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## UNITED STATES SUPREME COURT



### **Attachment of a Global Positioning System (GPS) Tracking Device to an Individual's Vehicle, and Subsequent Use of Device to Monitor Vehicle's Movements on Public Streets, Constitutes a Search or Seizure within the Meaning of the Fourth Amendment.**

*United States v. Jones*, 565 U.S. \_\_\_\_ (23 January 2012).

In 2004, Antoine Jones became the target of a narcotics trafficking investigation by a joint FBI and District of Columbia Metropolitan Police Department task force. Based upon information gathered during the investigation, in 2005 the Government applied to the United States District Court for the District of Columbia for a warrant authorizing the use of an electronic tracking device on the Jeep Grand Cherokee registered to Jones's wife. A warrant was issued authorizing installation of the device, within 10 days, in the District of Columbia. Eleven days after the warrant was issued, and in Maryland rather than the District of Columbia, agents installed a GPS tracking device on the undercarriage of the Jeep while it was parked in a public parking lot. Over the next 28 days, the Government used the device to track the vehicle's movements. The device established the vehicle's location within 50 to 100 feet, and communicated that location by cellular telephone to a Government computer. It relayed more than 2,000 pages of data over the four-week period.

The Government obtained a multi-count indictment charging Jones and several alleged co-conspirators with, as relevant here, conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine and 50 grams or more of cocaine base, in violation of 21 U.S.C. §§841 and 846. Before trial, Jones filed a motion to suppress evidence obtained through the GPS device. The District Court granted the motion only in part, suppressing the data obtained while the vehicle was parked in the garage adjoining Jones's residence. It held the remaining data admissible because "a person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." 451 F. Supp. 2d 71, 88 (2006) quoting *United States v. Knotts*, 460 U.S. 276, 281 (1983). Jones's trial produced

a hung jury on the conspiracy count. A grand jury re-indicted Jones and others on the same charge. At trial, the Government introduced the same GPS-derived locational data admitted in the first trial. The data connected Jones to the alleged conspirators' stash house that contained \$850,000 in cash, 97 kilograms of cocaine, and 1 kilogram of cocaine base. The jury returned a guilty verdict, and the District Court sentenced Jones to life imprisonment.

Jones appealed. The United States Court of Appeals for the District of Columbia Circuit reversed the conviction because of admission of the evidence obtained by warrantless use of the GPS device which, it stated, violated the Fourth Amendment.

The Government appealed and the United States Supreme Court granted review. The United States Supreme Court affirmed the judgment of the Court of Appeals for the D.C. Circuit. The Court ruled that the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a "search" within the meaning of the Fourth Amendment.

In the case at hand, the Court relied upon the fact that the Government physically occupied private property for the purpose of obtaining information. The Majority opinion expressed no doubt that such a physical intrusion would have been considered a "search" within the meaning of the Fourth Amendment when it was adopted.

The Court noted that historically, property rights have played a significant role in search and seizure analysis. In fact, until at least the latter half of the 20<sup>th</sup> century, Fourth Amendment jurisprudence was tied to common-law trespass. For example, in *Olmstead v United States*, 277 U.S. 438, 464 (1928), the Court held that wiretaps attached to telephone wires on the public streets did not constitute a Fourth Amendment search because "there was no entry of the house or offices of the defendants."

Later cases though began to deviate from this property-based approach and, when analyzing whether or not a violation of the Fourth Amendment has occurred, looked instead at whether government officers violated a person's "reasonable expectation of privacy." *Katz v. United States*, 389 U.S. 347, 360 (1967). In the case at hand, the trial court applied the latter analysis and concluded that no search had occurred because Jones had no reasonable expectation of privacy in the area of the Jeep accessed by Government agents (its underbody) and in the locations of the Jeep on the public roads. The Court noted though the analysis of *Katz* (i.e. the violation of a reasonable expectation of privacy) is not the exclusive test for determining if a search has occurred within the meaning of the Fourth Amendment; it simply added to, not substituted for, the common-law trespass test.

Therefore, in determining whether a search has occurred within the meaning of the Fourth Amendment, the Court must first consider whether the Government engaged in a physical intrusion of a constitutionally protected area in order to gain information. If so, then a search is likely to have occurred, and the Government must comply with the requirements of the Fourth Amendment. If a trespass did not occur, then the Court must determine whether or not the Government's actions violated a person's reasonable expectation of privacy.

In the case at hand, because the Government engaged in a physical intrusion of a constitutionally protected area in order to gain information, its installation of a GPS device on the Jeep, and its use of that device to monitor the vehicle's movements, was a "search" within the meaning of the Fourth Amendment. With that determination being made, the Court declined to answer whether the defendant had a reasonable expectation of privacy in the undercarriage of his car and in the car's locations on the public roads stating, "the present case does not require us to answer that question."

#### **Issues and Recommendations**

1. Is a search warrant required to place a GPS tracking device on the outside of a vehicle parked in a public place?

Yes. However, a search warrant may not be the only method for ensuring compliance with the Fourth Amendment. See #2 below for further discussion.

2. May officers use a court order in lieu of the search warrant referred to in #1 above?

A court order, with an affidavit establishing probable cause for the activity requested to be authorized, is the functional equivalent of a search warrant under the Fourth Amendment. Therefore, it is highly likely that our appellate courts would recognize a judge's inherent authority to issue such an order. In fact, a court order authorizing the installation and monitoring of a GPS device on a private vehicle is preferable to obtaining a search warrant due to the various procedural issues that arise if a warrant is used. (Recall that N.C.G.S. §15A-248 requires a search warrant to be executed within 48 hours of issuance; N.C.G.S. §15A-252 requires that prior to undertaking a search pursuant to a search warrant, a copy must be given to the person in control of the vehicle to be searched, or affixed to the vehicle itself; and N.C.G.S. §15A-257 requires an executed warrant to be returned to the clerk of the issuing court without unreasonable delay, at which point, unless sealed, it becomes a public record.)

Officers needing to apply for a court order authorizing the attachment and monitoring of a tracking device on a private vehicle should contact the Special Operations Division.

3. An order issued by a Superior Court Judge is valid throughout the State. If a court order is obtained from a Superior Court Judge, authorizing the installation and monitoring of a GPS device on a private vehicle, may the device continue to be monitored if the vehicle travels out of State.

It is unclear how our appellate courts would rule on this issue. An argument could be made that the monitoring authorized by the court order is accomplished by officers that have remained physically present within the State of North Carolina. Thus, the officers did not act outside of their territorial jurisdiction and the monitoring fell within the jurisdiction of the court. At least until our appellate courts decide otherwise, the State has a legitimate argument to support the continued monitoring.

4. Do the requirements of *U.S. v. Jones* apply to recent installations that occurred, and current monitoring that began, prior to the Court's ruling?

Yes. The *Jones* ruling will apply to current and future investigations (as well as prosecutions). If a GPS device is currently installed on a vehicle and/or is currently being monitored without a search warrant or a court order, to ensure that evidence will be admissible in a criminal prosecution and to reduce the possibility of civil liability, the device should be removed. It is unlikely that a warrant or court order is

needed for the sole purpose of removing a wrongfully installed device unless intrusion in or on private property (entering a garage, lifting the vehicle's hood, etc) is required. If the GPS device is to be re-installed and monitored pursuant to a court order, the affidavit must establish probable cause for the installation and monitoring based upon facts that existed before the initial "trespassory" installation and monitoring occurred.

5. Does *U.S. v. Jones* prohibit or restrict the ability of the government to place and monitor a tracking device in bait property?

No. Prior Supreme Court decisions have found no violations of a reasonable expectation of privacy, or trespass, when reviewing similar activities. In *U.S. v. Knotts*, 460 U.S. 276 (1983) the Court upheld against Fourth Amendment challenge the use of an electronic tracking device that had been placed in a container of chloroform, allowing law enforcement to monitor the location of the container. The Court found there was no infringement of Knotts' reasonable expectation of privacy since the information obtained - the automobile carrying the container on public roads, and the location of the off-loaded container in open fields near Knotts' cabin - had been voluntarily exposed to the public. Similarly, in *U.S. v. Karo*, 468 U.S. 705 (1984), a tracking device was installed in a container that belonged to a third party, not to Karo. Karo later took possession of the container. The Court held that a search or seizure within the meaning of the Fourth Amendment does not occur when a device is installed in a container with the consent of the original owner, and the container is delivered to a person having no knowledge of the presence of the device. These cases were not overruled by *Jones*. In fact, the Court distinguished these cases by pointing out that, unlike Knotts and Karo, Jones "possessed the Jeep at the time the Government trespassorily inserted the information-gathering device" and therefore, the case at hand, was "on a much different footing."