SEVENTH CIRCUIT UPHOLDS USE OF SUBPOENA FOR IP ADDRESS INFO

October 2016

Article Source: http://www.llrmi.com/articles/legal_update/2016_united states_v_ciara.shtml

On August 17, 2016, the Seventh Circuit Court of Appeals decided *the United States v. Caira*[i], in which they examined whether the use of a subpoena, rather than a warrant, to obtain IP login information and location was reasonable under the Fourth Amendment. The relevant facts of *Caira*, taken directly from the case, are as follows:

> Between July and September 2008, emails were sent from gslabs@hotmail.com to an email address associated with a website hosted in Vietnam. The emails asked about buying sassafras oil, an ingredient in ecstasy. The DEA, which had been monitoring the website, sent an administrative subpoena to Microsoft Corporation (the owner of Hotmail, the web-based email service for @hotmail.com email addresses). The subpoena asked for:
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> [A]ll basic subscriber information, including the subscriber's name, address, length of service (including start date) and types of services used including any temporarily assigned network address, Passport.net accounts, means and source of payment (including credit card or bank account number), and the account login histories (IP Login history) of, the following email account(s): gslabs@hotmail.com.
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> For this case, the request for "account login histories (IP Login history)" is key. Internet Protocol (abbreviated as "I.P.") addresses are used to identify computers connected to the internet. The allocation of addresses is centrally managed so one can look up in a public registry which internet service provider "owns" a particular address.
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> Responding to the subpoena, Microsoft gave the DEA information about instances in which the gslabs@hotmail.com account was accessed between July 5 and September 15, 2008. For each instance, Microsoft provided the date, time, and an I.P. address associated with the computer that accessed the account. The DEA saw that

> 24.15.180.222 was an I.P. address frequently used to access the account, so it sent an administrative subpoena to Comcast Corporation (the owner of that I.P. address). The subpoena asked for:
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> Any and all e-mail addresses associated with [24.15.180.222]; a) customer name and other user name(s); b) addresses; c) records of session times and durations; d) length of service (including start date) and types of service used; e) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and f) means and source of payment for such service (including any credit card or bank account numbers).
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> Comcast responded that the address was assigned to Anna Caira, and Comcast gave the DEA Anna's home address. The investigation continued from there and culminated in Anna's husband, Frank Caira, being charged with possessing and conspiring to manufacture illegal drugs, in violation of 21 U.S.C. sections 841(a)(1) and 846).[ii]

Caira filed a motion to suppress the information obtained from the subpoena and the district court denied the motion. He pled guilty with the right to appeal the denial of the motion to suppress. Caira then filed a timely appeal with the Seventh Circuit Court of Appeals and argued that a warrant was required to obtain the information associated with his IP address and since no warrant was obtained, his rights under the Fourth Amendment were violated.

The issue on appeal was whether Ciara possessed a reasonable expectation of privacy in the IP login information that was shared between his computer and internet provider such that the Fourth Amendment requires the government to obtain a search warrant, rather than a subpoena, to obtain the information.

Ciara argued that he possessed a reasonable expectation of privacy in the IP information because it was associated with his home and the home is given special protection under the Fourth Amendment.

The Seventh Circuit examined precedent from the United States Supreme Court that is controlling in Ciara's case. The court stated

> **[I]n *United States v. Miller*, 425 U.S. 435 (1976), and *Smith v. Maryland*, 442 U.S. 735 (1979), the Supreme Court developed a bright-line application of the reasonable-expectation-of-privacy test that is relevant here. In what has come to be known as the "third-party doctrine," the Court held that "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties ... even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed**." *Smith*, 442 U.S. at 743-44 (citing *Miller*, 425 U.S. at 442-44).
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> In *Miller*, the defendant had no reasonable expectation of privacy in his banking records, even though they contained sensitive financial information, because he had voluntarily shared the information with a third party—the bank. 425 U.S. at 442-44. And in *Smith*, the

> defendant had no reasonable expectation of privacy in the phone numbers he dialed from his home phone because, as a necessary step in placing phone calls, he shared that information with the phone company. 442 U.S. at 743-44. **Even if such defendants had a *subjective* expectation of privacy, *Miller* and *Smith* held that once information is voluntarily disclosed to a third party, any such expectation is "not one that society is prepared to recognize as reasonable."** *Smith*, 442 U.S. at 743 (internal quotation marks and citation omitted). **Accordingly, the government's pursuit of the information "was not a 'search,' and no warrant was required."** *Smith*, 442 U.S. at 746.[iii] [emphasis added]

The court reasoned that Caira shared his computer's IP address with Microsoft, a third party. The purpose of sharing that address was so that he could access his email and it would be displayed where he was currently located. While Caira argued that he did this from his home, where he possessed a reasonable expectation of privacy under the Fourth Amendment, the court noted that this is similar to *Smith*, where that defendant dialed phone numbers from his home phone.

The court then held

> **Because Caira voluntarily shared his I.P. addresses with Microsoft, he had no reasonable expectation of privacy in those addresses. So the DEA committed no Fourth Amendment "search" when it subpoenaed that information**…[iv]

As such, the court of appeals affirmed the denial of the motion to suppress.

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[i] No. 14-1003 (7th Cir. Decided August 17, 2016)
[ii] Id. at 2-4
[iii] Id. at 5
[iv] Id. at 11