

Yes, In NJ Your Cell Phone Location Is Protected

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In a victory for the concept of privacy for New Jersey Residents, our Appellate Division threw out a search of a hotel room that was located by the use of a trace of a cell phone.

In the case of State v. Earls, during the investigation of potential burglaries, the police attempted to contact an individual, the defendant's girlfriend, who allegedly had knowledge of the crimes. However, the police were unsuccessful. The police were concerned that the suspect might harm the girlfriend. They then began a search for both the defendant and the witness in an effort to "ensure her safety" and to execute an arrest warrant for the defendant. As a result, the police contacted T-Mobile, the cell phone service provider, who provided information about the location of defendant's cell phone. However, no effort was made to obtain a search warrant for the trace. T-Mobile then notified police with the defendant's general location. After two unsuccessful tower searches, a third request was made and a successful trace occurred. Once that was established, the defendant was ultimately discovered at a motel. Police gained entry into the motel room and seized stolen property and drugs which were in plain sight when they arrived at the door. At the trial level, the defendant's attorney argued that the defendant had a reasonable expectation of privacy in his cell phone location information. The trial court recognized that there was an expectation of privacy, but admitted the evidence pursuant to the "emergency aid" exception to the warrant requirement under the theory that the police were attempting to protect an individual (the girlfriend) from possible domestic violence.

The defendant appealed and the Appellate Division affirmed the trial court's decision but under a different legal theory. The Appellate Court determined that the defendant actually lacked the reasonable expectation of privacy in his cell phone location information and that as a result, the police lawfully seized evidence from his motel room.

The Supreme Court of New Jersey then granted the defendant's petition for certification based upon the limited issue of whether the New Jersey State Constitution protects an individual's privacy interest

in the location of his or her cell phone. The NJ Supreme Court held that a person **does** have a reasonable expectation of privacy in his cell phone location and that a warrant should have been acquired before that information could be obtained.

The Supreme Court then sent the case back down to the Appellate Division to determine if there was any theory to support an exception to the warrant requirement. The Appellate Division rejected the State's reliance on the "emergency aid" doctrine since the officers were not responding to an open line 911 call or any other situation involving a presumption of emergency requiring an immediate response. The Appellate Division specifically stated "even after the police began requesting defendant's cell phone location and data, there was no sense of urgency in their effort."

There is great significance in this case. The Supreme Court made a strong statement that an individual's cell phone location is protected by the Constitution of our State. Additionally, the Appellate Division's rejection of the "emergency aid" doctrine establishes that the Appellate Courts would not permit the police to circumvent the Constitution by creating emergencies where none exist.