

Special Edition of Police Prosecutor Update

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On January 23, 2012, the United States Supreme Court issued a decision in *United States v. Jones*, _____ U.S. _____ (2012), holding that the attachment of a Global Positioning System (GPS) tracking device to an individual's vehicle and the subsequent use of the GPS tracking device to monitor the movement of the vehicle, constitutes a search within the meaning of the 4th Amendment. This case is located at <http://www.supremecourt.gov/opinions/11pdf/10-1259.pdf>.

In 2004, the defendant, Antoine Jones, was the owner of a nightclub in the District of Columbia. Police also suspected that Antoine Jones was a drug dealer. They were right about that.

In 2005, after a period of investigation, the Government applied to the United States District Court for the District of Columbia for a warrant authorizing the installation and use of a GPS tracking device on a vehicle being used by the defendant. The district court issued a warrant, authorizing the installation of the requested GPS tracking device, to be installed in the District of Columbia, within ten days.

Unfortunately, law enforcement officers did not install the GPS tracking device on the defendant's vehicle until the 11th day. Moreover, the GPS tracking device was installed on the defendant's vehicle in Maryland and not in the District of Columbia. Over the next 28 days, the GPS tracking device communicated the location of the target vehicle. The GPS tracking device relayed more than 2,000 pages of data over a four week period.

The United States Government obtained an Indictment charging the defendant, and others, with Conspiracy to Distribute Cocaine. Prior to trial, the defendant, Antoine Jones, filed a motion to suppress evidence, requesting that the federal district court suppress all of the evidence gathered by the GPS tracking device. The federal district court granted the motion to suppress, in part, suppressing only the data obtained while the vehicle used by the defendant was parked in a garage adjoining the defendant's residence.

The case went to jury trial once, which resulted in a hung jury. After re-indictment, the case proceeded to a second jury trial. During that trial, the Government introduced the evidence obtained from the GPS tracking device that had been placed on the defendant's vehicle. The defendant was convicted at the second jury trial and sentenced to life imprisonment.

On appeal, the United States Court of Appeals for the District of Columbia Circuit reversed the defendant's conviction, holding that the warrantless installation and use of a GPS tracking device on a vehicle violated the 4th Amendment. In 2011, the United States Supreme Court granted certiorari to decide the issue.

In short, the United States Supreme Court held that the attachment and use of a GPS tracking device on a vehicle, without a warrant, violated the 4th Amendment to the United States Constitution.

NOTE: On appeal, the Government conceded noncompliance with the warrant issued by the United States District Court. The Government argued only that a warrant was not required. This was an interesting tactical choice, as the Government did NOT argue noncompliance with the warrant, with the

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evidence obtained by the GPS tracking device admissible under the good faith exception to the exclusionary rule.

The Supreme Court majority held that the Government had, in fact, physically intruded on personal property which was a clear violation of the 4th Amendment.

Practical Tips for Law Enforcement:

- 1) What do you do in cases where the police investigation of the suspect was completed prior to January 23, 2012 and evidence was developed from the use of a GPS tracking device on a vehicle, which was placed on the vehicle without a warrant? If charges have been filed the defense has likely already or will soon file a motion to suppress the evidence gathered by the GPS tracking device.

In this scenario, generally, the data gathered by the GPS tracking device should be admissible evidence at trial.

In *Davis v. United States*, _____ U.S. _____, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011), the United States Supreme Court addressed this issue, relating to searches of a vehicle incident to the arrest of one of the occupants of that vehicle.

In *Davis*, the police were conducting a routine traffic stop and arrested the defendant, Willie Davis, for giving a false name. The police searched the vehicle in which the defendant was riding and found a handgun inside that vehicle. The search of that vehicle was in compliance with existing case law regarding the scope of a search incident to arrest.

The defendant, Willie Davis, was charged federally with being a felon in possession of a firearm. The defendant filed a motion to suppress evidence, which was denied by the federal district court. The defendant was convicted and appealed.

While the appeal was pending, the United States Supreme Court issued its decision in *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009). The *Gant* case limited the extent of the search of a vehicle that could be conducted by police, under the standard previously established by *Belton*.

Of course, the defendant, Willie Davis, wanted to take full advantage of the more restrictive search rules of *Gant* and argued that he was so entitled and that the handgun seized by the police should have been suppressed. However, the United States Supreme Court disagreed.

In short, the United States Supreme Court held that searches conducted in objectively reasonable reliance on binding appellate precedent are NOT subject to the exclusionary rule. The United States Supreme Court noted that suppression of evidence where the police relied on established appellate precedent would not deter police misconduct and would come at a high cost to both the truth and public safety.

The Indiana Court of Appeals has followed the *Davis* decision in *Henderson v. State*, 953 N.E.2d 639 (Ind. App. 2011).

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Prior to the January 23, 2012 decision by the United States Supreme Court in *United States v. Jones*, there were no Indiana appellate cases dealing with the constitutionality of placing GPS tracking devices on vehicles. However, there was established appellate precedent from the 7th Circuit Court of Appeals. The United States Court of Appeals for the 7th Circuit held that the placement of a GPS tracking device on a vehicle was NOT a search under the 4th Amendment. The Court of Appeals reasoned that the GPS tracking device was simply an electronic substitute for standard visual surveillance.

- 2) What about cases where the police investigation was not completed by January 23, 2012 and a GPS tracking device was actually on a vehicle on that date and thereafter?

For the data gathered by the GPS tracking device prior to January 23, 2012, the analysis set forth above should save that evidence from suppression.

However, if the GPS tracking device remained on a vehicle on or after January 23, 2012, and was placed on that vehicle without a warrant, that GPS tracking device should be removed from the vehicle and the data gathered by the GPS tracking device on or after January 23, 2012 should not be used as evidence by the State in a prosecution of a defendant, nor should such data be used as the basis for further investigation of a suspect (for example, as the basis for a search warrant).

It is likely that the GPS tracking device can be removed from the target vehicle by the police with or without prior judicial approval, although prior judicial approval is always the better choice.

Please contact your prosecutor to obtain sample warrants to place a GPS tracking device on a vehicle.