

STATE v. KENDALL O. SMITH, SR., AC 32803
Judicial District of Tolland

Criminal; Search and Seizure; Whether the Defendant’s Constitutional Rights Were Violated Because the Police Obtained His Cell Phone Records without a Warrant; Whether the Defendant Had a Reasonable Expectation of Privacy in his Cell Site Location Information. The defendant was charged with first degree robbery, conspiracy to commit first degree robbery, and committing a felony with a firearm in connection with the 2008 armed robbery of a Stafford Springs bank. While investigating the bank robbery, the police obtained the defendant’s cell phone records—including “cell site location information” (CSLI), which is location data that is automatically generated when a person makes or receives a cell phone call—under Connecticut General Statutes § 54-47aa. That statute says that the police can get an order from a judge requiring the disclosure of cell phone records if the police state “a reasonable and articulable suspicion that a crime has been committed or is being committed” The CSLI told the police that the defendant’s cell phone was used in the vicinity of the robbery. Before trial, the defendant filed a motion to suppress the CSLI evidence, claiming it could not be admitted against him at trial because it was obtained illegally. The trial judge denied the motion and, after a trial before a jury, the defendant was convicted of the three crimes. The defendant now appeals his convictions, claiming that the trial judge should not have allowed the prosecution to present the CSLI to the jury because the police obtained that information without a warrant and in violation of his rights under the fourth amendment to the United States constitution. The fourth amendment secures citizens’ right against unreasonable searches and seizures and requires that the police must show probable cause to get a search warrant. In order to invoke the protection of the fourth amendment, a person must demonstrate that they have a reasonable expectation of privacy in the place searched or the property seized. The defendant argues that he has a reasonable expectation of privacy in his CSLI and that the use of CSLI to follow his movements constituted a search under the fourth amendment. He contends that CSLI transforms a cell phone into a tracking device that can reveal a person’s movements over time and that can establish the person’s location, including when the person is at home or some other place where they reasonably expect privacy and freedom from intrusion by the government or police. The defendant contends that, because cell phone users have a reasonable expectation of privacy in their location information, the police should be required to show probable cause—a higher standard than “reasonable and articulable suspicion”—and obtain a warrant to get that information. Finally, the defendant argues that the Connecticut constitution, which also prohibits unreasonable searches and seizures, must also be interpreted to require that police obtain a warrant in order to get cell phone records. The defendant’s other claims on appeal are that the trial judge wrongly: (1) told the jurors that they could discuss their impressions of the trial amongst themselves and with others while the trial was ongoing; (2) questioned a key witness in a manner that undermined the witness’ testimony and unfairly helped the prosecution; (3) admitted the witness’ unreliable police statement into evidence without removing irrelevant and prejudicial remarks contained in the statement; and (4) failed to instruct the jury about the weight and effect to be given to the testimony by the state’s experts and the standards by which that testimony should be evaluated.