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SJC-13768

COMMONWEALTH vs. RICHARD ARNOLD.

Bristol. October 10, 2025. - December 17, 2025.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,
Dewar, & Wolohojian, JJ.

Sex Offender. Global Positioning System Device. Constitutional
Law, Sex offender, Search and seizure. Search and Seizure,
Probationer, Expectation of privacy. Practice, Criminal,
Probation, Findings by judge.

Indictments found and returned in the Superior Court
Department on November 17, 2011.

A motion for relief from a condition of probation, filed on
February 29, 2024, was heard by William M. White, Jr., J.

The Supreme Judicial Court granted an application for
direct appellate review.

James P. McKenna for the defendant.
Robert P. Kidd, Assistant District Attorney, for the
Commonwealth.

Patricia Muse & Ben Leatherman, Committee for Public
Counsel Services, for Committee for Public Counsel Services,
amicus curiae, submitted a brief.

DEWAR, J. General Laws c. 265, § 47 (§ 47), provides that a defendant convicted of certain sex offenses "shall" be subject to global positioning system (GPS) monitoring "at all times for the length of his probation." In Commonwealth v. Feliz, 481 Mass. 689, 690-691 (2019), S.C., 486 Mass. 510 (2020), we held that mandatory imposition of GPS monitoring as a condition of probation without an individualized determination as to the reasonableness of such a search violates art. 14 of the Massachusetts Declaration of Rights.

The present appeal raises questions concerning the duration of GPS monitoring. For reasons we elaborate on today, the reasonableness of GPS monitoring as a probation condition turns in part on its duration. A judge conducting the individualized determination required by Feliz, 481 Mass. at 690-691, therefore must consider the duration of the GPS monitoring condition. Moreover, as a result of our holding in Feliz, a judge may order GPS monitoring of a defendant under § 47 only for a duration, if any, that the judge determines to be reasonable.

The defendant here pleaded guilty to sex offenses prior to Feliz and was sentenced to ten years in a State prison followed by ten years of probation with GPS monitoring pursuant to § 47. After serving his prison sentence and the first two years of his probation with GPS monitoring, the defendant moved under Feliz for an individualized determination as to the reasonableness of

his GPS monitoring condition and argued that the condition should be terminated. Following a hearing, the motion judge concluded that the Commonwealth had satisfied its burden of proof to show that continued GPS monitoring of the defendant was reasonable. On appeal, the defendant raises a number of challenges to the judge's decision, most of which require little discussion. We agree with the defendant, however, that the judge was required to consider the ten-year duration of the defendant's GPS monitoring condition in determining whether the condition was reasonable. Although the judge entered detailed findings of fact and conclusions of law, the judge did not make findings and conclusions regarding the duration of the GPS monitoring condition. We therefore vacate the order denying the defendant's motion and remand for further proceedings consistent with this opinion.¹

Background. In March 2012, the defendant pleaded guilty to one count of rape of a child, two counts of rape of a child aggravated by age, two counts of incest, and one count of indecent assault and battery on a child under the age of fourteen. The victims are the defendant's children. The female victim disclosed that, when she was five years old, the defendant licked her vagina on one occasion. The male victim

¹ We acknowledge the amicus brief submitted by the Committee for Public Counsel Services.

disclosed that the defendant masturbated him and performed oral sex on him many times when the victim was ages ten to sixteen. The victims disclosed this information when they were still minors and the defendant was fifty-three years old.

The defendant received concurrent sentences on the six charges, amounting to a total of from ten years to ten years and one day in a State prison followed by ten years of probation. His conditions of probation included GPS monitoring for the entire period of probation under § 47. See G. L. c. 265, § 47 ("Any person who is placed on probation for [specified sex offenses] . . . shall, as a requirement of any term of probation, wear a global positioning system device . . . at all times for the length of his probation for any such offense"). The GPS exclusion zones required by § 47 were not established at the time of the defendant's sentencing. See id. (requiring Commissioner of Probation to "establish defined geographic exclusion zones including, but not limited to, the areas in and around the victim's residence, place of employment and school and other areas defined to minimize the probationer's contact with children, if applicable").

In addition to GPS monitoring, the defendant also was required, among other probation conditions, to have no contact with the victims, to have no unsupervised contact with any minor, to complete sexual abuse perpetrator counselling as well

as mental health counselling as directed by the Department of Probation, and to comply with his statutory obligation to register as a sex offender, see G. L. c. 6, § 178E. The Sex Offender Registry Board (SORB) subsequently classified the defendant as a level three offender. See G. L. c. 6, § 178K (2) (c) ("Where [SORB] determines that the risk of reoffense is high and the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active dissemination, it shall give a level [three] designation to the sex offender").

In 2019, we held that "[m]andatory, blanket imposition of GPS monitoring on probationers, absent individualized determinations of reasonableness, is unconstitutional." Feliz, 481 Mass. at 700. Accordingly, notwithstanding the mandate set forth in § 47, a judge may impose GPS monitoring on a defendant only if the judge determines, after "weigh[ing] the Commonwealth's need to impose GPS monitoring against the privacy invasion occasioned by such monitoring," that imposing GPS monitoring on the defendant is reasonable. Id. at 691.

In September 2021, the defendant completed his prison sentence and began his probationary term, subject to GPS monitoring. In February 2024, he filed a motion seeking the individualized determination required by Feliz of whether his GPS monitoring condition was reasonable. The defendant argued

that the condition violated his rights under the Fourth Amendment to the United States Constitution and art. 14 because the intrusion on his privacy interests was not sufficiently justified by countervailing government interests, and because the ten-year duration was arbitrary and excessive. In support of this argument, he pointed to his compliance thus far with all conditions of probation; the reduced risk of recidivism generally posed by a person of his age, then sixty-five; assessments conducted by his counselling program concluding that he posed a "very low risk" of reoffense notwithstanding his level three classification by SORB; and the lack of defined exclusionary zones to protect the victims, such that, the defendant argued, the GPS monitoring "serve[d] no meaningful purpose."

During the hearing on the defendant's motion, the Commonwealth indicated that it did not know the addresses of the victims despite efforts to contact them. The judge allowed the Commonwealth a continuance in order to locate the victims.

By the second hearing date, the Commonwealth had located the victims and confirmed that they both resided in Massachusetts. The Commonwealth introduced statements from the victims expressing their ongoing fear of the defendant and describing harms they continued to suffer as a result of the defendant's crimes. These harms included, among others,

posttraumatic stress and chronic anxiety disorders, insomnia and night terrors, and feeling "haunted and in [a] constant state of crippling stress and anxiety [at] the thought of" contact with the defendant. The Commonwealth argued that imposition of GPS monitoring was required to protect the public from the defendant, given the nature and gravity of his offenses and his level three SORB classification, and also urged that exclusion zones should be established to protect the victims.

In a memorandum of decision and order entered on June 5, 2024, the judge denied the defendant's motion for relief from the GPS monitoring condition. The judge also directed that GPS exclusionary zones be established for both victims and instructed the parties to file a motion with the court by June 28, 2024, if there were "any inability to set exclusionary zones or abide by them due to present residences or employment." No such motion was filed.

The defendant appealed from the judge's order, and we allowed his application for direct appellate review.

Discussion. The defendant argues that the ten-year duration of his GPS monitoring condition, originally set at his sentencing under § 47 to match his ten-year probationary term, is an arbitrary and unreasonable duration that violates his constitutional rights under the Fourth Amendment and art. 14, and that the motion judge who declined to vacate the condition

upon conducting the individualized determination required by Feliz, 481 Mass. at 690-691, erred in failing to evaluate the duration of the condition.² "Although ordinarily we review a judge's decision on a motion to vacate a condition of probation for an abuse of discretion . . . we conduct an independent review where, as here, the judge's decision was based on a constitutional determination." Commonwealth v. Rodriguez, 494 Mass. 723, 732-733 (2024), quoting Commonwealth v. Roderick, 490 Mass. 669, 673 (2022).

GPS monitoring is a search under the Fourth Amendment and art. 14. See Feliz, 481 Mass. at 690-691, citing Grady v. North Carolina, 575 U.S. 306, 309 (2015). As a warrantless search, such monitoring is "'presumptively unreasonable,' and, therefore, presumptively unconstitutional." Roderick, 490 Mass. at 672, quoting Commonwealth v. Norman, 484 Mass. 330, 335 (2020). "Nonetheless, GPS monitoring of probationers may be constitutional if the Commonwealth establishes that such a search is reasonable." Roderick, supra, citing Commonwealth v. Antobenedetto, 366 Mass. 51, 57 (1974).

² The defendant also argues that, in various respects, the judge accorded too much weight to the government's interests in continued GPS monitoring. Deciding this case as we do, we need not and do not reach most of these arguments. See notes 3, 4, infra.

To prove the reasonableness of GPS monitoring as a probation condition, the Commonwealth must establish that "the government's interest in imposing GPS monitoring outweighs the privacy intrusion occasioned by GPS monitoring." Feliz, 481 Mass. at 701. "Because reasonableness depends 'on the totality of the circumstances,' . . . no one factor will be dispositive in every case." Id., quoting Grady, 575 U.S. at 310.

The government's interest in imposing GPS monitoring depends on the "extent to which the search advances a legitimate government interest." Roderick, 490 Mass. at 672. The Commonwealth must "establish how GPS monitoring" of "this particular defendant" furthers its interests, Feliz, 481 Mass. at 705, and the court then considers the weight of this interest, see Roderick, supra at 673.

As the judge recognized, the Commonwealth invoked two legitimate government interests in GPS monitoring of the defendant. First, "the government has a valid interest in deterrence . . . where the Commonwealth provides sufficient evidence that a defendant poses a demonstrable risk of reoffending." Roderick, 490 Mass. at 679. And, as the judge did here, a judge may rely on SORB's classification of a defendant as sufficient evidence to establish such a risk. See

Rodriguez, 494 Mass. at 735; Roderick, supra at 679-681.³

Second, "where the crime of which a defendant has been convicted was committed against a specific, identified victim, the Commonwealth may have a strong interest in enforcing exclusion zones in order to prevent further victimization of that individual." Roderick, supra at 677. "Exclusion zones ensure that defendants stay away from victims, thereby protecting

³ Because the judge thus could rely on the defendant's level three SORB classification as evidence that he posed a high risk of reoffense, see Roderick, 490 Mass. at 680-681, the defendant errs in asserting that "[n]othing in the record . . . supports the idea that . . . [he] is currently a threat to the public at large." The defendant also challenges the weight the judge accorded to the SORB classification decision, which was issued prior to the defendant's release from prison. Citing evidence that postdates SORB's decision, including the results of risk assessments performed by his counselling program, the defendant argues that the judge clearly erred in his finding that "there is nothing to indicate that [the defendant] poses anything less than a high risk to the public." Contrary to the defendant's suggestion, the judge's finding does not necessarily amount to a finding that there was no evidence whatsoever in the record in the defendant's favor as to his risk of reoffense; instead, it may well represent a finding that, after weighing all of the relevant evidence, none sufficed to show that he "poses anything less than a high risk to the public." Deciding this case as we do, we need not address the relative weight to be accorded to the disputed evidence; all of the evidence again will be before the judge on remand, and the judge will consider "the totality of the circumstances" in determining whether the ten-year duration of GPS monitoring here is a reasonable search. Feliz, 481 Mass. at 701, quoting Grady, 575 U.S. at 310.

victims' safety by providing them with a safe haven" (quotation omitted). Id.⁴

With respect to a defendant's privacy interests, although a probationer has "a diminished expectation of privacy relative to the general population, . . . the government does not have an unlimited ability to infringe" upon it (quotation omitted). Feliz, 481 Mass. at 700. While "[p]robationers who have been convicted of sex offenses are subject to monitoring in numerous ways apart from GPS monitoring[,] . . . GPS monitoring results in 'a far greater intrusion on the defendant's liberty than that associated with traditional probation monitoring.'" Id. at 703, quoting Commonwealth v. Goodwin, 458 Mass. 11, 22 (2010). It requires "the probation department [to] attach a GPS device to

⁴ The defendant does not dispute the relevance of this government interest here, conceding -- as is manifestly supported by the record -- that "[t]he Commonwealth presented information that the now adult victims continue to suffer psychological harm and find the prospect of having a possible contact with [the defendant] upsetting." He nonetheless argues that the judge "[g]ave [u]ndue [w]eight" to this interest, where, in the defendant's view, based on other evidence, "[i]t is speculative, and improbable, to think that [the defendant] would initiate contact with the victims during the remainder of his probationary term and risk being sentenced back to prison," and where, regardless of GPS monitoring, the defendant will remain subject to a probation condition that he stay away from the victims for the full duration of his ten-year probationary term. Again, deciding this case as we do, we need not address this issue; the judge on remand will consider the weight to accord the government's interest in protecting these victims as part of the totality of the circumstances. See Feliz, 481 Mass. at 699; note 3, supra.

the defendant's person, in such a way that the defendant cannot remove the device," thereby "significantly burden[ing] the defendant's liberty interest in bodily autonomy and integrity." Roderick, 490 Mass. at 675. Further, " [t]he information exposed through GPS monitoring is uniquely revealing"; it "provides the government with a detailed, encyclopedic, and effortlessly compiled log of the individual's movements" (quotation and citation omitted). Id. at 676. See Feliz, supra at 704 ("As currently in use in the Commonwealth, GPS devices collect one data point of latitude and longitude per minute," as well as "information about a wearer's speed of travel, such that it is possible to tell if a person is driving, running, or walking," with data then "stored for an indefinite amount of time").

We agree with the defendant that, because of the nature of GPS monitoring as a search, a judge determining the reasonableness of a GPS monitoring condition must consider, among all the circumstances, the duration of monitoring. The Appeals Court recently expressly so held in Commonwealth v. Streed, 105 Mass. App. Ct. 606, 607, 609-610 (2025), a case also involving a defendant sentenced to ten years of probation with GPS monitoring pursuant to § 47 prior to Feliz. Streed duly recognized that a judge must "'consider the incremental effect' that GPS monitoring over time would have on the defendant's

liberty, weigh[] that effect against the government's interest in monitoring, and determine[] an appropriate period of monitoring." Streed, supra at 609, quoting Roderick, 490 Mass. at 672. Indeed, although the Commonwealth defends the reasonableness of the defendant's GPS monitoring condition in its entirety and argues that § 47 requires imposing it in full, the Commonwealth does not dispute that such a condition's duration bears on whether it is reasonable.

The duration of the search affects, most obviously, the burden on the defendant's interests. The invasiveness of GPS monitoring results not only from the nature of the information collected, see Feliz, 481 Mass. at 704-705, but also from its collection over a "much longer period of time" than many other searches, id. at 704. See Roderick, 490 Mass. at 672 (courts must consider "the character and quantity of the information that would be revealed by [a] search" when considering privacy intrusion occasioned by GPS monitoring [emphasis added]). The longer a defendant is monitored, the greater the information collected, and the greater the burden on the defendant's liberty interest in bodily autonomy. See id. at 683. Accordingly, in Roderick, for example, we noted that "the degree of intrusion upon the defendant's privacy occasioned by GPS monitoring [was] aggravated by the fact that the defendant was ordered to wear a GPS device for three years." Id.

The duration of GPS monitoring also bears on the showing the Commonwealth must make as to how GPS monitoring of the defendant advances its own interests. Because the Commonwealth bears the burden of proving the reasonableness of the search, see Roderick, 490 Mass. at 672, the Commonwealth must demonstrate that its interests in imposing GPS monitoring outweigh the defendant's privacy interests for the full duration of the search, see Streed, 105 Mass. App. Ct. at 609-610, citing Feliz, 481 Mass. at 700.

The duration of GPS monitoring thus is part of the "totality of the circumstances" a judge must consider in assessing the reasonableness of GPS monitoring as a condition of probation. Feliz, 481 Mass. at 701, quoting Grady, 575 U.S. at 310. And this reasonableness determination as to the entire period "must be made before a defendant is subjected to GPS monitoring." Streed, 105 Mass. App. Ct. at 609, citing Feliz, supra at 700.

We further agree with the defendant that the duration of GPS monitoring imposed on a defendant under § 47, if any, need not match the length of the defendant's probationary term, depending on whether the Commonwealth demonstrates the reasonableness of GPS monitoring for the entire period of probation. See Streed, 105 Mass. App. Ct. at 609-610. Arguing the contrary, the Commonwealth emphasizes that § 47 requires

that a defendant be subject to GPS monitoring "at all times for the length of his probation." G. L. c. 265, § 47.

Notwithstanding this clear statement of legislative intent that GPS monitoring extend for the full duration of probation for defendants subject to § 47, we have already held in Feliz, 481 Mass. at 696-703, that the Fourth Amendment and art. 14 do not permit imposition of GPS monitoring as a condition of probation unless the Commonwealth demonstrates the condition's reasonableness for a particular defendant -- a determination that, as we underscore today, depends in part on the duration of the search. See, e.g., Roderick, 490 Mass. at 683. Accordingly, under Feliz, supra, a judge sentencing a defendant under § 47 may impose a GPS monitoring condition only for a duration, if any, that the judge determines to be reasonable, even if the resulting period of GPS monitoring is shorter than the duration of probation.

Here, as the Commonwealth concedes, the judge's findings and conclusions, issued without the benefit of the Appeals Court's recent decision in Streed, 105 Mass. App. Ct. at 609-610, did not address the ten-year duration of the defendant's GPS monitoring condition. Although the judge's order identified a host of considerations relevant to the reasonableness of imposing GPS monitoring on the defendant, the duration of the search was not among them. Nor did the judge address the ten-

year duration in his factual findings and conclusions regarding the strength of the Commonwealth's interests advanced by GPS monitoring of this defendant, the burdens on the defendant's interests, and the balance between them. We thus cannot be sure that the judge considered the duration of the GPS monitoring condition. We therefore vacate the judge's order and remand so that the judge may make further factual findings and reconsider the reasonableness of the defendant's GPS monitoring condition in light of our opinion today.⁵

Conclusion. Whether GPS monitoring as a condition of probation is a reasonable search turns in part on its duration, and the Commonwealth bears the burden of demonstrating that GPS monitoring is reasonable for the entire ordered duration. Notwithstanding the requirement in G. L. c. 265, § 47, that a defendant sentenced thereunder shall be subject to GPS monitoring "at all times for the length of his probation," a judge may order GPS monitoring only for a duration, if any, that the judge determines to be reasonable, even if the resulting

⁵ There is one additional issue to be addressed in the proceedings on remand. The record before this court is unclear whether exclusion zones were set for the defendant and, if they were, whether the defendant was given notice of the zones' locations. The Commonwealth concedes that the defendant is entitled to this information. On remand, assuming he remains subject to continued GPS monitoring, the defendant shall be given notice of the location of any exclusion zones.

period of GPS monitoring is shorter than the defendant's probationary term.

We vacate the order entered on June 5, 2024, denying the defendant's motion, and remand the matter to the Superior Court for further proceedings consistent with this opinion. In the proceedings on remand, the defendant shall be given notice of the locations of any GPS exclusion zones. See note 5, supra.

So ordered.