interpreting similar provisions under the South Carolina Act. See generally, e.g., State v. Whitner, 399 S.C. 547, 553 (2012) (explaining that South Carolina’s Wiretap Act “parallels the Federal Act passed by Congress in 1968, which similarly permits lawful interception where one party to the communication consents”); State v. Guerrero-Flores, 402 S.C. 530, 534 (Ct. App. 2013) (finding “that federal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting the provisions of the Homeland Security Act”); Jackson v. State, 127 So.3d 447, 469 (Fla. 2013) (explaining that the comparable Florida statutes were “essentially identical” to the South Carolina statutes and “there is no reasonable expectation of privacy . . . in a telephone communication from jail during which warnings are issued”).

I. RECORDING TELEPHONIC COMMUNICATIONS FROM  
DETENTION CENTER DOES NOT VIOLATE THE SOUTH  
CAROLINA HOMELAND SECURITY ACT

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. Petitioner incorrectly relies on S.C. Code Ann. § 17-30-35 and S.C. Code Ann. § 17-30-70 as support for his position that a Court Order was required to intercept the calls. Specifically, Petitioner ignores that 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) (“‘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) (“‘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 officer in the ordinary course of his duties...”)

S.C. Code Ann. § 17-30-30(B) (“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.”).

Both the South Carolina Act and the Federal Act generally prohibit the unauthorized interception of “any wire, oral, or electronic communication.” Compare S.C. Code Ann. § 17-30-20 with 18 U.S.C. § 2511(1)(a). However, both the state and federal wiretap statutes also permit law enforcement to obtain judicial orders that authorize the interception of electronic/telephonic communications. Compare S.C. Code Ann. § 17-30-70 with 18 U.S.C.2516(2), 2518. Nevertheless, a judicial order is not always necessary. Like the Federal Act, the South Carolina Act provides for a “law-enforcement exception” that permits detention facilities to monitor and record inmates’ telephone conversations if the recording is done within the ordinary course of their duties or business. See, e.g., United States v. Hammond, 286 F.3d 189 (4th Cir. 2002) (explaining that although the federal wiretapping provisions apply to prisons, the law-enforcement exception exempted the detention facility administered by the Bureau of Prisons from the prohibition on the interception of telephone calls).

To understand the origins of the law-enforcement exception, it is first important to note that the S.C. Homeland Security Act defines “intercept” to be 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. § 17-3-15(3) (2002); see also, 18 U.S.C. §2510(4). Moreover, it is important to note that section 17-30-15 specifically excludes “any telephone or telegraph instrument, equipment, or facility, or any component thereof . . . being used by . . . an investigative or law enforcement officer in the ordinary course of his duties” from the definition of “electronic, mechanical, or other device.” S.C. Code Ann. § 17-3-15(4)(a)(1)(ii) (2002). Thus, the interception of electronic/telephonic communications is not unlawful even without a judicial order if the interception satisfies the “law-enforcement exception” to the S.C. Homeland Security Act. Ultimately, this “law-enforcement exception” has been consistently upheld in the federal courts, and has been found to include prison officials, prison employees, private contractors, etc. See also, e.g., United States v. Van Poyck, 77 F.3d 285 (9th Cir. 1996) (concluding that the law enforcement exception applied to a detention center’s policy of audiotaping all inmates’ outbound telephone calls and the interception was done in the ordinary course of business); United States v. Rivera, 292 F. Supp. 2d 838 (E.D. VA 2003) (explaining, amongst other things, that a prison official is considered an “investigative or law enforcement officer,” obviating the need for a judicially authorized intercept, and that a private contractor such as Verizon may be used to monitor and record jail telephone calls in accordance with the law enforcement exception); United States v. Friedman, 300 F.3d 111 (2nd Cir. 2002); and United States v. Frink, 328 Fed. Appx. 183 (4th Cir. 2009).

In addition to the law enforcement exception, the courts have also found that consent operates as a second exception to the prohibition on the interception of wire and other electronic

communications. Like the Federal Act, the S.C. Homeland Security Act provides that “[i]t 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.” S.C. Code Ann. § 17-30-30(B) (2002).

The courts have found that consent is a very broad term, defined as an “agreement, approval, or permission as to some act or purpose” and that “[t]he law recognized different kinds of consent, including express, implied, informed, voluntary, and parental.” Whitner, 399 S.C. at 555 (citing Black’s Law Dictionary 346 (9th Ed. 2009)). In addition, the federal courts have repeatedly found that “[t]he legislative history [of the Federal Act] shows that Congress intended the consent requirement to be construed broadly.” United States v. Amen, 831 F.2d 373, 378 (2nd Cir. 1987). Furthermore, “consent may be express or implied in fact from ‘surrounding circumstances indicating that the defendant knowingly agreed to the surveillance.’” Rivera, 292 F.Supp.2d at 844. In many cases, an inmate’s consent to a recording has been implied if he was given a meaningful notice that a call was subject to monitoring or recording and still decided to make a phone call. See generally, e.g., Van Poyck, 77 F.3d at 292 (9th Cir. 1996) (explaining that when signs have been posted above jail telephones and warn of the monitoring and recording, consent may be implied in fact from the “surrounding circumstances indicating that the defendant knowingly agreed to the surveillance.”); Amen, 831 F.2d at 378-79 (2d Cir. 1987) (same reasoning applied); United State v. Workman, 80 F.3d 688, 693 (2d Cir. 1996) (a sign, written in both Spanish and English, was placed near the telephones and warned that calls were monitored and recorded); and Hammond, 286 F.3d at 191 (4th Cir. 2002) (placing notices on audio recordings as well as near the jail telephones gives rise to a finding of consent).

In this case, Petitioner clearly received notice of the telephone recordings because there are placards posted on the actual telephones. In addition, an audio recording plays prior to every telephone call and warns both the inmate as well as the third party caller that the call is subject to monitoring and recording.

CONCLUSION

The State asserts that based upon the facts of the case, the statements of the Petitioner were lawfully obtained pursuant to South Carolina Code sections 17-30-15 and 17-30-30 (Supp. 2012), and the applicable law enforcement and consent exceptions do not entitle him to suppression of the recorded jail telephone calls under section 17-30-110. The State contends that the Petitioner's motion, in light of the facts of the case and the applicable law, is without merit and will have an unintended consequence of merely delaying the ultimate disposition of the matter at trial.

WHEREFORE, the State respectfully asks this Court for an order denying a hearing, denying the motion, and remanding the case for trial.

Respectfully submitted,

By: Joanna McDuffie  
Joanna McDuffie (Bar Number 77063)  
Assistant Solicitor  
Fifth Judicial Circuit Solicitor's Office  
1701 Main Street  
Columbia, South Carolina 29201  
(803) 576-1800

ATTORNEY FOR RESPONDENT

November 1, 2017

# Attachment A

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date indicated below she served the following respondent(s) in this action with a copy of the State's Return to Petitioner's Motion to Suppress and the State's Motion to Deny the Petitioner's Motion to Suppress via United States Mail with first class postage prepaid to the following addresses on this 1<sup>st</sup> day of November, 2017:

Overture Walker  
Bernstein & Bernstein, LLC  
PO Box 583  
Columbia, South Carolina 29202

Jonathan Milling  
Milling Law Firm, LLC  
2910 Devine Street  
Columbia, South Carolina 29205

By: 

Anna Bright

Paralegal to Assistant Solicitor Joanna McDuffie (Bar number 77063)

Fifth Judicial Circuit Solicitor's Office

1701 Main Street

Columbia, South Carolina 29201

(803)576-1800