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United States v. Jones: **Attaching a GPS device to a vehicle is a “search” within the meaning of the Fourth Amendment**

No. 10-1259 (USSC Jan. 23, 2012)

In *US v. Jones*, law enforcement placed a GPS tracking device on the undercarriage of a vehicle while it was parked in a public parking lot. The device was placed there without a warrant. Law enforcement then monitored the movement of the vehicle for the next 28 days, and at one point, had to replace the battery in the device. Federal prosecutors then used the information obtained from the GPS device to convict Jones of conspiracy to possess and distribute cocaine.

Speaking for a five-Justice majority, Justice Scalia held that the Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” Here, the vehicle was an “effect” as that term is used in the Fourth Amendment. Thus, by “physically occup[ing] private property for the purpose of obtaining information, the installation of a GPS device and its use to monitor the vehicle’s movements constituted a “search” for Fourth Amendment purposes.

In so holding, the Court rejected the Government’s argument that the placement of the GPS device was not a search based on the Katz reasonable expectation of privacy test. *Katz v. United States*, 389 U. S. 347, 351 (1967). Rather, the Court grounded its decision on common law trespass. “The text of the Fourth Amendment reflects its close connection to property, since otherwise it would have referred simply to ‘the right of the people to be secure against unreasonable searches and seizures’; the phrase ‘in their persons, houses, papers, and effects’ would have been superfluous.” *Jones*, Slip Op. at 4. Thus, the majority opined, “the Katz reasonable-expectation-of-privacy test has been added to, not substituted for, the common-law trespassory test.” *Id.*, at 8 (emphasis in original). In other words, the majority held, the Court did not need to address the reasonable expectation of privacy test because the placement of the GPS device failed the common law trespassory test of the Fourth Amendment.

Justice Scalia’s majority decision was criticized by four of the Justices. Justice Alito, writing a concurring opinion, stated that the reasonable expectation of privacy test should have been utilized instead of “18th Century tort law.” Under that test, the relatively short-term monitoring of a person’s movements on public streets accords with expectations of privacy that our society has recognized as reasonable. But, the use of longer term GPS monitoring in investigations impinges on expectations of privacy. Although there is no bright line test, the four weeks of monitoring of Jones’ vehicle in this instance clearly crossed the threshold into that of unreasonableness. Thus, Alito and three Justices concurred with the majority opinion.

The narrow decision in *Jones* provides that a warrant must be obtained to place a GPS device on a vehicle. However, the decision in *Jones* will undoubtedly cause us problems for years to come as we grapple with the parameters of the Scalia’s “common law trespassory” test on search and seizure issues beyond those dealing with tracking devices.