



# LEGAL UPDATE

## NO REASONABLE EXPECTATION OF PRIVACY IN CALL DATA LOGS

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*Commonwealth v. Lepage*, 494 Mass. 67 (2024).

### RELEVANT FACTS

At 1:23 PM on September 29, 2012, the Fall River police were dispatched to Cherry Street where they found the victim, a street-level drug dealer, shot to death in her parked car. Based upon their investigation, officers knew the victim had her cell phone with her just prior to her death; however, it was not there when police arrived on scene. Officers obtained the call logs for her phone which listed both incoming and outgoing calls around the time she was shot. Call logs showed the defendant called the victim at 12:50 PM that day and that the victim returned the call at 1:02 PM, just 20 minutes before police were dispatched to the scene.

Officers called the defendant's number on September 29 and twice on October 1. The officer identified himself as a Fall River police officer and explained he was investigating the victim's death. The person who answered the phone identified himself as "Brandyn Jackson." (The defendant's name is Brandyn Lepage). Jackson declined the officer's requests to come to the station to discuss the investigation.

Officers learned from a first-time confidential informant (CI) that "gay-boy Brandyn" was responsible for killing the victim. The CI said that the victim's phone records would show Brandyn called the victim on September 29 around 1 PM and that Brandyn had called to arrange a drug deal. The CI went on to say that Brandyn and the victim met up, argued over drugs and money and then Brandyn shot the victim. The victim's wife also claimed that the victim had a conflict or issues with "gay-boy Brandyn."

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

When officers could not convince “Brandyn Jackson” to come to the station, they contacted the defendant’s cell phone service provider to request certain information under 18 U.S.C. §§ 2701 et seq, the Federal Stored Communications Act (SCA). T-Mobile provided call detail records for the defendant’s phone which included a time-stamped log of all incoming and outgoing calls, whether text messages were sent or received (but not the content of the texts) from September 9, 2012 – October 1, 2012.

The defendant was ultimately indicted in December 2012 on multiple charges, including murder in the first degree. The defendant argued that police violated his right to be free from unreasonable searches and seizures when they obtained his call detail records without a warrant. He made a motion to suppress any evidence gained as a result of the police obtaining the call detail records as fruit of the poisonous tree.

## DISCUSSION

A search occurs when the government intrudes upon an individual’s reasonable expectation of privacy.

“An individual has a reasonable expectation of privacy if:

1. the individual has manifested a subjective expectation of privacy in the object of the search; and
2. if society is willing to recognize that expectation as reasonable.” p. 76 quoting *Commonwealth v. Almonor*, 482 Mass. 35, 40 (2019).

When deciding this case, the court relied on the third party doctrine which holds that individuals have no expectation of privacy in information that they voluntarily convey to a third party that the third party then collects for a legitimate business purpose. When an individual makes a phone call or sends a text message, they must provide the service provider with certain information, specifically the number they wish to connect to. Providers maintain records of these transactions for legitimate business reasons, such as billing. Because placing calls and texts involve an individual conveying information to the service provider and the service provider collects that information for legitimate business purposes, call detail logs fall within the third-party doctrine. This means that individuals have no reasonable expectation of privacy in such logs. Because there is no reasonable expectation of privacy, obtaining those logs are not a search.

The defendant asked the court to find that the SCA created a reasonable expectation of privacy because it limits the circumstances in which a cell service provider can disclose call detail records to law enforcement. The court was not convinced, finding that a person assumes the risk that information they voluntarily provide to a third party will be disclosed to the government.

The motion to suppress was properly denied.