

South Carolina Supreme Court Holds Parent May Vicariously Consent to Wiretap of Child

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The South Carolina Supreme Court recently held that under the South Carolina Wiretap Act a parent has the implied right to vicariously consent to a recording of their minor child's conversations, although the parent's motive for making the recording is an important factor in the validity of the vicarious consent. The South Carolina Wiretap Act permits interception of an oral communication where one of the parties to the communication gives prior consent to the interception, but the Act does not explicitly allow for vicarious consent. Acknowledging this, the court instead looked to federal court interpretations of the Omnibus Crime Control and Safe Streets Act, the federal act on which the Wiretap Act is based. Since federal courts have implied a doctrine of vicarious consent into this federal act, the South Carolina Supreme Court did the same in its interpretation of the South Carolina law. And the court further adopted the federal courts' limitation on this doctrine – the guardian must have a “good faith, objectively reasonable basis” for believing it is in the best interest of the child to consent to a wiretap. In this case (*State v. Whitner*), the court held that the trial court properly admitted a recording of a conversation between a minor child victim of sexual abuse and the defendant, in which the defendant admitted to the abuse, because the child's mother consented to the recording to determine if her daughter needed counseling, and if it was appropriate for the defendant to continue having contact with the child.

Tip: This case suggests that in some circumstances parents may be able to vicariously consent to their child's communications. The facts will be essential, however, and it is important to keep in mind that this was a criminal case involving sexual abuse.

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