

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

JENNIFER SPIVEY FOLEY, as Personal
Representative of the Estate of SCOTT RYAN
SPIVEY,

Plaintiff,

vs.

CHARLES WELDON BOYD and KENNETH
WILLIAMS,

Defendants.

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2024-CP-26-03798

ORDER REGARDING DEFENDANTS'
MOTION IN LIMINE

This matter comes before the Court on a motion *in limine* filed by both defendants in this action. Counsel for defendants filed joint motions regarding the admissibility of two audio recordings of 911 calls made by two eyewitnesses. The Court conducted a hearing on the issues on November 17, 2025.

The salient facts are that a lengthy altercation occurred on SC Highway 9 along a segment between North Myrtle Beach and Loris. The incident primarily involved two trucks headed west on Highway 9. The altercation ended at the corner of Swamp Camp Road and Highway 9 where the plaintiff was killed after being shot multiple times. Two witnesses saw portions of the incident and called Horry County 911 dispatch. The two recorded calls are subject to this preliminary motion. Those two witnesses live out of state and have not participated in pre-trial discovery with any of the parties in this action. Attempts have been made to secure the attendance of these witnesses at the upcoming hearings, but the attempts have been unsuccessful.

The issue before the court is a preliminary ruling addressing whether the audio recordings of these two witnesses may be admitted at the hearings notwithstanding the witnesses' attendance.

The Court heard arguments by counsel, reviewed briefs submitted, and listened to the two recordings during the hearing. The Defendants argued that the recorded calls are allowed under Rules 803(1) and/or 803(2) SCRE. The Plaintiff argued that State v Dennis, 444 S.C. 353, 907 S.E.2d 142 (Ct. App. 2024) requires the factfinder to evaluate the credibility of witnesses in a Stand Your Ground Hearing and that the factfinder may not be able to sufficiently measure credibility without in-person testimony. *See State v. Dennis*, 444 S.C. 353, 907 S.E.2d 142 (Ct. App. 2024).

After careful review of the submissions and law, the Court finds that provided the proper foundation and authentication is made by the party attempting to introduce the recordings, the Court would likely allow the recordings to be admitted for consideration by the Court at the hearing under the exceptions to the hearsay rule under Rule 803(1) or 803 (2) SCRE. The Court also finds that the recordings of the audio telephone calls contain the actual voice description of events as the caller observed. The recorded observations include the volume, cadence, timbre, tone, and inflections of the witness' voices describing what he or she was observing. These facets of the conversation provide much potential information for a fact finder to consider and evaluate credibility. The Court preliminarily finds that the recordings of these two calls would not be violative of the finding in State v. Dennis which requires the factfinder to consider more than the review of a transcript of a witness's prior testimony. *Id.*

This Order is to provide guidance to the parties in order to prepare for upcoming hearings and is not a final ruling by the court of the admissibility of the recordings. This preliminary ruling does not preclude the Court from considering other testimony, arguments, or objections by the parties at future hearings. This preliminary ruling does not limit the ability of the parties from making motions as to particular portions of the recordings which may have other challenges under the rules, such as, portions of the recording which include comments collected by the recording which were not observed by the declarants.

This order is not a final order. All parties are protected on the issues until hearing on merits.

IT IS SO ORDERED.

_____, 2025
Horry, South Carolina

Eugene C. Griffith, Jr.
Presiding Judge

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Horry Common Pleas

Case Caption: Jennifer Spivey Foley , plaintiff, et al VS Charles Weldon Boyd ,
defendant, et al
Case Number: 2024CP2603798
Type: Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154

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