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Calvin Riorda

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RECENT DEVELOPMENT

JOHNSON V. STATE: GPS DATA GENERATED AS PART OF A BUSINESS RECORD MAY BE ADMITTED INTO EVIDENCE WITHOUT EXPERT TESTIMONY.

By: Calvin Riorda

The Court of Appeals of Maryland held that location information transmitted from a pocket GPS device may be admitted into trial without expert testimony explaining how the device functions. *Johnson v. State*, 457 Md. 513, 518, 179 A.3d 984, 986 (2018). The court reasoned that simply because GPS data is mechanically complex does not mean that it automatically requires expert testimony to explain its underlying workings. *Id.* at 516, 179 A.3d at 986. The court held that routinely generated GPS data, indicating locations and durations of time, could be admissible without the need for expert testimony, because lay jurors are familiar with GPS technology in their daily lives. *Id.* at 537, 179 A.3d at 998.

On the night of March 12, 2014, a Maryland Transit Association (“MTA”) bus struck the car of a 28-year-old woman (“Ms. K”). After arriving on the scene, Officer Martaz Johnson (“Officer Johnson”), a MTA police officer, drove Ms. K. home. Once they arrived at Ms. K’s home, Officer Johnson followed her inside and allegedly proceeded to assault and rape her. While on duty that night, Officer Johnson carried a GPS tracking device known as a “Pocket Cop.” The “Pocket Cop” data was accessible by MTA police supervisors, who could generate a report that showed the location of an on-duty police officer at specific times, as well as the duration of time spent at each location. On the night in question, Officer Johnson’s “Pocket Cop” data report matched the timeline given to police by Ms. K.

Officer Johnson was subsequently charged with first- and second- degree rape, and several other offenses relating to the alleged sexual assault. At trial, Sergeant William Schauman (“Sergeant Schauman”) testified about the locations and times generated within Officer Johnson’s GPS report, despite not having specialized knowledge of how the “Pocket Cop” functioned. Officer Johnson objected to admitting the “Pocket Cop” data, challenging the authenticity and completeness of the GPS report. Additionally, Officer Johnson argued that the GPS report required an expert witness to introduce the evidence pursuant to Maryland’s hearsay rule. Finding that the report had been generated as a standard operating procedure, the court overruled Officer Johnson’s objection, and permitted Sergeant Schauman to testify about the information contained in Officer Johnson’s “Pocket Cop” report under the business-records exception to the hearsay rule.

The jury convicted Officer Johnson of misconduct in office and two counts of second-degree assault. On appeal, the Court of Special Appeals of

Maryland affirmed the circuit court's decision in an unreported opinion. Officer Johnson then petitioned the Court of Appeals of Maryland for a writ of *certiorari*, which was granted. The issue before the court was whether the GPS data was properly admitted into evidence without expert testimony.

In the Court of Appeals of Maryland, Officer Johnson argued that the State had not established a sufficient foundation to introduce the GPS data at trial without expert testimony. *Johnson*, at 524, 179 A.3d at 990. As a general rule, expert testimony is required when the presented evidence is beyond the scope of knowledge of the average juror. *Id.* at 530, 179 A.3d at 994 (citing *Bean v. Dep't of Health and Mental Hygiene*, 406 Md. 419, 432, 959 A.2d 778, 786 (2008)). The court reasoned that GPS devices, however, are generally reliable and pervasive. *Johnson*, at 530-31, 179 A.3d at 994. Therefore, it was not necessary for the jurors to understand precisely how a GPS device works, so long as the general public understood what information the technology conveyed and its approximate margin of error. *Id.* at 531-32, 179 A.3d at 994-95.

The court then compared GPS technology to other commonly used devices such as clocks, thermometers, and scales. *Johnson*, at 531-32, 179 A.3d at 994. The court alluded that just as a juror can tell time without understanding the internal workings of a clock, so too could they understand the data generated from the GPS report without expert testimony. *Id.* at 531, 179 A.3d at 994. Moreover, the court noted that evidence from employee key-cards or ankle monitoring devices is admissible without expert testimony even though the underlying technology is complex. *Id.* In this regard, the court found that expert testimony was unnecessary to admit the times and locations reflected in the routinely generated GPS data. *Id.* at 532, 179 A.3d at 995. Therefore, the court rejected a categorical rule that expert testimony is required when GPS data is offered into evidence, noting the party opposing admission may still dispute the accuracy and reliability of the device. *Id.* at 533, 179 A.3d at 995.

Next, the court distinguished GPS data from location information derived from cell tower data, as in *State v. Payne*. *Johnson*, at 533, 179 A.3d at 995 (citing *State v. Payne*, 440 Md. 680, 104 A.3d 142 (2014)). In *Payne*, the defendants' locations were not contained in the cell tower data report, but required a specialized process to analyze and translate the voluminous data into a general location. *Johnson*, at 534, 179 A.3d at 996 (citing *Payne*, at 684, 104 A.3d at 144). The court stated that unlike the cell tower data in *Payne*, the location information generated from the "Pocket Cop" was automatically recorded as a street address. *Id.* at 534, 179 A.3d at 996. Indeed, Sergeant Schauman was able to read the "Pocket Cop" location data from the report without any special analysis or skill. *Johnson*, 457 Md. at 534, 179 A.3d at 996. Therefore, the court reasoned that the average juror in this case could understand the GPS records without expert help. *Id.*

The dissenting opinion disagreed with the majority's findings, arguing that the circuit court abused its discretion in allowing a lay witness, without technical or personal knowledge, to give opinions on the unadmitted GPS report. *Id.* at 537-38, 179 A.3d at 998. As such, this created a violation of Maryland rules 5-602 and 5-701. *Id.* at 539, 179 A.3d at 999. Contrary to the majority's holding, the dissent argued that the "Pocket Cop" was more technologically advanced than a lay juror could understand, and therefore, an expert witness was required to explain the evidence. *Id.* at 550-51, 179 A.3d at 1006.

In *Johnson*, the Court of Appeals of Maryland held that locations and durations of time generated from the "Pocket Cop" were admissible without the need for expert testimony. This holding is indicative of how the proliferation of sophisticated technologies in our society has lowered the standard for when an expert witness is required at trial. As the average person becomes comfortable using what was once considered "advanced technology," such as smart phone apps, search engines, and tablet devices, lay jurors will become less dependent on expert witnesses to explain the function of such programs and devices. Overall, it is likely that the holding in *Johnson* will reduce the necessity for expert testimony on certain types of technical data as lay jurors become more tech-savvy themselves. However, courts may have difficulties distinguishing which technical devices are within the ken of the average juror from those which require expert testimony.