

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Broom

474 Mass. 486 (2016) · No. SJC-11729 · Decided June 13, 2016

SUMMARY

The Massachusetts Supreme Judicial Court affirmed Eldrick Broom's convictions for murder in the first degree and aggravated rape. The court held that the defendant's challenge to the warrantless acquisition of thirty-one days of cellular site location information was not retroactively available because the issue had not been preserved at trial, and admission of the limited CSLI evidence did not create a substantial likelihood of a miscarriage of justice. The court nevertheless concluded that the warrant authorizing a search of the defendant's cellular telephone lacked probable cause and was overbroad.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Botsford, J.; Gants, C.J.; Spina, J.; Duffly, J.; Lenk, J.
JURISDICTION	Massachusetts
DECIDED	June 13, 2016
DOCKET	SJC-11729
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions of murder in the first degree and aggravated rape following the denial of a pretrial motion to suppress evidence and a jury trial in the Superior Court. The defendant also sought relief under G. L. c. 211, § 3, concerning the trial judge's handling of a juror's note.
STANDARD OF REVIEW	Constitutional suppression issues are reviewed for legal error; erroneous admission of evidence obtained in violation of constitutional rights is reviewed for harmlessness beyond a reasonable doubt. The court also conducted the required independent review under G. L. c. 278, § 33E.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Eldrick Broom v. Commonwealth

TOPICS

search and seizure

probable cause

warrant requirement

suppression of evidence

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the Commonwealth's warrantless acquisition of thirty-one days of cellular-site location information violated article 14 of the Massachusetts Declaration of Rights and, if so, whether the issue was preserved sufficiently to receive retroactive application of *Commonwealth v. Augustine*.
2. Whether the search warrant for the contents of the defendant's cellular telephone was supported by probable cause and satisfied the particularity requirement.
3. Whether the search of the cellular telephone was invalid because police did not begin the search within seven days after issuance of the warrant.
4. Whether the trial judge deprived the defendant of his right to participate in shaping a response by withholding a juror's note and responding without first allowing counsel to review it.
5. Whether any errors required reversal of the convictions under the harmless-error standard or the court's independent review under G. L. c. 278, § 33E.

HOLDINGS

1. The new rule requiring a search warrant supported by probable cause to obtain cellular-site location information for a substantial period applies only when the conviction was not final and the warrant issue was raised before or during trial. Because Broom did not challenge the acquisition of his cellular-site location information before or during trial, Augustine's warrant rule did not apply retroactively to his case.
2. The information known to police, including Broom's DNA on the victim and his residence in the same apartment complex, supplied probable cause to believe that CSLI for November 20 and 21 would assist in determining his location in the hours before, during, and after the homicide.
3. The warrant authorizing the search of the defendant's cellular telephone was unsupported by probable cause and was overly broad. A warrant affidavit concerning a cellular telephone with extensive storage and Internet capabilities must provide a particularized basis to expect that evidence relating to the crime will be found in the specific data files or electronic locations to be searched.
4. The denial of the motion to suppress the fruits of the cellular-telephone search was constitutional error, but the error was harmless beyond a reasonable doubt and did not require reversal.
5. The trial judge erred by preventing counsel from reading a juror's note at or near the time it was delivered and from participating meaningfully in shaping the response, but the error was harmless beyond a reasonable doubt.

KEY QUOTATIONS

“where search of this type of cellular telephone is sought, there must be probable cause that the device contains “particularized evidence” relating to the crime.” (at 16-17)

“Rather, the affidavit must demonstrate that there is a reasonable expectation that the items sought will be located in the particular data file or other specifically identified electronic location that is to be searched.” (at 17-18)

“it was error for the judge not to have allowed counsel to read the juror’s note at or near the time it was delivered and to participate meaningfully in shaping the judge’s response to it.” (at 28-29)

FACTUAL BACKGROUND

The victim was found strangled in her Boston apartment on November 21, 2011, with clothing and ligatures around her body and her cellular telephone, keys, and underwear missing. DNA testing linked Broom to sperm found on the victim and on clothing beneath her body, and Broom lived in the same apartment complex and had acknowledged a sexual encounter with the victim the night before her death. Cellular-site location information placed his telephone away from the victim’s apartment near the relevant time, while other evidence strongly supported the prosecution’s theory that the sexual encounter and killing occurred as part of a violent assault.

PROCEDURAL HISTORY

Indictments were returned in the Superior Court Department on January 31, 2012. A pretrial motion to suppress was heard by Judge Janet L. Sanders, and the cases were tried before Judge Jeffrey A. Locke. The motion to suppress evidence from the defendant’s cellular telephone was denied, the defendant was convicted, and the Supreme Judicial Court affirmed after reviewing the claims concerning cellular-site location information, the cellular-telephone search, the juror’s note, and its independent review under G. L. c. 278, § 33E.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Augustine, 467 Mass. 230 (2014)
- Commonwealth v. Estabrook, 472 Mass. 852, 858-859 (2015)
- Commonwealth v. Augustine, 472 Mass. 448, 454-455 (2015)
- Commonwealth v. Connolly, 454 Mass. 808, 811, 819-822, 825 (2009)
- Commonwealth v. Kaupp, 453 Mass. 102, 110 (2009)
- Commonwealth v. Dorelas, 473 Mass. 496, 499, 501-504, 506-507 (2016)
- Teague v. Lane, 489 U.S. 288, 301 (1989)
- Commonwealth v. Bray, 407 Mass. 296, 301 (1990)
- Commonwealth v. Figueroa, 413 Mass. 193, 202 (1992), S.C., 422 Mass. 72 (1996)
- Commonwealth v. D’Agostino, 421 Mass. 281, 284 (1995)
- Commonwealth v. Bowler, 407 Mass. 304, 307 (1990)

- Commonwealth v. Thomas, 469 Mass. 531, 552a (2014)
- Commonwealth v. O'Brien, 419 Mass. 470, 478 (1995)
- Commonwealth v. Woodbine, 461 Mass. 720, 731-732 (2012)
- Commonwealth v. Floyd P., 415 Mass. 826, 833-834 (1993)
- Thames v. Commonwealth, 365 Mass. 477, 478 n.2 (1974)
- Commonwealth v. Bacigalupo, 49 Mass. App. Ct. 629, 631-634 (2000)
- Shields v. United States, 273 U.S. 583, 588-589 (1927)
- United States v. Parent, 954 F.2d 23, 24-26 (1st Cir. 1992)
- Fillippon v. Albion Vein Slate Co., 250 U.S. 76, 80 (1919)
- Commonwealth v. Curtis, 417 Mass. 619, 636 (1994)
- Commonwealth v. Davis, 52 Mass. App. Ct. 75, 77-78 (2001)
- Commonwealth v. Cromer, 365 Mass. 519, 525 (1974)
- E.C.O. v. Compton, 464 Mass. 558, 559 n.5 (2013)
- Rivera v. State, 381 S.W.3d 710, 711 n.2 (Tex. Ct. App. 2012)

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