



LEGAL UPDATE

OFFICER HAD NO AUTHORITY TO SEIZE CELL PHONE IN NEW HAMPSHIRE

Commonwealth v. McCarthy, 495 Mass. 736 (2025).

RELEVANT FACTS

A home invasion investigation let Lowell police detectives to the defendant and another man, both residents of Nashua, New Hampshire. The detectives contacted Nashua police as a courtesy to let them know they were going to be in their city to speak to the men. Two local officers were assigned to accompany the detectives in Nashua.

Upon speaking to the defendant, he admitted to being in the victim's apartment the previous day and to speaking to the codefendant that day. Because it was unclear whether the conversation with the codefendant was in person or over the phone, the detective asked the defendant if he had spoken over the phone with the codefendant the day before. The defendant replied that they had spoken "recently."

Upon request, the defendant agreed to show the detective his cell phone call log. He pulled out the phone and manipulated it in such a way that the detective believed the defendant was accessing the call logs. At some point he made several "swiping gestures" which the detective believed were consistent with deleting an entry from the call log. When the defendant showed the call log to the detective, there were no calls listed between the defendant and the codefendant on the day of the home invasion.

The detective confronted the defendant about his suspicion that the defendant had deleted something from the call log. The defendant denied deleting anything. The Lowell detective then seized the defendant's cell phone and took it back to Lowell and sought a search warrant

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

for its contents. The defendant was not arrested that day. The issue in this case was whether the Lowell detective had the authority to seize the defendant's cell phone in New Hampshire.

DISCUSSION

A police officer lacks authority to act outside his or her jurisdiction, unless specifically authorized by statute or in the performance of a valid citizen's arrest at common law. Commonwealth v. Twombly, 435 Mass. 440, 442 (2001).

Fresh Pursuit

MGL c 41 § 98A authorizes an officer to make arrests outside their jurisdiction if an arrestable offense was committed in the officer's presence within their jurisdiction and the officer is in fresh and continued pursuit of the offender. While the statute authorizes extraterritorial arrests in such situations, it does not authorize the seizure of property. Even if the statute did allow an officer to seize property, it would not apply here because the detectives were not in "fresh and continued" pursuit of the defendant and the home invasion did not occur in their presence.

Mutual Aid Agreements

MGL c 40 § 8G allows municipalities, including those in surrounding states, to enter into mutual aid agreements. New Hampshire has a similar statute. For mutual aid to apply, there must be a written agreement signed by each of the municipalities. There was no evidence presented of any mutual aid agreement between Lowell, Massachusetts and Nashua, New Hampshire.

Request for Aid

Statutes in both Massachusetts (MGL c 37 § 13) and New Hampshire authorize officers to act in another jurisdiction when there is a specific request for aid. The key to both statutes is that the host jurisdiction must request assistance. In this case, Nashua did not seek any assistance.

Common Law

Finding no statutory authority for the detective's actions, the court considered common law. Under common law, when an officer leaves their jurisdiction, they cease to act as police officers, but they are still people. If the law allows a citizen to act in a particular situation, then the law would allow a police officer to act. Because the seizure at issue here took place in New Hampshire, the court applied New Hampshire law.

In New Hampshire, private citizens can make arrests "upon reasonable grounds to suspect that the person has committed a felony." Commonwealth v. Gullick, 386 Mass. 178, 282-283 (1982). In New Hampshire, destruction of evidence is a felony. For purposes of this appeal, the court found that the Lowell detective could have conducted a citizen's arrest for destruction of evidence after seeing the defendant delete information from the call log. However, no arrest was made and New Hampshire law does not allow a civilian to seize property when an arrest is not made.

The seizure of the phone was unlawful. The motion to suppress was properly allowed.