

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Almonor, 482 Mass. 35

120 N.E.3d 1183 (2019) · No. SJC-12499 · Decided April 23, 2019

SUMMARY

The Massachusetts Supreme Judicial Court held that police use of a cellular-service-provider ping to cause a defendant's cell phone to transmit its real-time GPS location constitutes a search under art. 14 of the Massachusetts Declaration of Rights. The court nevertheless concluded that the warrantless search was supported by probable cause and justified by exigent circumstances in the investigation of a murder suspect believed to possess a shotgun. The court therefore reversed the allowance of the defendant's motion to suppress.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Kafker, J.; Gants, C.J.; Lenk, J.; Gaziano, J.; Lowy, J.; Budd, J.; Cypher, J.
JURISDICTION	Massachusetts
DECIDED	April 23, 2019
DOCKET	SJC-12499
DISPOSITION	reversed
PROCEDURAL POSTURE	The Commonwealth brought an interlocutory appeal from an order allowing the defendant's motion to suppress evidence. The Supreme Judicial Court granted direct appellate review.
STANDARD OF REVIEW	The court accepts the motion judge's subsidiary factual findings absent clear error but independently reviews ultimate findings and conclusions of law.
PRECEDENTIAL VALUE	Published opinion of the Massachusetts Supreme Judicial Court; binding Massachusetts precedent.
PARTIES	Commonwealth v. Jerome Almonor

TOPICS

- search and seizure
- fourth amendment
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

criminal procedure

constitutional law

privacy and technology

appellate procedure

QUESTIONS PRESENTED

1. Whether police action causing a cellular telephone to transmit its real-time location constitutes a search under article 14 of the Massachusetts Declaration of Rights or the Fourth Amendment.
2. Whether the warrantless real-time location search was reasonable under the exigent circumstances exception to the warrant requirement.
3. Whether the evidence seized from the bedroom should be suppressed as fruit of the warrantless cell-phone search.

HOLDINGS

1. Police action that causes an individual's cellular telephone to reveal its real-time location intrudes on a reasonable expectation of privacy and constitutes a search under article 14 of the Massachusetts Declaration of Rights.
2. The warrantless cell-phone search was reasonable under the exigent circumstances exception because police had probable cause and reasonable grounds to believe that obtaining a warrant would be impracticable due to risks of flight, destruction of evidence, and danger to police or others.

KEY QUOTATIONS

“Accordingly, we conclude that by causing the defendant's cell phone to reveal its real-time location, the Commonwealth intruded on the defendant's reasonable expectation of privacy in the real-time location of his cell phone.” (slip op. at 22)

“Faced with this exigency, the police acted entirely reasonably in pinging the defendant's cell phone to determine its location.” (slip op. at 31)

FACTUAL BACKGROUND

Police investigating a fatal shooting identified Almonor as the suspected shooter and learned that he still possessed a sawed-off shotgun. Without a warrant, police asked his cellular service provider to ping his phone and provide its real-time GPS coordinates, which placed the phone in the general location of a Brockton street where Almonor's former girlfriend lived. Police went to the residence with the homeowner's consent, found and arrested Almonor, and later obtained a search warrant for the bedroom, where they seized a sawed-off shotgun and bulletproof vest.

PROCEDURAL HISTORY

Indictments were returned in the Superior Court Department. After a three-day evidentiary hearing, the motion judge concluded that police use of a warrantless cell-phone ping was a search under the Fourth Amendment and article 14 and that exigent circumstances did not justify the warrantless search. A single justice allowed the

Commonwealth's interlocutory appeal and reported it to the Appeals Court; the Supreme Judicial Court thereafter granted the defendant's petition for direct appellate review.

DISPOSITION

reversed

CASES CITED

- Commonwealth v. Jones-Pannell, 472 Mass. 429, 436 (2015)
- Commonwealth v. Magri, 462 Mass. 360, 366 (2012)
- Commonwealth v. Augustine, 467 Mass. 230, 241-255 (2014), S.C., 470 Mass. 837 (2015)
- Katz v. United States, 389 U.S. 347, 351, 361 (1967)
- Carpenter v. United States, Carpenter v. United States, 138 S. Ct. 2206, 2214-2219, 2223 (2018)
- Commonwealth v. Rousseau, 465 Mass. 372, 382 (2013)
- Commonwealth v. Figueroa, 468 Mass. 204, 213-214 (2014)
- Commonwealth v. Forde, 367 Mass. 798, 800-807 (1975)
- Commonwealth v. Tyree, 455 Mass. 676, 684, 687-691 (2010)
- Commonwealth v. Alexis, 481 Mass. 91, 96-101 (2018)
- Commonwealth v. Estabrook, 472 Mass. 852, 858 & n.12 (2015)
- Commonwealth v. Connolly, 454 Mass. 808, 819, 823, 835-836 (2009)
- Kyllo v. United States, 533 U.S. 27, 34-40 (2001)
- United States v. Karo, 468 U.S. 705, 707, 715-716 (1984)
- United States v. Jones, 565 U.S. 400, 415-416, 429 (2012)
- Commonwealth v. White, 475 Mass. 583, 588 (2016)
- Commonwealth v. Entwistle, 463 Mass. 205, 213 (2012), cert. denied, 568 U.S. 1129 (2013)
- Commonwealth v. Nelson, 460 Mass. 564, 569-573 (2011)