[Cite as *State v. Young*, 2012-Ohio-1669.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

State of Ohio	Court of Appeals No. H-10-025
Appellee	Trial Court No. CRB 1000883
v.	
Robert J. Young	**DECISION AND JUDGMENT**
Appellant	Decided: April 13, 2012

* * * * *

G. Stuart O'Hara, Jr., Norwalk Law Director, and
Scott Christophel, Assistant Law Director, for appellee.

David J. Longo, Interim Huron County Public Defender,
for appellant.

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SINGER, P.J.

{¶ 1} Appellant appeals his conviction for obstruction of official business in the Norwalk Municipal Court. Because we conclude that appellant lacked standing to seek suppression of cell phone records obtained from his girlfriend's cell phone provider, we affirm.

{¶ 2} On June 7, 2010, a 17-year-old girl went missing from the Norwalk home of her grandparents. Sometime after the girl's disappearance, police began to suspect that her 20-year-old boyfriend, appellant Robert Young, was harboring her or knew where she was. Appellant denied such knowledge, but police remained suspicious.

{¶ 3} On June 9, 2010, without appellant's consent or review by a judge or magistrate, police obtained appellant's cell phone records from his carrier, Verizon Wireless, by submitting a single page Emergency Request Form. Police also obtained the 17-year-old girl's cell phone records with the consent of her mother. The records acquired contained, not only the numbers that had been called, but also the content of the text messages that had been exchanged.

{¶ 4} The 17 year old was eventually found living in an apartment rented by appellant. She had not been held against her will. The girl was returned to her parents.

{¶ 5} Police charged appellant with obstructing official business, a second degree misdemeanor. Appellant pled not guilty and moved to suppress the cell phone records obtained without a warrant.

{¶ 6} At the hearing on appellant's suppression motion, the investigating officer testified that the records had been obtained without a warrant and that, at the time the records were requested, although police has strong suspicions, he did not believe police had probable cause to obtain a warrant. Moreover, the officer testified, at the time he did

not believe a warrant was needed where an Emergency Request Form[1] was used. A subpoena for the records issued only after appellant was charged.

{¶ 7} The trial court sustained appellant's suppression motion, in part. The court concluded that appellant had a reasonable expectation of privacy in the content of his text messages even though those messages were maintained in records held by a third party, his cell phone provider. As a result, the police had no right to obtain these records absent appellant's consent, a warrant issued on probable cause or a recognized exception to a warrant requirement. Since no warrant had been obtained, the court suppressed the text messages that had been produced by appellant's cell provider.

{¶ 8} The court refused, however, to suppress messages appellant had sent to the 17 year old's cell phone that had been acquired with the consent of her mother from the girl's cell phone provider. These, the court ruled, could be used in evidence.

{¶ 9} Following the court's decision on appellant's motion to suppress, he amended his plea to no contest and was found guilty as charged. The court fined him $200, sentenced him to jail for 90 days, 60 suspended, and two years of probation. This appeal followed.

[1] The form was provided by the cell provider in apparent conformity with 18 U.S.C. 2703 which was later declared in violation of the Fourth Amendment. *Warshak v. United States*, 490 F.3d 455, 477 (6th Cir.2007).

{¶ 10} Appellant sets forth the following single assignment of error:

> The trial court erred to the prejudice of the Defendant-Appellant in denying his motion to suppress evidence obtained through an unreasonable seizure of text messages, in violation of his rights under the U.S. and Ohio Constitutions.

{¶ 11} The Fourth Amendment and the Ohio Constitution, Article I, Section 14, guarantee that individuals be free from unreasonable searches and seizures. Evidence obtained in violation of this guarantee must be excluded from introduction in any criminal trial. *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914), *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). The fruits of such evidence must be excluded as well. *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 391-392, 40 S.Ct. 182, 64 L.Ed. 319 (1920). Searches conducted without a probable cause based warrant are per se unreasonable, subject to only a few specifically established and well-defined exceptions. *California v. Acevedo*, 500 U.S. 565, 580, 111 S.Ct.1982, 114 L.Ed. 619 (1991), *State v. Tincher*, 47 Ohio App.3d 188, 190, 548 N.E.2d 251 (1988).

{¶ 12} There are limits on who may assert the right to suppress evidence obtained in violation of the Fourth Amendment. "[S]uppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself[.]" *Alderman v. United States*, 394 U.S. 165, 171-172, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969). "Fourth Amendment rights are personal in nature and may not be

vicariously asserted by others." *State v. Dennis*, 79 Ohio St.3d 421, 426, 683 N.E.2d 1096 (1997). "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." *Rakas v. Illinois*, 439 U.S. 128, 134, 99 S.Ct. 421, 58 L.Ed. 387 (1978).

{¶ 13} For a person to have been aggrieved by an unlawful search or seizure, he or she "'must have been a victim of a search or seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else.'" *Alderman v. United States*, *supra* at 173, quoting *Jones v. United States*, 362 U.S. 257, 261, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960). "We adhere to these cases and to the general rule that Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." *Id.* at 174.

{¶ 14} Appellant raises many interesting, and perhaps novel, questions about the nature of the privacy expectations of text messages stored by third parties. Nonetheless, the trial court suppressed the evidence that was obtained from appellant's cell phone provider. The issue is whether the records obtained from appellant's 17-year-old girlfriend's cell phone provider, with the consent of her mother, should be excluded.

{¶ 15} The parties engage in considerable argument as to whom the girlfriend's cell phone belonged, whether a minor can contract and whether a minor's mother can consent in circumstances like these. None of these issues is dispositive, because

appellant was not the aggrieved party. Suppression might be an issue if the information obtained from the girlfriend's cell phone provider were to be offered against the girlfriend. In such an instance, she could raise the issue. But appellant has put forth nothing that would establish that he had any reasonable privacy expectation in his girlfriend's phone records. He, therefore, is without standing to seek suppression of such evidence. Accordingly, the trial court did not err in denying appellant's motion to suppress the evidence obtained from the 17 year old's phone records. Appellant's sole assignment of error is not well-taken.

{¶ 16} On consideration whereof, the judgment of the Norwalk Municipal Court is affirmed. It is ordered that appellant pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE