

PENNSYLVANIA COURT OF COMMON PLEAS, CARBON COUNTY

Commonwealth v. Johns

11 Pa. D. & C.3d 728 (C.P. Carbon Cnty. 1979) · Decided February 22, 1979

SUMMARY

The court denied the Commonwealth’s petition to compel a respondent to provide a voice exemplar before arrest and without probable cause for an arrest warrant. Although the court concluded that compelled voice exemplars would not violate the Fourth or Fifth Amendments, it held that Pennsylvania courts lacked statutory or procedural authority to order such pre-arrest discovery outside a grand jury proceeding. The order denying the petition was entered on February 22, 1979.

CASE DETAILS

COURT	Pennsylvania Court of Common Pleas, Carbon County
WRITING FOR THE COURT	Lavelle, P.J.
JURISDICTION	Pennsylvania
DECIDED	February 22, 1979
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district attorney filed a petition seeking an order compelling the respondent to provide voice-identification exemplars before arrest and without probable cause for an arrest warrant.
STANDARD OF REVIEW	The court reviewed whether it possessed legal authority or jurisdiction to grant the Commonwealth's pre-arrest discovery petition.
PRECEDENTIAL VALUE	Published Pennsylvania Court of Common Pleas decision; persuasive trial-court authority within Pennsylvania.
PARTIES	Commonwealth of Pennsylvania v. Johns

TOPICS

- criminal procedure
- fourth amendment
- fifth amendment
- search and seizure
- right to counsel

PRACTICE AREAS

- criminal procedure
- constitutional law
- evidence

QUESTIONS PRESENTED

1. Whether compelling a pre-arrest voice exemplar without probable cause violates the Fourth Amendment prohibition against unreasonable searches and seizures.
2. Whether compelling a voice exemplar violates the Fifth Amendment privilege against self-incrimination.
3. Whether the Pennsylvania Court of Common Pleas had statutory, rule-based, or inherent jurisdiction to order a pre-arrest voice exemplar when no criminal rule or statute authorized the procedure.

HOLDINGS

1. Compelling a person to furnish a voice exemplar does not violate the Fourth Amendment because the exemplar involves production of a physical characteristic of the person's voice that is constantly exposed to the public.
2. Compelling a person to furnish a voice exemplar does not violate the Fifth Amendment privilege against self-incrimination because the exemplar is physical, not testimonial or communicative.
3. The Pennsylvania Court of Common Pleas lacked jurisdiction to order the requested pre-arrest voice exemplar because neither Pennsylvania statute nor the Pennsylvania Rules of Criminal Procedure authorized the relief, and the court had no inherent power to grant criminal discovery or enforce administrative subpoenas.

KEY QUOTATIONS

“While there appear to be no constitutional obstacles to the relief sought by the Commonwealth, it is evident that there is a conspicuous absence of a jurisdictional basis to support the relief sought, and it is this objection which is fatal to the Commonwealth’s petition.” (at 732)

“However, until such time as the legislature sees fit to confer upon the courts of this Commonwealth jurisdiction to afford such relief, we are presently without the power to do so.” (at 734)

FACTUAL BACKGROUND

Two women were raped at the Pocono Hershey Resort in separate incidents, and each reported that she could identify the assailant's distinctive voice even though the offenses occurred in darkness. A light green car was observed at the resort, and after a later attempted room entry, the vehicle was stopped and found registered to the respondent, who was identified by an eyewitness as the person attempting the entry. The Commonwealth sought to compel the respondent to provide a voice exemplar even though he had not been arrested and probable cause for an arrest warrant admittedly did not exist.

PROCEDURAL HISTORY

The Commonwealth petitioned the Carbon County Court of Common Pleas for pre-arrest voice exemplars in connection with investigations of two resort rapes. The court considered the petition on stipulated factual allegations and denied it, concluding that although the requested procedure presented no constitutional obstacle, the court lacked statutory or rule-based jurisdiction to order it.

DISPOSITION

dismissed

CASES CITED

- United States v. Dionisio, 410 U.S. 1, 93 S. Ct. 764, 35 L. Ed. 2d 67 (1973)
- United States v. Mara, 410 U.S. 19, 93 S. Ct. 774, 35 L. Ed. 2d 99 (1973)
- In re Grand Jury Proceedings (Schofield), 486 F.2d 85 (3d Cir. 1973)
- Wise v. Murphy, 275 A.2d 205 (D.C. Ct. App. 1971)
- Biehunik v. Felicetta, 441 F.2d 228 (2d Cir. 1971), cert. denied, 403 U.S. 932 (1971)

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