IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0887-15

GAREIC JERARD HANKSTON, Appellant

v.

THE STATE OF TEXAS

ON REMAND FROM THE UNITED STATES SUPREME COURT

HERVEY, J., delivered the opinion of the unanimous Court.

O P I N I O N

This case returns to us on remand from the United States Supreme Court. After reconsideration, we will reverse the judgment of the court of appeals and remand this cause for further proceedings.

Appellant, Gareic Jerard Hankston, was charged with murder for killing Keith Brown on May 29, 2011. He filed a pretrial motion to suppress, arguing that the State

violated the Fourth Amendment and Article I, Section 9 of the Texas Constitution[1] when it unreasonably searched his cell-phone call logs and historical cell site location information (CSLI) records. He further argued that, because his constitutional rights were violated, the records should have been suppressed. The trial court denied Appellant's motion, and a jury convicted him. On direct appeal, the court of appeals affirmed the ruling of the trial court. *Hankston v. State*, No. 14-13-00923-CR, 2015 WL 3751551 (Tex. App.—Houston [14th Dist.] June 16, 2015) (mem. op., not designated for publication).

Appellant filed a petition for discretionary review, asking us to review the court of appeals's decision. We refused to review his Fourth Amendment claim, having already held that a defendant does not have an expectation of privacy in his third-party call logs or CSLI records,[2] but we agreed to review his Article I, Section 9 claim. After concluding that the third-party doctrine also applies to call logs and historical CSLI records under Article I, Section 9, we held that Appellant did not have an expectation of privacy in his

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[1]Article I, Section 9 states that,

> The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

TEX. CONST. art. I § 9.

[2]*Hankston v. State*, 517 S.W.3d 112, 112–13 (Tex. Crim. App. 2017) (citing *Ford v. State*, 477 S.W.3d 321 (Tex. Crim. App. 2015) (holding that the third-party doctrine applies to CSLI under the Fourth Amendment)).

call logs or CSLI records. *Hankston v. State*, 517 S.W.3d 112, 121–22 (Tex. Crim. App. 2017). Appellant filed a petition for writ of certiorari in the United States Supreme Court challenging our decision because, even though we interpreted a state constitutional provision, we relied on Fourth Amendment principles.

While Appellant's petition was pending, the Supreme Court handed down *Carpenter v. United States*, 138 S. Ct. 2206 (2018), in which it held that a defendant has an expectation of privacy under the Fourth Amendment in at least seven days of historical CSLI records despite that they are third-party business records.[3] *Id.* at 2217. Considering *Carpenter*, and our reliance on Fourth Amendment principles, the Supreme Court vacated our judgment and remanded this case for further consideration. *Hankston v. Texas*, 138 S. Ct. 2706 (2018). Because of these developments, we grant Appellant's Fourth Amendment ground on our own motion, dismiss his Article I, Section 9 claim without prejudice, vacate the court of appeals's judgment, and remand this cause for the lower court to reexamine its Fourth Amendment holding in light of *Carpenter*.

Delivered: September 11, 2019

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[3]The Supreme Court did not address call logs, and Appellant now agrees that the call logs were properly admitted.