

This is an important Fourth Circuit case involving using an exigent form instead of a warrant to recover “pings” revealing the defendant’s cell phone location and call logs. Feel free to disseminate to staff and agencies as you deem appropriate.

United States v. Hobbs - Fourth Circuit Court of Appeals, 24 F.4th 965 (4th Cir. 2022)

Facts:

Police officers responded to Jaquanna Foreman’s residence concerning a 911 domestic violence call. Foreman told the responding officers that her former boyfriend, Erick Hobbs, had come to her home, brandished a semi-automatic handgun, and used the gun to break a window in the home. Hobbs then entered the home and removed a television. Foreman added that, before leaving, Hobbs threatened to kill Foreman, her daughter, and other family members, and told her that if she contacted the police, he also would kill any responding officers. The officers escorted Foreman and her daughter to the police station and initiated surveillance of Foreman’s residence while Hobbs remained at-large. At the station, Foreman gave the officers Hobbs’s cell phone number; she told them that she previously had seen Hobbs armed with assault rifles and that he was “obsessed with firearms.” During this time, Detective Michael Nesbitt verified that Hobbs had a violent criminal history, including convictions for armed robbery and attempted murder. Based on this information, Detective Nesbitt concluded that there was “an extreme urgent threat to the community” and submitted an “exigent form” to T-Mobile, Hobbs’s cell phone provider. Detective Nesbitt’s request sought immediate police access without a warrant to “pings” revealing Hobbs’s cell phone location, and to call logs displaying the phone numbers that Hobbs contacted, which would enable the officers to locate Hobbs. Within an hour, T-Mobile responded with real-time “pings” on Hobbs’s cell phone that alerted Detective Nesbitt every 15 minutes to Hobbs’s general location within 3,000 to 5,000 meters. Another detective used call logs obtained from T-Mobile to determine which of Hobbs’s associates lived within the geographical range of each “ping” to pinpoint Hobbs’ location more precisely. Approximately six hours after the domestic incident, a team of officers attempted to make a traffic stop of Hobbs’s vehicle. Hobbs tried to flee from the officers until his car eventually collided with a parked vehicle. The officers arrested Hobbs and recovered a loaded handgun on the ground between the driver-side door of his car and the curb. The government charged Hobbs with being a felon in possession of a firearm and ammunition. Hobbs filed a motion to suppress the firearm, arguing that the exigent circumstances exception to the Fourth Amendment’s warrant requirement did not justify the officers’ use of the cell phone “pings” and call log. The district court disagreed and denied the motion. Hobbs appealed.

Holding:

Affirmed. The exigent circumstances exception allows a warrantless search when an emergency leaves law enforcement officers insufficient time to obtain a warrant. The Supreme Court has identified the following “emergency conditions” that may support a finding of exigent circumstances: (1) the need to pursue a fleeing suspect; (2) the need to protect individuals who are threatened with imminent harm; and (3) the need to prevent the imminent destruction of evidence. In this case, the court held that the officers reasonably concluded that Hobbs was armed and dangerous, that he posed an imminent threat to Foreman, to her family members, and law enforcement. In addition, the court found that Hobbs’s cell phone provider was “notoriously slow” in responding to law enforcement search warrants and could take several days to produce the necessary cell phone location information. The court balanced these circumstances with the fact that the intrusion on Hobbs’s privacy rights was reasonably confined to the exigency. For example, the officers did not attempt to enter Hobbs’s home without a warrant or track Hobbs’s movements for an extended period. Instead, the officers arrested Hobbs in his vehicle within approximately one hour of receiving the “pings.”

Bottom Line:

The court held that exigent circumstances required the officers to obtain Hobbs's cell phone location information from T-Mobile without delay by using the "exigent form." The court emphasized that the exigent circumstances exception was not to be used as "a tool of convenience" by law enforcement officers in the absence of immediate danger to persons, a fleeing suspect, or the need to prevent the imminent destruction of evidence.

Full case at: <https://cases.justia.com/federal/appellate-courts/ca4/19-4419/19-4419-2022-02-01.pdf?ts=1643745644>