

SUPREME COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania v. Rahiem Cardel Fant

Fant · No. 66 MAP 2015 · Decided September 28, 2016

SUMMARY

Justice Wecht concurs in the Pennsylvania Supreme Court's decision concerning whether inmate “visit conversations” fall within the Pennsylvania Wiretapping and Electronic Surveillance Control Act exception for telephone calls to or from inmates. He agrees with the Majority's interpretation and application of the statutory exception but disagrees with addressing the Commonwealth's alternative argument that no interception occurred, concluding that the argument was not preserved for appellate review.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Wecht
JURISDICTION	Pennsylvania
DECIDED	September 28, 2016
DOCKET	66 MAP 2015
DISPOSITION	other
PROCEDURAL POSTURE	The Commonwealth appealed to the Supreme Court of Pennsylvania from the Superior Court's order reversing the Clinton County Court of Common Pleas' suppression order. The concurrence addresses the statutory exception for inmate telephone calls under the Pennsylvania Wiretapping and Electronic Surveillance Control Act and preservation of an alternative interception argument.
PRECEDENTIAL VALUE	Published concurring opinion; the concurrence is not independently controlling, although it joins the majority's resolution of the statutory issue.
PARTIES	Rahiem Cardel Fant v. Commonwealth of Pennsylvania

TOPICS

statutory interpretation

suppression of evidence

appellate procedure

preservation of error

criminal procedure

PRACTICE AREAS

criminal procedure

wiretap and electronic surveillance

appellate procedure

QUESTIONS PRESENTED

1. Whether the inmate-related “visit conversations” fell within the Pennsylvania Wiretapping and Electronic Surveillance Control Act exception permitting interception of telephone calls from or to an inmate in a facility.
2. Whether the Commonwealth could rely on the right-for-any-reason doctrine to assert, for the first time in the Supreme Court, that there was no interception under the Wiretap Act.
3. Whether the Commonwealth's failure to raise and preserve the interception issue in the Superior Court barred appellate review of that alternative argument.

HOLDINGS

1. The concurrence joins the majority's resolution that the relevant “visit conversations” fall within the statutory exception for interception of telephone calls from or to an inmate and agrees with the majority's application of that exception to the suppression court's factual findings.
2. The concurrence concludes that the majority should not reach the Commonwealth's alternative argument that no interception occurred because the Commonwealth failed to raise and preserve that issue in the Superior Court while acting as the appellant there.

KEY QUOTATIONS

“Because the Wiretap Act does not define “telephone calls,” it is necessary to discern the ordinary meaning of this term.” (at 2)

“Having lost in the suppression court, the Commonwealth had the obligation to preserve the issue when it was the appellant in the Superior Court.” (at 4)

FACTUAL BACKGROUND

The case involved recorded or monitored conversations associated with an inmate, described by the majority as “visit conversations.” The concurrence states that the suppression court made factual findings and agrees with the majority's application of the Wiretap Act's inmate-telephone-call exception to those facts.

PROCEDURAL HISTORY

The Clinton County Court of Common Pleas entered an order in a criminal case on February 26, 2014. The Superior Court, at No. 386 MDA 2014, reversed that order on February 9, 2015. The Commonwealth appealed to the Supreme Court of Pennsylvania under No. 66 MAP 2015; the matter was submitted on March 16, 2016, and decided on September 28, 2016.

DISPOSITION

other

CASES CITED

- Commonwealth v. DiNicola, 866 A.2d 329, 346 n.7 (Pa. 2005)
- E.J. McAleer & Co., Inc. v. Iceland Products Inc., 381 A.2d 441, 443 n.4 (Pa. Super. Ct. 1977)
- Commonwealth v. Katze, 658 A.2d 345, 349 (Pa. Super. Ct. 1995)
- Freed v. Geisinger Med. Ctr., 5 A.3d 212, 222 n.4 (Pa. 2010)
- In re J.M., 726 A.2d 1041, 1051 n.15 (Pa. 1999)
- Vicari v. Spiegel, 989 A.2d 1277, 1287 (Pa. 2010)
- Commonwealth v. Fant, 109 A.3d 777

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