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Georgia Supreme Court Holds That Wiretap Orders Must Be Issued By A Superior Court Judge Of The Circuit Where The Listening Post Is Located

On January 7, 2013, the Georgia Supreme Court issued the opinion in three cases, consolidated for appeal. *Luangkhot v. State* (S12G0895), *Phommachanh v. State* (S12G0905), and *Saleumsky v. State* (S12G0912). In these cases the Court construed Georgia and federal law and precedent to hold that, “superior courts do not currently possess the authority to issue wiretap warrants for interceptions conducted outside the boundaries of their respective judicial circuits.” Based upon their reading of federal and state law, the Court held that wiretaps issued in Gwinnett County which formed the basis for a Gwinnett County prosecution, violated federal and state law because the listening post (LP) for the wiretaps was in the HIDTA facility in Fulton County.

The Court stated that interception occurs at the LP, and that federal law provides that a judge may issue a wiretap order authorizing the interception of communications only “within the territorial jurisdiction of the court in which the judge is sitting.” 18 USCS § 2518(3). The Court further recognized that federal courts have held that the “territorial jurisdiction” over which a state court has authority depends entirely on state law. In Georgia, the Court found, “the territorial jurisdiction of a judge of the superior courts is the judicial circuit in which he presides,” citing *Granese v. State*, 232 Ga. 193, 197(2) (1974). See also O.C.G.A. § 15-6-12. Therefore, “in the absence of any state statute expressly granting superior courts the authority to issue wiretap warrants that apply outside their own judicial circuits, we hold that current state law vests the authority to issue wiretap warrants only in those superior courts of the judicial circuits in which *the tapped phones or listening post* are located.” (Emphasis supplied). Accordingly, the Court held that because the superior court of Gwinnett County lacked the authority to issue wiretap warrants for the “interceptions” which, as the evidence presented showed, took place solely in Fulton County, the motion to suppress should have been granted.

Thus, unless and until the legislature passes a statute “expressly granting superior courts the authority” to issue wiretap orders for an investigation to be executed using an LP in a circuit other than their own, it is strongly recommended that future wiretap orders be issued only by a judge of the circuit in which the listening post is located. Moreover, *Luangkhot* does not necessarily mean that an existing wiretap is invalid if the listening post is outside the circuit in which the wiretap order was entered. The Court particularly noted that “the state did not attempt to prove that any of [the telephones that were monitored] were ever used in Gwinnett County.” Therefore, if the State can prove that the tapped phones were in the circuit which entered the order (e.g. landlines or mobile phones through evidence of cell tower records), this decision may not require suppress of the evidence gathered through the use of the wiretap.