



## GEORGIA COURT EXAMINES WHETHER A PERSON HAS A REASONABLE EXPECTATION OF PRIVACY IN CELL PHONE OWNER INFO

October 2017

For duplication & redistribution of this article, please contact Law Enforcement Risk Management Group by phone at 317-386-8325.  
Law Enforcement Risk Management Group, 700 N. Carr Rd. #595, Plainfield, IN 46168

---

Article Source: [http://www.llrmi.com/articles/legal\\_update/2017\\_state\\_v\\_hill.shtml](http://www.llrmi.com/articles/legal_update/2017_state_v_hill.shtml)

©2017 [Brian S. Batterton](#), J.D., Legal & Liability Risk Management Institute

On July 13, 2016, the Court of Appeals of Georgia decided *State v. Hill*, in which the court discussed whether a person has a reasonable expectation of privacy in the phone number, name and birthdate associated with their cellular phone. The relevant facts of *Hill*, taken directly from the case, are as follows:

A law enforcement officer, who was the only witness at the hearing on Hill's motion to suppress, testified that on June 1, 2014, he investigated a taxi cab driver's claim that a man had fled without paying his cab fare. The man who fled had left a cellular phone in the backseat of the cab. The officer turned on the phone but a passcode prevented him from accessing any data contained therein. The officer, however, was able to place an emergency call from the phone, and from that call a 911 dispatcher provided him with the number assigned to the phone and with Hill's name and date of birth.<sup>ii</sup>

This information led the police to Hill and who was subsequently charged with Theft of Services under Georgia law in violation of OCGA 16-5-8. At a motion to suppress, Hill argued that the officer's act in calling 911 with his locked cell phone for the purpose of obtaining his identity constituted an illegal search under the Fourth Amendment. The trial court agreed and granted Hill's motion to suppress. The state appealed the grant of the motion to suppress to the Court of Appeals of Georgia.

The issue before the court was whether Hill possessed a reasonable expectation of privacy regarding his cell phone number, name, and birthdate associated with the phone.

The court of appeals discussed two Fourth Amendment principles when it analyzed the issue in this case. The first principle was that, although content of personal communication is private, the means by which that content was transmitted from point A to point B is not private. Specifically, the court stated

**[W]e have held in a case involving a landline phone that the Fourth Amendment “protects only the content of a telephone conversation and not the fact that a call**

---

©2017 Article published in the free LLRMI E-Newsletter

Link to article online: [http://www.llrmi.com/articles/legal\\_update/2017\\_state\\_v\\_hill.shtml](http://www.llrmi.com/articles/legal_update/2017_state_v_hill.shtml)  
<http://www.llrmi.com> | <http://www.patctech.com>

**was placed or that a particular number was dialed.”** *Stephenson* , supra, 171 Ga.App. at 939, 321 S.E.2d 433 (citation and punctuation omitted).<sup>iii</sup>

The second principle was that a person does not possess a reasonable expectation of privacy in information that he or she voluntarily turns over to third parties. Regarding this principle, the court stated

This rule applies even where the person revealing information intended its use by the third party to be limited. *United States v. Graham* , 2016 U.S. App. LEXIS 9797, \*5 (4th Cir. 2016) (en banc). **By using a phone, a person exposes identifying information to third parties, such as telephone companies, and assumes the risk that the telephone company may reveal that information to the government.** *Smith* , supra at 744 (II) (B), 99 S.Ct. 2577. See also *Ensley* , supra, 330 Ga.App. at 259, 765 S.E.2d 374. **Applying this principle to the act of law enforcement officers in obtaining from a cellular phone the number associated with that phone, the United States District Court for the Eastern District of Michigan held that “a cell[ular] phone number fits into the category of information that is not considered private and does not implicate the Fourth Amendment.”** *United States v. Sanford* , 2013 U.S. Dist. LEXIS 73624, \*3 (E.D. Mich. 2013). **The fact that it was a law enforcement officer, rather than Hill, who placed a call from the phone does not change our conclusion that the information obtained was not subject to Fourth Amendment protection.**<sup>iv</sup> [emphasis added]

The court further went on to explain

**Although a law enforcement officer cannot access data stored within a cellular phone without a warrant or an exception to the warrant requirement, see *Riley v. California* , — U.S. —, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014), courts have held that the officer can take other action with a cellular phone lawfully in his or her possession to determine the phone's owner. For example, the officer can remove the battery from a phone to acquire an identifying subscriber number, analogous to a serial number, without implicating the Fourth Amendment, because the subscriber has no “reasonable expectation of privacy in the serial number of his cell[ular] phone or other identifying information.”** *State v. Green* , 164 So.3d 331, 344 (La. App. 2015). See also *United States v. Lowe* , 2014 U.S. Dist. LEXIS 145457, \*20 (II) (A) (D. Nev. 2014). **And in the context of a civil rights action, the United States District Court for the Eastern District of Virginia held that an allegation that an officer improperly placed a call from a person's cellular phone did not state a Fourth Amendment violation.** *Deavers v. Spotsylvania County Sheriff's Dept.* , 2014 WL 2993445, at \*1 n. 4, 2014 U.S. Dist. LEXIS 90369, at \*\*9–10 n. 4 (E.D. Va. 2014).<sup>v</sup> [emphasis added]

The court also found it important to note that the officer did not look at content contained in the cell phone. Rather, he merely dialed 911 from the phone, which is possible despite the passcode, and the phone's caller ID revealed its number; from the number, the officer was able to determine the owner and the owner's date of birth.

In light of the principles discussed above, the Court of Appeals of Georgia reversed the trial court's grant of the motion to suppress and held that Hill did not possess a reasonable expectation of privacy in the information obtained when the officer dialed 911 from his phone.

---

<sup>i</sup> 338 Ga. App. 57 (789 S.E.2d 317) (2016)

<sup>ii</sup> Id. at 318

<sup>iii</sup> Id. at 319

<sup>iv</sup> Id. at 319-320

<sup>v</sup> Id. at 320