

The South Carolina Court of Appeals

State of South Carolina, Plaintiff,

v.

Daniel Ryan Day, Defendant.


Appellate Case No. 2013-000231


ORDER

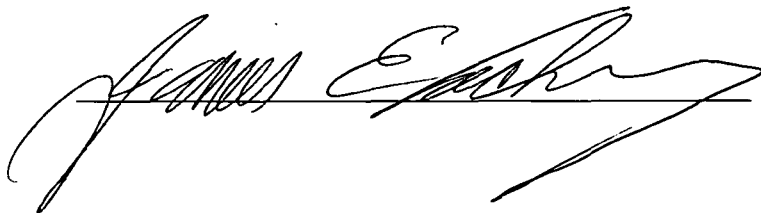
Daniel Ryan Day has been indicted for third-degree criminal sexual conduct and is awaiting trial. In January 2011, the victim (Victim) reported to the Richland County Sheriff's Department that Day raped her in March 2010. In investigating Victim's allegation, law enforcement instructed and assisted Victim in making and recording two pretext phone calls to Day for the purpose of eliciting incriminating statements from him. In February 2011, Victim made and recorded both phone calls from her home and later met with law enforcement to review the recordings.

Day filed a motion to suppress the contents of the phone calls intercepted pursuant to section 17-30-110 of the South Carolina Code (Supp. 2012), a part of the South Carolina Homeland Security Act. *See* S.C. Code Ann. §§ 17-30-10 to -145 (Supp. 2012). He requests that this court hold a hearing to determine whether the recordings of the phone calls were made and stored in accordance with subsection 17-30-100(A). Day argues "any failure to maintain recordings as required by subsection 17-30-100(A) would constitute a violation of the requirements of the [Homeland Security Act] and that any resulting recording would be an unlawful interception and therefore subject to suppression pursuant to subsection 17-30-110[(A)]." In addition, Day maintains a hearing is necessary to determine whether the State will be able to establish a sufficient chain of custody for the contents of the intercepted phone calls.

After careful consideration, we deny Day's request for a hearing and we deny the motion to suppress. In this case, Victim lawfully intercepted the conversations between her and Day under either subsection 17-30-30(B) or 17-30-30(C) because she was a party to the intercepted phone calls. See § 17-30-30(B), (C) (providing it is lawful for a person acting or not acting under color of law to intercept a conversation when the person is a party to the conversation). Thus, Day fails to establish any ground for suppression under subsection 17-30-110(A). See § 17-30-110(A) (providing a party "may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that the: (1) communication was unlawfully intercepted; (2) order of authorization or approval under which it was intercepted is insufficient on its face; or (3) interception was not made in conformity with the order of authorization or approval"). Additionally, any issues regarding admissibility of the recordings not arising under subsection 17-30-110(A) of the Homeland Security Act are reserved for the trial court to hear.


_____ C.J.


_____ J.


_____ J.

Columbia, South Carolina

cc: Margaret Fent Bodman
Derek S. Chiarenza

FILED
March 7, 2013