



United States Supreme Court

Fourth Amendment Protection Applies to Placing GPS on Vehicle

U.S. v. Jones

January 2012



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On January 23, 2012 the United States Supreme Court unanimously held that law enforcement's act of attaching a GPS device to a vehicle and tracking the vehicle by use of the device constitutes a search under the Fourth Amendment.ⁱ It is noted that the prosecution had failed in the lower courts to argue that placement of the device on a vehicle was a reasonable search thus that argument was waived. The Court outlined the facts in *Jones* as follows:



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In 2004 respondent Antoine Jones, owner and operator of a nightclub in the District of Columbia, came under suspicion of trafficking in narcotics and was made the target of an investigation by a joint FBI and Metropolitan Police Department task force. Officers employed various investigative techniques, including visual surveillance of the nightclub, installation of a camera focused on the front door of the club, and a pen register and wiretap covering Jones's cellular phone.

Based in part on information gathered from these sources, 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 issued, authorizing installation of the device in the District of Columbia and within 10 days.

On the 11th day, and not in the District of Columbia but in Maryland, 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, and once had to replace the device's battery when the vehicle was parked in a different public lot in Maryland. By means of signals from multiple satellites, the device

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established the vehicle's location within 50 to 100 feet, and communicated that location by cellular phone to a Government computer. It relayed more than 2,000 pages of data over the 4-week period.

The Government ultimately obtained a multiple-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. 451 F. Supp. 2d 71, 88 (2006). 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." *Ibid.* (quoting *United States v. Knotts*, 460 U. S. 276, 281 (1983)). Jones's trial in October 2006 produced a hung jury on the conspiracy count.

The government took the position that the data should not be suppressed arguing that no warrant was required for the placement of the GPS device, thus the investigators' non-compliance with the warrant should not lead to suppression.

In its decision, the United States Supreme Court held that the placement of the GPS on the vehicle was clearly a search within the meaning of the Fourth Amendment. In doing so, the Court looked at older cases which interpreted the Fourth Amendment in terms of trespass. It is noted that a line of cases following the Court's decision in *Katz v. United States*ⁱⁱ analyzed the Fourth Amendment in terms of a person's right to privacy while cases preceding *Katz* had traditionally considered Fourth Amendment intrusions based on common law trespass. In the Court's decision in *Jones*, the Court determined that *Katz* added a personal privacy dimension to the Fourth Amendment but did not take away the trespass dimension. It should be noted that a concurring opinion criticizes the majority opinion for using the trespass analysis. The majority opinion is clear that the *Katz* privacy analysis would apply to a case where there was no physical intrusion to a person's property but there was a collection of transmitted data.

The Court noted: "It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have 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 held that the use of the GPS was a search within the meaning of the Fourth Amendment.

It is important to recognize that the Court did not address whether a warrant was even required. Due to the non-compliance with the warrant the government had argued that placement of the GPS on the car was not a search within the meaning of the Fourth Amendment. The Court decided that in fact the placement of the GPS is a search.

The government did not present the argument that even if placement was a search, such a search would be reasonable to conduct without a warrant. The Court noted:

The Government argues in the alternative that even if the attachment and use of the device was a search, it was reasonable--and thus lawful--under the *Fourth Amendment* because "officers had reasonable suspicion, and indeed probable cause, to believe that [Jones] was a leader in a large-scale cocaine distribution conspiracy." We have no occasion to consider this argument. The Government did not raise it below, and the D. C. Circuit therefore did not address it. We consider the argument forfeited.(cites omitted).

As a result, the question is left open for another day as to whether law enforcement is required to get a search warrant when armed with probable cause prior to placement of a GPS on a vehicle. **The best advice is to obtain a warrant in such cases and comply with the requirements of the warrant.**

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

CITATIONS:

ⁱ *U.S. v. Jones*, 2012 U.S. LEXIS 1063; slip. Op. 10-1259 (January 23, 2012).

ⁱⁱ *Katz v. U.S.*, 389 U.S.347 (1967).