

SUPREME COURT OF NEVADA

Sharpe v. State

2015 NV 32 (2015) · No. 64287 · Decided June 4, 2015

SUMMARY

The Nevada Supreme Court affirmed Phillip Douglas Sharpe’s judgment of conviction for trafficking in a controlled substance following a guilty plea. The court held that Nevada’s wiretap statutes, specifically NRS 179.455 and NRS 179.460, permit the interception of cellular telephone calls and text messages because those communications qualify as wire communications. The court also concluded that Nevada’s law was not preempted by federal wiretap law.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Gibbons, J.; Saitta, J.; Pickering, J.
JURISDICTION	Nevada
DECIDED	June 4, 2015
DOCKET	64287
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of conviction, pursuant to a guilty plea, for trafficking in a controlled substance. The appellant reserved the right to appeal the denial of motions to compel discovery, suppress wiretap evidence, suppress vehicle-search evidence, and obtain a Franks hearing.
STANDARD OF REVIEW	Questions of statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential
PARTIES	Phillip Douglas Sharpe v. The State of Nevada

TOPICS

- statutory interpretation
- criminal procedure
- suppression of evidence
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- statutory interpretation
- electronic surveillance

QUESTIONS PRESENTED

1. Whether Nevada's wiretap statutes permit the interception of cellular telephone calls and SMS text messages under the statutory definition of 'wire communication.'
2. Whether Nevada's failure to update its wiretap statutes after federal law recognized a separate category of electronic communications rendered Nevada law less restrictive than federal law and therefore preempted.
3. Whether the district court erred in denying Sharpe's other pretrial motions and motions to suppress.

HOLDINGS

1. NRS 179.455's definition of 'wire communication' includes cellular telephone calls and text messages because they are 'any communication' made in whole or in part by the aid of wire, cable, or another like connection between the point of origin and the point of reception.
2. Nevada's wiretap law was not preempted because, despite differing statutory terminology, it allowed interception of cellular telephone calls and text messages to the same extent as federal law and was therefore not less restrictive.
3. The district court did not err in concluding that Nevada law permitted interception of Sharpe's cellular telephone calls and text messages, and the judgment of conviction was affirmed.

KEY QUOTATIONS

"We conclude that Nevada wiretap law, assuming its other statutory requirements are satisfied, allows for the interception of cellular telephone calls and text messages." (1)

"We conclude that NRS 179.455's definition of "wire communication" includes cellular telephone calls and text messages by its plain terms." (7)

"Accordingly, we conclude that Nevada wiretap law is not preempted." (9)

FACTUAL BACKGROUND

Officers investigating suspected methamphetamine distribution obtained a warrant authorizing interception of communications on two cellular telephone numbers attributed to Sharpe. The wiretap intercepted cellular calls and text messages, and intelligence from the wiretap and physical surveillance contributed to the investigation of a suspected methamphetamine purchase. Officers arrested Sharpe and seized approximately 3.25 pounds of methamphetamine from his vehicle, while a contemporaneous residential search yielded additional drugs and paraphernalia.

PROCEDURAL HISTORY

Officers obtained a wiretap warrant for two cellular telephone numbers attributed to Sharpe and intercepted telephone calls and text messages. They later obtained a search-and-seizure warrant, arrested Sharpe after observing a presumed drug transaction, and seized approximately 3.25 pounds of methamphetamine from his vehicle. The district court denied Sharpe's five pretrial motions; Sharpe then pleaded guilty to level III

trafficking in a controlled substance while reserving his appellate rights. The Nevada Supreme Court affirmed the judgment of conviction.

DISPOSITION

affirmed

CASES CITED

- State v. Lucero, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011)
- Berger v. New York, 388 U.S. 41 (1967)
- Katz v. United States, 389 U.S. 347 (1967)
- Bartnicki v. Vopper, 532 U.S. 514, 523-24 (2001)
- Commonwealth v. Moody, 993 N.E.2d 715, 718-24 (Mass. 2013)
- State v. Serrato, 176 P.3d 356, 359-60 (Okla. Crim. App. 2007)
- McKamey v. Roach, 55 F.3d 1236, 1240 (6th Cir. 1995)
- State v. Allen, 119 Nev. 166, 170, 69 P.3d 232, 235 (2003)
- Yates v. United States, 574 U.S. ___, 135 S. Ct. 1074, 1081-82 (2015)
- Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997)
- Franks v. Delaware, 438 U.S. 154 (1978)