

The South Carolina Court of Appeals

Ryan E. Terrell, Petitioner,

v.

Bryan R. Terrell, Respondent.

Appellate Case No. 2020-001071

ORDER

Ryan E. Terrell (Mother) has filed a motion pursuant to the South Carolina Homeland Security Act (the Act)¹ to suppress certain communications inadvertently loaded to Child's cellphone.²

The Act prohibits "[t]he interception of wire, electronic, or oral communications" except "in the manner permitted by this chapter." § 17-30-10. The Act is violated when a person "intentionally intercepts . . . any wire, oral, or electronic communication." S.C. Code Ann. § 17-30-20(1) (2014). "[T]ext messages constitute 'electronic communications' within the meaning of the [Federal] Wiretap Act."³ *United States v. Jones*, 451 F.Supp.2d 71, 75 (D.D.C. 2006), *affirmed in*

¹ 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 "[r]eviewing 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").

² Mother's request for a hearing is denied. *See* S.C. Code Ann. § 17-30-110(A) ("The reviewing authority may, *in its discretion*, conduct a hearing and require additional testimony or documentary evidence." (emphasis added)).

³ "The [South Carolina Wiretap Act] is patterned after Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C.A. § 2510-22 (2002) (Federal [Wiretap] Act)." *State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d

part and reversed in part by United States v. Maynard, 615 F.3d 544 (D.C. Cir. 2010).

"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(3) (2014). A person must contemporaneously intercept the communication during transmission in order for a communication to be intercepted. *See Luis v. Zang*, 833 F.3d 619, 627 (6th Cir. 2016) ("The [Federal Wiretap] Act does not explicitly require that the acquisition of a communication occur contemporaneously with the transmission of the communication. . . . Nonetheless, courts interpreting this language have uniformly concluded that an intercept requires contemporaneity."); *Sunbelt Rentals, Inc. v. Victor*, 43 F.Supp. 1026, 1031 (N.D. Cal. 2014) ("For a communication to be intercepted, 'it must be acquired during transmission, not while it is in electronic storage.'" (quoting *Konop v. Hawaiian Airlines, Inc.*, 303 F.3d 868, 878 (9th Cir. 2002))).

We find Bryan R. Terrell (Father) did not intentionally intercept Mother's text messages. Mother's text messages inadvertently went to Child's cellphone due to her failing to unlink her iCloud account from Child's cellphone. Father inadvertently saw the text messages after the cellphone began alerting late at night. Father did not turn over the phone for the data to be downloaded until approximately three days after receiving the text messages. We find Father did not intercept or record the text messages contemporaneously with the text messages' transmission. Accordingly, after careful consideration, Mother's motion to suppress under the Act is denied. *See Sunbelt Rentals, Inc.*, 43 F.Supp. at 1031 (finding the defendant failed to provide facts to support his assertion that the plaintiff intercepted his text messages when "[i]f anything, the pleadings suggest[ed] that [the plaintiff] read [the defendant's] text messages after they were sent and received on the Sunbelt iPhone, which is insufficient to demonstrate intentional interception under the [Federal] Wiretap Act"); *id.* at 1030 (concluding the plaintiff "did not intentionally capture or redirect [the defendant's] text messages to the Sunbelt iPhone—the transmission of those messages was entirely [the defendant's] doing").⁴

577, 580 (Ct. App. 2013). Accordingly, "federal cases analyzing comparable provisions of the Federal [Wiretap] Act are persuasive in interpreting the provisions of the [South Carolina Wiretap Act]." *Id.*

⁴ The parties' requests for attorney's fees, expenses, and costs are denied.

James E. Lockery

C.J.

U. Ke

J.

Stephanie P. McDonald

J.

Columbia, South Carolina

cc:

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FILED
Sep 22 2020