

NJ High Court Upholds State's Wiretapping Law

By **Martin Bricketto**

Law360, New York (March 18, 2014, 5:58 PM ET) -- The New Jersey Supreme Court on Tuesday unanimously upheld the constitutionality of the state's wiretapping law and the ability of authorities to intercept phone calls outside of the state, finding that the mobility of cellphones would otherwise thwart investigations.

The court rejected the arguments of Edward Ronald Ates — a Florida man convicted for the 2006 murder of his former son-in-law — that the state Wiretapping and Electronic Surveillance Control Act allows law enforcement officials to overstep their jurisdiction by monitoring phone calls between out-of-state individuals as long as the listening post is in New Jersey.

That “point of interception” requirement creates an artificial connection to New Jersey, and investigators should be forced to secure wiretap orders in other states, according to Ates. But Chief Justice Stuart Rabner said in his opinion for the court that the law's setup makes perfect sense in the age of cellphones.

“Because of the inherent mobility of cellphones, it would be impractical, if not impossible in some instances, for law enforcement to intercept cellphone conversations if agents could only rely on orders issued in the state where a call was placed or received,” the opinion said. “Under that type of scheme, a court order would lose its force as soon as a target crossed state lines with a cellphone in hand.”

The act requires a direct connection to New Jersey, according to the court. Besides the listening post requirement, a judge has to find probable cause that a crime under New Jersey law has been committed and that a wiretap can cull relevant communications, the court said.

“I think the Supreme Court looked at it with a very realistic and practical approach that, when it comes to wiretaps, it's the nexus of the crime, it's the contact in New Jersey as to the crime and not necessarily where a particular suspect will be,” said Bergen County Prosecutor John Molinelli, whose office handled the case.

Ates' arguments also ran counter to federal and state court decisions on similar statutes, according to the justices. The state's wiretapping law, enacted in 1968, is based on Title III of the federal Omnibus Crime Control and Safe Streets Act, which set standards for intercepting wire and other communications. That law itself grew out of earlier U.S. Supreme Court decisions on the electronic surveillance of phone conversations.

“So long as the listening post is within the court’s jurisdiction, courts have rejected claims to suppress recorded conversations that took place out of state,” the opinion said.

Authorities investigating the Ramsey, N.J., murder obtained wiretap orders in 2006 covering six telephone numbers for Ates and family members in Florida and Louisiana. Ates failed to suppress the wiretap conversations before his 2009 trial, which led to a guilty verdict that the

Appellate Division and Supreme Court have both since preserved.

“The court's ruling ensures that criminal suspects will not be able to thwart lawful police investigations by taking their mobile phones across state lines,” said Deputy Attorney General Daniel Bornstein, who represented the New Jersey Attorney General's Office as an amicus participant.

Attorney Walter A. Lesnevich, representing Ates, criticized the ruling as a blow against privacy. “The case and the similar ones mean there is no more privacy on a telephone anywhere,” he said.

Though the decision isn't a surprise, it indicates that the court wants to stake ground in how traditional ideas of privacy and reasonable searches and seizures apply in a world of fast-developing technology, according to Raymond M. Brown, the chair of Greenbaum Rowe Smith & Davis LLP's white collar defense practice group.

“This opinion is the Supreme Court's way of saying we're in this game, we're monitoring it, we're going to respond in a cautious and conservative way,” Brown said.

Indeed, the decision shows that old law can address issues involving new technologies and sheds light on the court's approach to important privacy matters, according to Fernando M. Pinguelo, chair of Scarinci Hollenbeck LLC's cybersecurity and data protection group.

“It demonstrates the court's independence in sticking to the principles that are important, but also looking to others for guidance and agreeing if it's consistent with the way things are done in New Jersey and disagreeing if it's not,” Pinguelo said.

Ates is represented by Walter A. Lesnevich.

The case is *State v. Ates*, case number 070926, in the Supreme Court of the State of New Jersey.