

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Suffolk County
SJC-13991

Commonwealth of Massachusetts,
Plaintiff/Appellee

v.

Romuald Bernaud,
Defendant/Appellant

ON INTERLOCUTORY APPEAL FROM A DECISION OF THE
SUFFOLK SUPERIOR COURT
DENYING THE DEFENDANT'S MOTION TO SUPPRESS

BRIEF OF APPELLANT,
Romuald Bernaud

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November 2025

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ISSUE PRESENTED

Whether Mr. Bernaud had an objectively reasonable expectation of privacy in six hours of his minute-by-minute GPS data because it had a great level of detail, including direction and speed of travel, which contained significantly more information than an equivalent six hours of CSLI and the timeframe for the GPS data extended well beyond the time of the shooting.

STATEMENT OF THE CASE

On March 11, 2024, a grand jury indicted Mr. Bernaud for (1) carrying a firearm without a license in violation of G.L. c. 269, § 10(a); (2) carrying a loaded firearm without a license in violation of G.L. c. 269, § 10(n); (3) possession of ammunition in violation of G.L. c. 269, § 10(h)(1); (4) possession of a firearm in a felony in violation of G.L. c. 265, § 18B; and (5) assault and battery with a dangerous weapon in violation of G.L. c. 265, § 15A(b). (R.A. 3-7).¹ He pled not guilty to these charges. (R.A.

¹ The Record Appendix is reproduced separately and is cited by page as "(R.A. __)". The addendum is reproduced post and is citing by page as "(Add. __)". The transcript of the hearing in this case is cited as (Tr. __)."

11). On June 4, 2024, Mr. Bernaud filed a motion to suppress the GPS location data that police had obtained. (R.A. 22). A hearing occurred before Judge Adam Sisitsky on September 17, 2024. (R.A. 14). On October 15, 2024, Judge Sisitsky denied the motion in a written decision. (R.A. 32). Mr. Bernaud filed a timely notice of appeal and application for leave to pursue an interlocutory appeal. (R.A. 38). On March 4, 2025, a single justice of the Supreme Judicial Court (Wolohojian, J.) allowed it and directed it to proceed in the Appeals Court.

INTRODUCTION TO THE STATEMENT OF FACTS

Both the motion judge's findings of fact and this statement of facts are drawn from the supplementary police report regarding a 2023 introduced into evidence. (R.A. 27-31). The entirety of the record before the trial judge consisted of three agreed upon exhibits. (Tr. 4).

STATEMENT OF FACTS

At approximately 9:34 a.m. on July 24, 2023, police responded to 788 Dudley Street in Boston, following reports of a person shot. (R.A. 27). Police obtained ballistic evidence from Dudley Street, as well as video footage from nearby locations. (R.A.

27). The video from this "initial investigation" shows a grey Acura driving near Dudley Street at approximately 9:32 a.m. (R.A. 27). An individual exits the Acura, walks down the street and starts shooting. (R.A. 28). The individual is masked "leaving only his eyes exposed[.]" (R.A. 28).

As part of his investigation, Detective Matthew Wyman "submitted a request to Electronic Monitoring to determine if any individuals were being monitored and to determine if they were involved." (R.A. 30). He requested four nearby locations within a window of either ten or thirty minutes. (R.A. 30). The detective determined that Romuald Bernaud appeared at two of these locations. (R.A. 30).

Detective Wyman then requested a "point by point location ... with latitude and longitude coordinates for Romuald Bernaud ... from 6:00 am to 12:00 pm." (R.A. 30). The detective obtained a minute-by-minute report for Mr. Bernaud's location during this time frame. (R.A. 30). For example, the report summarizes "9:36:28 - Stationary on High St (no video)," "9:37:27 - Stationary on High St (no video)," and "9:38:28 - Moving at 3 mph up High St towards Church St (no video)." (R.A. 30-31). Detective Wyman did not apply

for any search warrant for this information. (R.A. 30).

ARGUMENT

MR. BERNAUD HAD AN OBJECTIVELY REASONABLE EXPECTATION OF PRIVACY IN SIX HOURS OF HIS MINUTE-BY-MINUTE GPS DATA BECAUSE IT HAD A GREAT LEVEL OF DETAIL, INCLUDING DIRECTION AND SPEED OF TRAVEL, WHICH CONTAINED SIGNIFICANTLY MORE INFORMATION THAN AN EQUIVALENT SIX HOURS OF CSLI AND THE TIMEFRAME FOR THE GPS DATA EXTENDED WELL BEYOND THE TIME OF THE SHOOTING.

The trial court erred when it denied Mr. Bernaud's motion to suppress his GPS location data because he had a reasonable expectation of privacy in it. See Fourth Amendment to the United States Constitution and Article 14 of the Massachusetts Declaration of Rights; Commonwealth v. Govan, 496 Mass. 124 (2025). Specifically, the trial court's order should be vacated because the six hours of GPS data that Det. Wyman obtained without a warrant were more than the one hour in Govan, which implicates privacy concerns. See Govan, 496 Mass. at 140. Moreover, six hours of GPS location data has a significantly greater quantity and quality of information than six hours of CSLI data. See Commonwealth v. Augustine, 467 Mass. 230, 239-240 (2014).

Under both the Fourth Amendment and art. 14, a search implicates constitutional protections when the government intrudes on a person's reasonable expectation of privacy. Fourth Amendment to the United States Constitution, Article 14 of the Massachusetts Declaration of Rights; Commonwealth v. McCarthy, 484 Mass. 493, 497 (2020). The Commonwealth's "retrieval and review of ... historical [GPS location] data requires a separate constitutional inquiry under the Fourth Amendment and art. 14[.]" See Govan, 496 Mass. at 135, quoting Commonwealth v. Johnson, 481 Mass. 710, 720 (2019). This Court "should first determine whether the warrantless retrieval and review of the defendant's GPS location data was a search in the constitutional sense." See Govan, 496 Mass. at 136, quoting Commonwealth v. Mora, 485 Mass. 360, 364 (2020). To do so, this Court should "determine whether the defendant manifested a subjective expectation of privacy in the object of the search." Govan, 496 Mass. at 136, citing Augustine, 467 Mass. at 242. If the defendant manifested a subjective expectation of privacy, this Court should "then determine whether 'society is willing to recognize that expectation as reasonable.'" Id. This

is “highly dependent on the particular facts and circumstances of the case.” Govan, 496 Mass. at 137, quoting Commonwealth v. One 1985 Ford Thunderbird Auto., 416 Mass. 603, 607 (1993). This Court should “review de novo any findings of the motion judge that were based entirely on the documentary evidence” and “review independently the application of constitutional principles to the facts found.” Commonwealth v. Mauricio, 477 Mass. 588, 591 (2017); Commonwealth v. Thomas, 469 Mass. 531, 539 (2014).

In Govan, the Supreme Judicial Court held that a defendant did not have a reasonable privacy expectation in a single hour window of GPS location data but left open the question of whether a reasonable privacy interest might exist in a longer timeframe. See Govan, 496 Mass. at 143. There, the police responded to “a report of shots fired” in Dorchester at 1:30 a.m. and obtained video footage from nearby cameras that showed “an interaction between occupants of two parked cars... that culminated in an exchange of gunfire.” Id. at 126-127. Police “first obtained a list of five persons subject to GPS monitoring who were in the immediate vicinity of the address ... where the shooting

incident occurred within a twenty-five-minute period centered on the time of the shooting.” Id. at 137. After “observing that the time and approximate location of the defendant’s movement” corresponded with the suspect’s, police “obtained a more detailed reconstruction of the defendant’s GPS points for a one-hour period centered on the time of the shooting.” Id. Specifically, the police obtained “a list revealing the defendant’s precise location (defined in terms of latitude and longitude), speed of travel, and direction of travel for each minute during the relevant one-hour period.” Id.

The court held that the “first inquiry revealed an “isolated incident[]” rather than a “pattern of activity.” Id. at 141, quoting Commonwealth v. Perry, 469 Mass. 436, 446 (2022). As it “did not reveal the precise contours of the defendant’s journey during each of those twenty minutes” it did not violate “an objectively reasonable expectation of privacy.” See Govan, 496 Mass. at 141-142. While the “second inquiry did reveal the precise contours of the defendant’s movements during the relevant one-hour period” the court held that this was “more analogous to “follow[ing] someone during a single journey as he

goes to the market or returns home from work[.]” Id. at 141. This one hour of GPS data was comparable to six hours of CSLI information. Id. at 140, citing Commonwealth v. Estabrook, 472 Mass. 852 (2015). It “embodied no more (and no less) than ‘comparing [a] subset[] of the defendant's GPS location data recorded while he was on [pretrial release]’ with the ‘time[] and place[] of suspected criminal activity during the [pretrial release] period.’” See Govan, 496 Mass. at 142, citing Johnson, 481 Mass. at 726-727. However, the court also cautioned that this conclusion was “dependent on the particular facts and circumstances of the case.” Govan, 496 Mass. at 143, citing One 1985 Ford Thunderbird Auto, 416 Mass. at 607. The court specifically limited Govan to a “single one-hour inquiry into the defendant's precise whereabouts” and explicitly did “not here decide whether ... inquiries of longer duration ... might intrude upon a pretrial releasee’s reasonable expectation of privacy in otherwise similar circumstances.” Govan, 496 Mass. at 143, citing Perry, 489 Mass. at 453.

An analysis of Augustine is helpful to illustrate the differences in precision between CSLI and GPS technologies. See Augustine, 467 Mass. at 249. The

court there explained that a “cellular service provider has a network of base stations, also referred to as cell sites or cell towers, that essentially divides the provider’s service area into ‘sectors.’” Id. at 237. “When a subscriber makes or receives a call, the cellular service provider records the identity of the cell site utilized.” Id. at 238. “Through such network-based location techniques a cellular service provider can approximate the location of any active cellular telephone handset within its network based on the handset’s communication with a particular cell site” (quotation and citation omitted). Id. In Augustine, the CSLI specifically consisted of “the telephone numbers, the date and time, and the numbers of the cell sites used for all the calls made and received by the defendant’s cellular telephone handset ... , unanswered calls – as well as the latitude and longitude of the cell sites to which those calls connected in order to conduct those calls.” Id. at 239. This data specifically excluded text messages and internet use. Id. at 239-240. While ordinarily the police must obtain a warrant supported by probable cause to acquire someone’s CSLI information, the Supreme Judicial Court

has also held that police may obtain six hours of CSLI information without a search warrant. See Estabrook, 472 at 857-858.

First, unlike Govan, Mr. Bernaud expressed a subjective expectation of privacy in his GPS location data. (R.A. 24). Specifically, in his signed affidavit attached to the motion to suppress, he stated that “while I was subjected to GPS monitoring, I expected that my location data would be kept private. I did not knowingly, freely, and voluntarily consent to having my location shared with the police for the purpose of a criminal investigation that was unrelated to the case for which I was on release.” (R.A. 24). As such, Mr. Bernaud has met the first part of the test outlined in Govan by manifesting a subjective expectation of privacy. See Govan, 496 Mass. at 136-137; Contrast United States vs. Hunt, U.S. Dist. Ct., No. 20-cr-10119-DJC (D. Mass. Sept. 24, 2021)(the defendant did not have a subjective privacy interest in his GPS data where he “signed the Order acknowledging that the GPS data was not private and confidential, that such data would be recorded and may be shared with, among others, law enforcement”).

The police unconstitutionally obtained “a quantity or quality of information that intruded upon an objective expectation of privacy in the whole of one’s physical movements” by obtaining six hours of Mr. Bernaud’s minute-by-minute GPS location data. See Govan, 496 Mass. at 140. The Supreme Judicial Court specifically left open the question of the constitutionality of police obtaining GPS data of more than an hour without a warrant. Id. at 143. Mr. Bernaud had an objectively reasonable privacy interest in this greater quantity of GPS data. Id. Critically, by obtaining six hours of Mr. Bernaud’s minute-by-minute GPS data the police obtained much more than needed to compare “[a] subset[] of the defendant’s GPS location data recorded while he was on [pretrial release]” with the “time[] and place[] of suspected criminal activity during the [pretrial release] period.” Contrast Govan, 496 Mass. at 142. Specifically, in the video obtained in the police’s initial investigation, the Acura arrived nearby the shooting scene at 9:32 a.m. (R.A. 27). The video footage roughly tracks the Acura until it turns left onto High Street at 9:35 a.m. (R.A. 27-28). The time and place of the shooting is within this approximately

three-minute window.² (R.A. 27-28). The incident in Govan was similarly short, involving an argument between individuals in automobiles that culminated in gunfire. See Govan, 496 Mass. at 126-127. Perhaps it would have been reasonable for the police to only obtain a single hour of GPS data for Mr. Bernaud. Id. at 142. However, six hours of minute-by-minute GPS data goes well beyond any boundaries of the incident. Id.; see also Johnson, 481 Mass. at 726-727 (where the “GPS location data was targeted to the task at hand” so “[s]imply comparing subsets of the defendant’s GPS location data recorded while he was on probation to the general times and places of suspected criminal activity during the probationary period is not a search in the constitutional sense”).

The police obtained a greater quantity and quality of information by obtaining six hours of Mr. Bernaud’s GPS information, as opposed to six hours of CSLI. CSLI is not captured if an individual is not

² The police report in evidence as Exhibit three contains a minute-by-minute breakdown on the final two pages that appears to merge video evidence and GPS evidence. (R.A. 30-31). It is not clear what video police had obtained prior to obtaining the GPS evidence, and what they had obtained after to confirm the individual’s movements. None of the videos were in evidence.

actively on a telephone call and does not include periods where someone is using text messages or the internet. See Augustine, 467 Mass. at 239-240. CSLI has variable precision and is highly dependent on cell tower location. Id. at 237-240. GPS location data is not dependent on external factors, such as cell tower location. (R.A. 30-31). In contrast, Mr. Bernaud's GPS data contained three hundred and sixty discrete points of precise location data, including movement, speed, and direction. (R.A. 30-31). The CSLI as outlined in Augustine does not track an individual with this much detail and precision. See Augustine, 467 Mass. at 237-240. GPS location data "has the potential to track a cellular telephone user's location in constitutionally protected areas" with an even greater precision than CSLI. See Augustine, 467 Mass. at 249.

The level of detail obtained in six hours of GPS evidence implicates "underlying concerns about duration[.]" See Govan, 496 Mass. at 140. Six hours of detailed GPS data reveal much more than a "a single journey as [someone] goes to the market or returns home from work." Id. at 140-141. Six hours provides a large enough window for multiple journeys,

associations, and patterns, especially with the precision of GPS data in a dense urban area. Id. The “likelihood a stranger would observe all those movements is not just remote, it is essentially nil” across six hours (citation omitted). McCarthy, 484 Mass. at 504. The duration and precision of six hours of GPS data, well outside of the bounds of the crime, would allow police to track someone into “constitutionally sensitive areas, such as the home or a place of worship.” See Commonwealth v. Yusuf, 488 Mass. 379, 386 (2021), quoting Caniglia v. Strom, 141 S. Ct. 1596, 1599 (2021) (“The very core of [the constitutional] guarantee is the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion” [alterations in original]). “Providing law enforcement with such personal information is of particular concern because it risks chilling the associational and expressive freedoms that our State and Federal Constitutions strive to protect” (citation omitted). Perry, 489 Mass. at 448.

Accordingly, this Court should hold that Mr. Bernaud had an objectively reasonable privacy interest in his GPS location data.

Conclusion

WHEREFORE, for the foregoing reasons, this Court should reverse the trial court's order denying Mr. Bernaud's motion to suppress evidence.

Respectfully Submitted,
Romuald Bernaud
By His Attorney,

/s/ Mathew B. Zindroski

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Dated: 11/25/25

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COMMONWEALTH OF MASSACHUSETTS**SUFFOLK, ss.****SUPERIOR COURT
DOCKET NO. 2484CR00116****COMMONWEALTH****v.****BERNAUD****FINDINGS OF FACT, RULINGS OF LAW, AND
ORDER ON DEFENDANT'S MOTION TO SUPPRESS [Dkt. 20]**

The Defendant is charged with Assault and Battery with a Dangerous Weapon, Possession of a Firearm in the Commission of a Felony, Carrying a Firearm without a License, Carrying a Loaded Firearm without a License, and, unlawfully possessing Ammunition. He moves to suppress evidence obtained by members of the Boston Police Department relating to the Defendant's location through Global Positioning System (GPS) device data, obtained without a warrant from the Massachusetts Probation Service's Electronic Monitoring Program (ELMO). The matter before the Court is on the Defendant's Motion to Suppress Evidence. Defendant argues first that the Commonwealth has the burden of proving that the initial imposition of GPS monitoring of the Defendant as a term of his pre-trial release in connection with a separate case was reasonable. Defendant argues that even if the Commonwealth has met this burden, the acquisition and use of Defendant's GPS location data by the Police, constituted an unlawful search, in that by reviewing Mr. Bernaud's historical GPS data from ELMO without a warrant, the Police violated defendant's reasonable expectation of privacy.

A hearing was held before the Court on September 17, 2024, at which time the Commonwealth submitted three exhibits for the Court's consideration. After careful review of

the pleadings, arguments presented, the evidence admitted, and appropriate legal standards as discussed herein, the Defendant's Motion to Suppress Evidence is **DENIED**.

FACTS

Based upon the credible evidence before me, and the reasonable inferences I draw from that evidence, I make the following findings of fact: On March 24, 2022, the Defendant was arraigned before the Dorchester Division of the Boston Municipal Court for charges of Assault by Means of a Dangerous Weapon, Possession of a Large Capacity Feeding Device, Possession of Ammunition, and Possession of a Firearm during Commission of a Felony.

The Commonwealth filed a Motion for Pretrial Detention under G.L. c. 276 § 58A. After a dangerousness hearing, Judge Tynes found clear and convincing evidence that the Defendant posed a danger to victim and/or community but found that certain conditions would ensure the safety of the victim/public. The conditions imposed under 58A included GPS monitoring and to stay away from the victim and witnesses.

On or about 9:34 am on Sunday, July 23, 2023, Boston Police responded to a radio call for a shooting at Ramsey Street and Dudley Street. On Dudley Street, police recovered (7) spent shell casings on the sidewalk and street along with (1) bullet fragment. Officers also observed that a parked, red SUV had damage to its front driver's side (side closest to street). There were no victims physically struck by gunfire. An eyewitness told police that the shooter had a black handgun and fired roughly 4-5 times at an unknown person before entering a black SUV. The black SUV then struck two vehicles while fleeing after the shooting. The witness described the shooting suspect as a black male, wearing a facemask, medium build, and roughly 5' 10-6'00 tall.

Detectives recovered video footage that captured the shooting. In video from Brother's Market (776 Dudley Street), at 9:28:42AM, a dark Acura SUV stops outside 763 Dudley Street and a black male wearing a black face mask, white shirt, gray pants, and white sneakers exits. The driver is wearing a gray hooded sweatshirt with the hood up. The Acura SUV continues down the street as the male that exited brandishes a black handgun and fires - with visible smoke emerging from the barrel - at someone or something off screen (in the direction of Columbia Road). Multiple people on camera flee in response to the shooting. Meanwhile, the dark Acura SUV drives forward and appears to crash into a parked car.

Separate video facing 614 Columbia Road captured the suspected shooter entering the SUV before the shooting and being picked up/entering it moments after the shooting. Specifically, at 9:13AM, a SUV consistent with the appearance of the suspect Acura, stops outside 614 Columbia Road, where a person wearing clothing consistent with the shooter's enters the passenger side. The SUV then drives off towards Dudley Street. Then, at 9:33AM, a SUV consistent with the suspect Acura is seen on Columbia Road (with possible damage to its driver's side) makes a U-turn and drives back towards Dudley Street. Seconds later, a person wearing clothing consistent with the shooter's (coming from direction of Dudley Street) is seen on the sidewalk of Columbia Road approaching the SUV. This person then enters the SUV's passenger side and the SUV drives out of view towards Stoughton Street.

Police also reviewed City cameras in the area of the shooting. From this video, police were able to discern the suspect SUV's partial license plate, ending in "73". When cross referenced with RMV/CJIS records detectives determined that the suspect Acura SUV's full plate number was likely 2TNE73.

The Acura SUV was reported stolen on July 23, 2023, at approximately 4:30PM by the husband of its registered owner.

On July 25, 2023, police located the suspect Acura SUV parked in front of 15 High Street and towed it back to the station. Detectives interviewed the suspect Acura SUV's registered owner and she gave consent to search the vehicle. Police searched the suspect Acura SUV and saw apparent gunshot damage to its rear. No firearms were found inside the SUV. Multiple latent fingerprints were recovered from the SUV's interior and later identified as the Defendant's fingerprints—from the interior front passenger door handle. Detectives then conducted a GPS/ELMO inquiry for the shooting scene. This data revealed that the Defendant was in the area of the shooting during its timeframe. Police requested and received the rest of Mr. Bernaud's GPS points from the date of the shooting from 6:00AM- 12:00PM. Mr. Bernaud's GPS points were consistent with the video footage capturing the shooter entering the Acura SUV before the shooting, re-entering it after the shooting, and the SUV's path of flight immediately after the shooting.

No firearms were recovered during the investigation.

DISCUSSION

The use of GPS tracking information provided by ELMO to identify Mr. Bernaud's location on July 23, 2024, was constitutional and did not violate the Defendant's rights. Unlike the Defendant in *Commonwealth v. Norman*, 484 Mass. 330 (220), Mr. Bernaud, at the time of his arrest, had been previously released pre-trial pursuant to conditions imposed under M.G.L. c. 276 58A – a statute intended to address deterrence and dangerousness. Indeed, the Defendant had been charged with Assault by Means of a Dangerous Weapon, Possession of a Large

Capacity Feeding Device, Possession of Ammunition, and Possession of a Firearm during Commission of a Felony. Mr. Bernaud had been released on these charges with GPS tracking following a finding that his release would endanger the safety of the public. The record makes clear that GPS monitoring was imposed on Defendant for legitimate purposes and subsequent monitoring was reasonable under the Fourth Amendment and article 14.

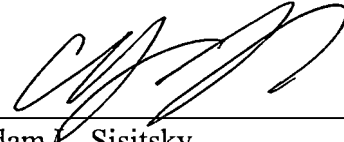
The use here of GPS data to identify the Defendant's location at the time of the shooting, requires a determination of whether the Defendant had a reasonable expectation of privacy in this location information. Here, under the circumstances, the Defendant did not. There is no evidence before the Court that defendant had any subjective expectation of privacy. At a minimum, he knew that he could be tracked and located if he was not back home in time for his curfew. *See Commonwealth v. Johnson*, 481 Mass. 710 (2019). Similarly, neither Bernaud nor any other Defendant placed on congruent pretrial conditions (pursuant to a finding of dangerousness in two separate ongoing firearms cases) would have an objective expectation of privacy under the circumstances. There is no basis for concluding that Defendant did not understand that his movements could – and would – be tracked by law enforcement to ensure his compliance with his pre-trial conditions of release.

The defendant surely understood that the GPS did not belong to him and he was wearing it so others could mark his location. Indeed, he agreed to wear it at all times and to permit ongoing monitoring of his whereabouts. Once he consented to pretrial release with GPS monitoring as a required condition, it is not reasonable for Defendant to have concluded that he could control or limit how any such GPS data would be used. Accordingly, there was no error in the sharing the GPS location data with police, nor the use of such data to locate the Defendant.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the Defendant's Motion to Suppress Evidence is **DENIED**.

So ordered this 15th day of October, 2024.

A handwritten signature in black ink, appearing to read 'AS', is written over a horizontal line.

Adam L. Sisitsky
Justice of the Superior Court

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

TIMMY HUNT,

Defendant.

Case No. 20-cr-10119-DJC

MEMORANDUM AND ORDER

CASPER, J.

September 24, 2021

I. Introduction

Defendant Timmy Hunt (“Hunt”) has moved to suppress the GPS data obtained from a GPS electronic monitoring device imposed as a condition of his pretrial release in a pending state case in Suffolk Superior Court. D. 84. Having considered the motion (and supporting memorandum and exhibits), D. 84-87, the government’s opposition, D. 105-06, Hunt’s reply, D. 109, and having heard oral argument on the motion, D. 111, the Court DENIES the motion.

II. Findings of Fact

These findings are based upon the record before the Court including the affidavits of Hunt, D. 87, and Special Agent Timothy R. Kenny (“Kenny”), D. 106; D. 1-1, 20-mj-01119-DLC.

A. Imposition of GPS Device in State Proceeding

On March 14, 2019, Hunt was arraigned in Suffolk Superior Court and charged with carrying a firearm without a license. D. 87 ¶ 1; D. 86-1 at 4. At his arraignment, the Commonwealth requested a cash bail amount of \$40,000 and Hunt’s counsel requested \$10,000

based upon Hunt's ability to pay. D. 105 at 6. Hunt's counsel asserted that Hunt had "no problem" with being put "on a GPS as well as some kind of monitoring." Id. at 7. The Superior Court set cash bail at \$15,000 and ordered GPS monitoring and home confinement when bail was posted. Id.; D. 109 at 2.

Hunt remained in custody until July 1, 2019 when he posted the \$15,000 bail. D. 87 ¶¶ 1, 2. Hunt met with a Probation employee, outside of court and without counsel present, who told him he would be released on house arrest with a GPS monitoring bracelet. Id. The Probation employee gave Hunt an Order of Pretrial Conditions of Release ("Order") form to sign. Id. ¶¶ 2-3; D. 87-1 at 2. The form, in relevant part, noted that home confinement was one of the conditions of his release and that he was to comply with electronic monitoring and "obey all local, state, and federal laws and court orders." D. 87-1 at 2. Hunt signed the Order below the statement that he "read and understood these conditions." Id. The second page of the Order outlined Hunt's conditions of GPS supervision, which required that he not tamper, interfere or otherwise damage or destroy the GPS device and keep it charged at all times. Id. at 3. The Order also informed Hunt, in relevant part, that:

You are hereby placed on GPS by this Court. Unless you are excused by your probation officer, you must appear in court on the GPS supervision end date indicated, at which time a report of your GPS progress will be made. If you fail to appear on that date or any other date required, a warrant may be issued for your arrest. Coordinates and other data related to your physical location while on GPS are recorded and may be shared with the court, probation, parole, attorneys and law enforcement. Data generated by GPS equipment assigned to you is not private and confidential.

Id. Hunt also signed the second page, affirming that he "read and underst[ood] the above conditions of GPS supervision and I agree to observe them." Id.

Hunt's conditions of release were later addressed in at least two hearings. First, on August 20, 2019, Hunt appeared, apparently without counsel, to request a modification to his curfew to facilitate his work schedule. D. 105 at 7–8; D. 86-1 at 7. Hunt stated that “being on a bracelet is not an issue.” D. 105 at 7-8. At an October 4, 2019 hearing, Hunt appeared with counsel to request further modification to his curfew so that he could work certain overnight shifts. D. 105 at 8; D. 86-1 at 9; D. 87 ¶ 4. Hunt's counsel relied upon the fact that Hunt was traceable by GPS to support modification of the curfew, stating that “[a]nybody that wants to know where he is, look at his GPS points.” Id. On both occasions, the Superior Court modified Hunt's curfew to accommodate his employment schedule. Id.

B. Investigation into Hunt and Brewster

The FBI had been investigating alleged drug trafficking by Hunt and Trevel Brewster (“Brewster”) since approximately February 2020. D. 1-1, 20-mj-01119-DLC, ¶ 9. A confidential witness (“CW”) working with the FBI identified Brewster as dealing cocaine base. Id. ¶ 11. Further investigation suggested that Hunt was Brewster's supplier. Id. ¶ 16. The FBI arranged controlled purchases between the CW and Brewster on or about February 26, 2020, and March 2, 2020. Id. ¶¶ 18–19, 27–28. On both occasions, agents observed Brewster enter the CW's vehicle to collect money from the CW, exit the CW's vehicle, enter a white sedan, and then return to the CW's vehicle with a plastic bag containing suspected crack cocaine. Id. ¶¶ 21–22, 30–34. The bags' contents tested positive for cocaine base. Id. ¶¶ 24, 36. Agents also identified the white sedan observed at the controlled transactions as a Chevrolet Malibu rented by Hunt from Avis Budget Group on February 26, 2020 and returned on March 21, 2020. Id. ¶ 33; D. 106 ¶ 3.

C. FBI Obtains GPS Data

Kenny learned that Hunt was on pretrial release related to his pending criminal matter in Superior Court, which included GPS monitoring as a condition of release. D. 106 ¶ 7. On May 8, 2020, Kenny contacted the Massachusetts Probation Service to request GPS monitoring points for Hunt on February 26, 2020 between 3:00 p.m. and 4:30 p.m., and on March 2, 2020 between 4:00 p.m. and 5:30 p.m. Id. ¶ 8. On May 9, 2020, Kenny received two maps responsive to that request. Id. Later that day, Kenny requested GPS monitoring points for Hunt on the same days as the initial request, but for more specific time windows: February 26 from 3:40 p.m. to 4:00 p.m. and March 2 from 4:40 p.m. to 5:00 pm. Id. ¶ 9. Kenny did not obtain a warrant to access Hunt's historical GPS data. See id.; D. 85 at 11. The government asserts that the GPS data places Hunt at or near the location of the CW's controlled buys with Brewster. D. 85 at 2, 6.

D. Indictment

A federal grand jury indicted Hunt and Brewster on June 23, 2020 with two counts of distribution and possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1), and one count of conspiracy for same, 21 U.S.C. §§ 846. D. 1.

III. Discussion

A. Neither Imposition of the GPS Bracelet nor the Gathering or Use of Limited Data Here Constituted a Search under the Fourth Amendment

The Fourth Amendment protects an individual's right to be free from an unreasonable search or seizure and a "search" need not be a physical intrusion, but may be a violation of a person's reasonable of privacy, Smith v. Maryland, 442 U.S. 735, 739-40 (1979), as Hunt alleges here in GPS location monitoring and the historical data regarding same. D. 85 at 6-7. A person has a reasonable expectation of privacy when he has a subjective expectation of privacy and that expectation is one that "society is prepared to recognize as reasonable." Smith, 442 U.S. at 740;

see United States v. Rheault, 561 F.3d 55, 59 (1st Cir. 2009). A defendant bears the burden of establishing a reasonable expectation of privacy regarding the items searched or seized. United States v. Lipscom, 539 F.3d 32, 35-36 (1st Cir. 2008).

Neither the gathering nor the use of the GPS location data constitutes a search since Hunt had no reasonable expectation of privacy in either. To the extent that Hunt contends that the attachment of the GPS device as part of his pretrial conditions was a search, he has shown no reasonable expectation of privacy as to same and no case law supporting this contention. Such monitoring is routinely a part of pretrial release in state court (as it was in this case) and in federal court. See 18 U.S.C. 3142(c)(1)(B)(xiv). Also, as discussed more fully below, Hunt also consented to same as part of his pretrial release and implicitly affirmed that assent in his motions to alter the conditions of his release to accommodate his work schedule.

As to the gathering and use of the historical data, Hunt also has not shown a reasonable expectation of privacy. Although Hunt expresses some subjective expectation of privacy in same, see D. 87 ¶ 3, the Court does not conclude that such expectation is one that can be recognized as reasonable, particularly on this record where Hunt consented to the GPS monitoring and even to the possibility that GPS data could be shared with law enforcement. D. 105 at 16–17, D. 87-1 at 3. The case law upon which Hunt relies does not compel a different outcome. Hunt points primarily to Carpenter v. United States, ___ U.S. ___, 138 S. Ct. 2206 (2018). In Carpenter, the Supreme Court ruled that the seizure of cell site location information in that case constituted a seizure, but it make clear that its holding was limited to the greater scope of data seized there, noting that “[i]t is sufficient for our purposes today to hold that accessing seven days of [cell site location information] constitutes a Fourth Amendment search.” Id. at 2217 n.3. The court expressly did not reach “whether there is a limited period for which the [g]overnment may obtain

an individual's historical [cell site location information] free from Fourth Amendment scrutiny," *id.*, which is the situation presented here. That is, the holding in Carpenter addressed to seven days of cell site location information does not mean that the seizure of a far more limited scope of location data (1.5 hours of GPS data for each of two days) constituted a search.

Accordingly, as an initial matter, the Court concludes that the imposition of the GPS monitoring as part of Hunt's pretrial release and the gathering and limited use of location data here does not constitute a search under the Fourth Amendment.

B. Consent to GPS Monitoring

Even assuming *arguendo*, that the GPS monitoring and gathering and use of location data from same was a search, it was a reasonable one given Hunt's consent and the scope of such search. "In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement." Riley v. California, 573 U.S. 373, 382 (2014). "Consent is a well-recognized exception" to the warrant requirement. United States v. Coombs, 857 F.3d 439, 448 (1st Cir. 2017). "The validity of a defendant's consent must be gauged under the totality of the circumstances," which requires the Court to "look for evidence of coercion, duress, confusion, and the like." Coombs, 857 F.3d at 448 (citations omitted). Moreover, "[a] consensual search may not exceed the scope of the consent given," the standard for which, "is that of 'objective' reasonableness-what would the typical reasonable person have understood by the exchange" United States v. Turner, 169 F.3d 84, 87 (1st Cir. 1999) (internal citation omitted).

On this record, the Court concludes that Hunt consented to the GPS monitoring and gathering and use of data from same. The totality of circumstances regarding his consent begins with his March 2019 arraignment. During that hearing, in Hunt's presence and on his behalf, his counsel pressed for lower bail than the \$40,000 bail that the government sought, arguing in part

that Hunt would consent to GPS or other monitoring. D. 105 at 5-6. The Court set cash bail at \$15,000 with conditions of release including GPS monitoring and home confinement. Id. at 6. Upon making bail on July 1, 2019, Hunt signed the Order acknowledging that the GPS data was not private and confidential, that such data would be recorded and may be shared with, among others, law enforcement. D. 87-1 at 2-3. Court events after his release also reflect Hunt's consent to GPS monitoring. On at least two occasions, August 20, 2019 and October 4, 2019 (the latter of which was with Hunt's counsel), Hunt urged the Court to adjust his curfew to accommodate his work hours, relying upon the fact that the continued GPS monitoring would mitigate any concerns about his requests. D. 86-1 at 7-9. Hunt contends that he "did not read the fine print on the form," and that he did not understand that the GPS data could be used "for any purposes other than" that he stay at home and appear in court as required. D. 87 ¶ 3. Considering all of the circumstances here, United States v. Twomey, 884 F.2d 46, 51 (1st Cir. 1989), however, Hunt's consent was freely and voluntarily given to the GPS monitoring and data from same.

First, Hunt offered his agreement to such monitoring as part of his (counseled) argument to the Court for release, which was a rational strategy given the Commonwealth's position about higher bail, the seriousness of the state charge and Hunt's extensive criminal history which meant he faced a sentence as an armed career criminal. D. 105 at 6. Second, Hunt was advised of the GPS condition and the possibility that GPS data would be shared with law enforcement. Third, his subsequent requests to modify his curfew, including one through counsel, reflected continued consent to be subjected to this condition. Even considering the collection of location data and sharing the 1.5 hour each on two days from it separately from the imposition of the GPS device, Hunt consented to same. As a means of mitigating risk (and appealing to the state court to impose a lower bail), the imposition of the GPS device had no significance unless the Court and probation

would have access to it to monitor Hunt's whereabouts. Law enforcement access to it was similarly granted with Hunt's signing of the Order and serves a similar purpose where part of the conditions of release included that he obey all local, state and federal laws. D. 87-1 at 2.

Moreover, to the extent that Hunt contends that signing the Order "does not necessarily establish free and voluntary consent" because the alternative to accepting those conditions (which included the GPS monitoring) was to remain in pretrial custody, D. 85 at 9, this Court rejects this argument as other Courts have done. See, e.g., United States v. Clay, No. 4:12-CR-735-03, 2013 WL 4483405, at *5 (S.D. Tex. May 6, 2013). To the extent that Hunt relies upon Commonwealth v. Norman, 484 Mass. 330 (2020) to argue that his consent was not freely and voluntarily given, unlike that case where the "only evidence of consent" was the defendant's signature of the order regarding same, id., there is additional evidence bearing upon his consent here. As discussed above, Hunt offered GPS monitoring as part of his release plan and when that was successful, he later cited GPS monitoring in several petitions to change his curfew. It is the totality of these circumstances which reflect the free and voluntary nature of his consent here.

C. Reasonableness of the Search

Moreover, in the context of the circumstances here, the scope of the search was reasonable. The reasonableness of a Fourth Amendment search is determined by the totality of the circumstances, "assessing, on the one hand, the degree to which [the search] intrudes upon an individual's privacy, and, on the other, the degree to which it is needed for the promotion of legitimate government interests." Samson v. California, 547 U.S. 843, 848 (2006) (quoting United States v. Knights, 534 U.S. 112, 118 (2001)). Hunt, as a defendant on pretrial release, has some diminished expectation of privacy, see, e.g., Norris v. Premier Integrity Sols., Inc., 641 F.3d 695, 699 (6th Cir. 2011), even if that expectation is not nil and is greater than a defendant after

conviction. See United States v. Weikert, 504 F.3d 1, 11 (1st Cir. 2007) (noted that a post-conviction defendant had a “substantially diminished expectation of privacy”); Norman, 484 Mass. at 334-35.

Moreover, there is a legitimate government interest in the imposition of a GPS device and the location data from it. That interest is not just to ensure a defendant’s appearance in court, but prevent violation of conditions of pretrial release which here included the commission of any other crime. Although Hunt points to the absence of deterrence of future crime as a purpose of the state bail statute, D. 109 at 7 (citing Norman, 484 Mass. at 336-37 discussing Mass. Gen. L. c. 276 § 58), obeying the law was an express condition of Hunt’s pretrial release, D. 105 at 17, (not unusual for a condition for pretrial release, but also particularly appropriate given Hunt’s criminal record and armed career criminal status), and so there was a legitimate governmental interest in preventing same.

Accordingly, the Court concludes that, even assuming the GPS monitoring and gathering and use of its location data was a search, it was reasonable in scope, and there was no Fourth Amendment violation here.

D. Good Faith Exception

Moreover, even assuming *arguendo* that there had been a search here in violation of the Fourth Amendment, suppression of the GPS location would not be warranted. The Leon exception to suppression of the fruits of unconstitutional searches centers on a law enforcement officer’s reasonable reliance on warrants, see United States v. Leon, 468 U.S. 897, 922 (1984), statutes, see Illinois v. Krull, 480 U.S. 340, 353 (1987), or settled appellate precedent that courts later invalidate, see Davis v. United States, 564 U.S. 229, 240 (2011). Whether the rule applies generally depends upon the level of culpability of the police misconduct. See Davis, 564 U.S. at

238. “When the police act with an objectively ‘reasonable good-faith belief’ that their conduct is lawful,” or “when their conduct involves only simple, ‘isolated’ negligence,” the deterrence rationale is diminished. Id.

The Court agrees with the government’s contention that the exclusionary rule should not apply here where the agents “acted in an objectively reasonable manner, relying on the absence of any federal law holding that a warrant must be obtained in order to obtain [1.5 hours of GPS data for two days] from a pretrial defendant’s GPS bracelet, where there is probable cause that such data constitutes evidence of a crime.” D. 105 at 20. Contrary to Hunt’s contention, D. 109 at 15, this is true in light of the Supreme Court’s ruling in Carpenter, given the limits of that decision as discussed above. Deterrence of law enforcement conduct is not warranted here where they acted upon a reasonably held, good faith belief that their request for limited GPS data from state probation about an individual on pretrial release whom they had probable cause to believe was involved in another crime was lawful.

IV. Conclusion

For the foregoing reasons, the Court DENIES Hunt’s motion to suppress. D. 84.

So Ordered.

/s/ Denise J. Casper
United States District Judge

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article 14 (1780)

Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.

G.L. c. 265, § 15A(b).

(b) Whoever commits an assault and battery upon another by means of a dangerous weapon shall be punished by imprisonment in the state prison for not more than 10 years or in the house of correction for not more than 2 1/2 years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.

G.L. c. 265, § 18B

Section 18B. Whoever, while in the commission of or the attempted commission of an offense which may be punished by imprisonment in the state prison, has in his possession or under his control a firearm, rifle or shotgun shall, in addition to the penalty for such offense, be punished by imprisonment in the state prison for not less than five years; provided, however, that if such firearm, rifle or shotgun is a

large capacity weapon, as defined in section 121 of chapter 140, or if such person, while in the commission or attempted commission of such offense, has in his possession or under his control a machine gun, as defined in said section 121, such person shall be punished by imprisonment in the state prison for not less than ten years. Whoever has committed an offense which may be punished by imprisonment in the state prison and had in his possession or under his control a firearm, rifle or shotgun including, but not limited to, a large capacity weapon or machine gun and who thereafter, while in the commission or the attempted commission of a second or subsequent offense which may be punished by imprisonment in the state prison, has in his possession or under his control a firearm, rifle or shotgun shall, in addition to the penalty for such offense, be punished by imprisonment in the state prison for not less than 20 years; provided, however, that if such firearm, rifle or shotgun is a large capacity semiautomatic weapon or if such person, while in the commission or attempted commission of such offense, has in his possession or under his control a machine gun, such person shall be punished by imprisonment in the state prison for not less than 25 years.

G.L. c. 269, § 10(a)

(a) Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without either:

(1) being present in or on his residence or place of business; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(4) having complied with the provisions of sections one hundred and twenty-nine C and one hundred and thirty-one G of chapter one hundred and forty; or

(5) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; and whoever knowingly has in his possession; or knowingly has under control in a vehicle; a rifle or shotgun, loaded or unloaded, without either:

(1) being present in or on his residence or place of business; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(4) having in effect a firearms identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or

[Clause (5) of subdivision (5) of subsection (a) effective until October 2, 2024. For text effective October 2, 2024, see below.]

(5) having complied with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns; or

[Clause (5) of subdivision (5) of subsection (a) as amended by 2024, 135, Sec. 114 effective October 2, 2024. For text effective until October 2, 2024, see above.]

(5) having complied with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of not semiautomatic rifles and shotguns; or

(6) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years, or for not less than 18 months nor more than two and one-half years in a jail or house of correction. The sentence imposed on such person shall not be reduced to less than 18 months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole,

work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 18 months of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file.

No person having in effect a license to carry firearms for any purpose, issued under section one hundred and thirty-one or section one hundred and thirty-one F of chapter one hundred and forty shall be deemed to be in violation of this section.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person 18 years of age or older, charged with a violation of this subsection, or to any child between ages fourteen and 18 so charged, if the court is of the opinion that the interests of the public require that he should be tried as an adult for such offense instead of being dealt with as a child.

The provisions of this subsection shall not affect the licensing requirements of section one hundred and twenty-nine C of chapter one hundred and forty which require every person not otherwise duly licensed or exempted to have been issued a firearms identification card in order to possess a firearm, rifle or shotgun in his residence or place of business.

G.L. c. 269, § 10(h)(1)

(h)(1) Whoever owns, possesses or transfers a firearm or ammunition without complying with the provisions of section 129C of chapter 140 shall be punished by imprisonment in a jail or house of correction for not more than 2 years or by a fine of not more than \$500. Whoever commits a second or subsequent violation of

this paragraph shall be punished by imprisonment in a house of correction for not more than 2 years or by a fine of not more than \$1,000, or both. Any officer authorized to make arrests may arrest without a warrant any person whom the officer has probable cause to believe has violated this paragraph.

G.L. c. 269, § 10(n)

(n) Whoever violates paragraph (a) or paragraph (c), by means of a loaded firearm shall be further punished by imprisonment in the house of correction for not more than 2 1/2 years, which sentence shall begin from and after the expiration of the sentence for the violation of paragraph (a) or paragraph (c).

Certificate of Compliance

**Pursuant to Rule 16(k) of the
Massachusetts Rules of Appellate Procedure**

I, Mathew B. Zindroski, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (a)(13) (addendum);
Mass. R. A. P. 16 (e) (references to the record);
Mass. R. A. P. 18 (appendix to the briefs);
Mass. R. A. P. 20 (form and length of briefs,
appendices, and other documents); and
Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced spaced font Courier New at size 12 and contains ten pages of argument.

/s/ Mathew B. Zindroski

Mathew B. Zindroski

Certificate of Service

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on August 12, 2026, I have made service of this Reply Brief upon the attorney of record by the Electronic Filing System of the Supreme Judicial Court on ADA Ian Maclean (Ian.MacLean@mass.gov).

/s/ Mathew B. Zindroski

Mathew B. Zindroski