

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Rousseau

465 Mass. 372 (2013) · Decided June 5, 2013

SUMMARY

The Massachusetts Supreme Judicial Court affirmed the convictions of John Rousseau and Michael Dreslinski for arson and related offenses arising from fires and vandalism in 2007. The court held that both defendants had standing to challenge the GPS warrant, that the warrant was supported by probable cause, and that Rousseau's probation condition restricting computer use violated his constitutional right of access to the courts. The court rejected Rousseau's sufficiency and evidentiary claims and rejected Dreslinski's claims concerning hearsay and the modified DiGiambattista instruction.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cordy, J.
JURISDICTION	Massachusetts
DECIDED	June 5, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed their convictions from separate jury trials in the Worcester Superior Court. The Supreme Judicial Court transferred the appeals to itself on its own motion.
STANDARD OF REVIEW	For sufficiency of the evidence, whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find the essential elements beyond a reasonable doubt. Admission of evidence for relevance and prejudice was reviewed for abuse of discretion, and the court reviewed the challenged jury instruction for prejudicial error.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; precedential
PARTIES	John Rousseau, Michael Dreslinski v. Commonwealth

TOPICS

- search and seizure
- fourth amendment
- probable cause
- suppression of evidence
- criminal procedure

PRACTICE AREAS

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether Rousseau and Dreslinski had standing to challenge the GPS warrant under the Fourth Amendment and article 14 of the Massachusetts Declaration of Rights.
2. Whether the affidavit supporting the GPS warrant established probable cause after excision of allegedly overstated information.
3. Whether Rousseau's convictions were supported by sufficient evidence.
4. Whether the trial judge improperly admitted evidence as irrelevant or prejudicial character evidence.
5. Whether the probation condition barring Rousseau from using computers while incarcerated violated his constitutional right of access to the courts.
6. Whether Rousseau's statements to a news photographer were admissible under the joint venturer exception to the hearsay rule.
7. Whether the trial judge's modified DiGiambattista instruction, including reference to Rousseau's alleged waiver of recording, required a new trial.

HOLDINGS

1. Dreslinski, as the owner and operator of the vehicle, had standing to challenge the GPS monitoring. Rousseau, although merely a passenger without a possessory interest in the vehicle, also had standing under article 14 because he had a reasonable expectation that his movements would not be subjected to extended government GPS surveillance without judicial oversight and probable cause.
2. The affidavit, even after excision of allegedly overstated portions concerning a recorded conversation, contained sufficient information to establish probable cause for the GPS warrant.
3. The evidence was sufficient for a rational juror to find beyond a reasonable doubt that Rousseau participated with Dreslinski in setting the charged fires and committing the related offenses.
4. The trial judge did not abuse his discretion by admitting testimony and physical evidence concerning Rousseau's conduct, police-related activity, and fire-related items found at his residence.
5. The probation condition prohibiting Rousseau from using any computer while incarcerated was overly broad and violated his constitutional right of access to the courts because it effectively denied access to computerized legal research and library materials.
6. Rousseau's out-of-court statements to the news photographer were admissible against Dreslinski as admissions of a joint venturer made during and in furtherance of an ongoing criminal enterprise.
7. The trial judge's use of the word "waived" in a modified DiGiambattista instruction was problematic, but did not constitute prejudicial error requiring a new trial under the circumstances presented.

KEY QUOTATIONS

“We conclude that under art. 14, a person may reasonably expect not to be subjected to extended GPS electronic surveillance by the government, targeted at his movements, without judicial oversight and a showing of probable cause.” (382)

“However, given that the Department of Correction has digitized its law library, we agree that the breadth of the probationary condition would have the practical effect of denying Rousseau access to the courts.” (390)

FACTUAL BACKGROUND

State police investigated Rousseau and Dreslinski for a series of arsons and related offenses in Massachusetts during the summer of 2007. Pursuant to successive warrants, police attached a GPS device to Dreslinski’s pickup truck and monitored it for thirty-one days; GPS and surveillance evidence placed the truck and the defendants near four fire scenes. Searches of the defendants’ residences and vehicle uncovered fire-related equipment, police equipment, clothing, maps, and radio information. Rousseau was also subject to a probation condition barring computer use while incarcerated, although the Department of Correction had converted its legal library to computerized access.

PROCEDURAL HISTORY

Rousseau and Dreslinski were separately convicted of multiple arson and related offenses arising from four fires and related property crimes. They challenged the GPS warrant, evidentiary rulings, and other trial and sentencing matters on appeal. The Supreme Judicial Court affirmed the convictions but remanded Rousseau’s case for modification of his probation conditions.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Rousseau’s case is remanded for modification of his probation terms. He must be permitted to use prison library computers for legal research and other activity related to his case, but may be barred from using those computers for other purposes.

CASES CITED

- Commonwealth v. Connolly, 454 Mass. 808 (2009)
- United States v. Jones, 132 S. Ct. 945 (2012)
- Commonwealth v. Long, 454 Mass. 542 (2009)
- Commonwealth v. Mubdi, 456 Mass. 385 (2010)
- People v. Weaver, 12 N.Y.3d 433 (2009)
- Kyllo v. United States, 533 U.S. 27 (2001)
- Katz v. United States, 389 U.S. 347 (1967)
- Olmstead v. United States, 277 U.S. 438 (1928)

- Commonwealth v. Walczak, 463 Mass. 808 (2012)
- United States v. Grubbs, 547 U.S. 90 (2006)
- Commonwealth v. Latimore, 378 Mass. 671 (1979)
- Jackson v. Virginia, 443 U.S. 307 (1979)
- Commonwealth v. Mullane, 445 Mass. 702 (2006)
- Commonwealth v. Arroyo, 442 Mass. 135 (2004)
- Commonwealth v. Sicari, 434 Mass. 732 (2001)
- Commonwealth v. Robidoux, 450 Mass. 144 (2007)
- Commonwealth v. Marrero, 427 Mass. 65 (1998)
- Commonwealth v. Pike, 428 Mass. 393 (1998)
- Commonwealth v. Power, 420 Mass. 410 (1995)
- United States v. Tonry, 605 F.2d 144 (5th Cir. 1979)
- Commonwealth v. LaFrance, 402 Mass. 789 (1988)
- Commonwealth v. Bongarzone, 390 Mass. 326 (1983)
- Commonwealth v. Silanskas, 433 Mass. 678 (2001)
- Commonwealth v. DiGiambattista, 442 Mass. 423 (2004)
- Commonwealth v. Tavares, 81 Mass. App. Ct. 71 (2011)
- Commonwealth v. Robinson, 78 Mass. App. Ct. 714 (2011)
- Commonwealth v. Drummond, 76 Mass. App. Ct. 625 (2010)