

SUPREME COURT OF THE UNITED STATES

ARTEZ BREWER
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States District Court of Appeals
for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

KERRY C. CONNOR
Attorney at Law
9013 Indianapolis Blvd., Suite C
Highland, IN 46321
Telephone: (219) 972-7111
Facsimile: (219) 972-7110
kcc Connor@sbcglobal.net

Attorney for Petitioner
ARTEZ BREWER

Question Presented

Whether when federal law enforcement exceeds the limitations on the face of the warrant for GPS tracking to in-state monitoring and continues to monitor an individual across numerous states in violation of the warrant, the unauthorized search is irrelevant to the Fourth Amendment and the burden shifts to the searched individual to prove the unauthorized search was without probable cause.

TABLE OF CONTENTS

	<u>Page</u>
Question Presented	i
Table of Contents	ii
Table of Authorities.	iii
Petition for Writ of Certiorari.	1
Opinions Below.	1
Jurisdiction.	1
Constitutional Provisions Involved	1
Statement of Case.	2
Reasons for Granting the Writ.	5
I. This case represents an important question on the scope of the Fourth Amendment jurisprudence in the context of GPS tracking.	5
A. Law enforcement breached the scope of the GPS warrant.	5
B. The Seventh Circuit holding in the case at bar created a burden on the defendant to prove that the magistrate's particularized parameters of a warrant were justified by probable cause.	8
Conclusion.	10
Appendix	

TABLE OF AUTHORITIES

Cases	<u>Page</u>
<i>Bivens v. Six Unknown Named Agents</i> , 403 U.S. 388 (1971)	6
<i>Carpenter v. United States</i> , 138 S. Ct. 2206 (2018)	9
<i>Coolidge v. New Hampshire</i> , 403 U.S. 443 (1971)	6
<i>Dalia v. United States</i> , 441 U.S. 238, 248, 252 (1979)	7
<i>Horton v. California</i> , 496 U.S. 128 (1990)	5, 8
<i>Marron v. United States</i> , 275 U.S. 192 (1927)	6
<i>Richards v. Wisconsin</i> , 520 U.S. 385 (1997)	6, 7
<i>United States v. Brewer</i> , 915 F.3d 408 (7 th Cir. 2019)	1, 6, 7, 8
<i>United States v. Castetter</i> , 865 F.3d 977 (7 th Cir. 2017)	3
<i>United States v. Grubbs</i> , 547 U.S. 90 (2006)	7
<i>United States v. Sanchez-Jara</i> , 889 F.3d 418 (7 th Cir. 2018)	4, 9
<i>United States v. Jones</i> , 565 U.S. 400 (2012)	3, 5, 7, 10
<i>Wong Sun v. United States</i> , 371 U.S. 471 (1963)	10
U.S. Constitution	
United States Constitution, Amendment IV	1, 5, 9
Federal Statutes	
18 U.S.C. §2510 et. seq.	7
18 U.S.C. § 2703	9
18 U.S.C. §3006A	1
18 U.S.C. §3742	1
28 U.S.C. §1254(1)	1
28 U.S.C. §1291	1

Petition for Writ of Certiorari

Petitioner Artez Brewer, a federal inmate currently incarcerated at United States Penitentiary Big Sandy in Inez, Kentucky by and through Attorney Kerry C. Connor, appointed pursuant to the Criminal Justice Act, 18 U.S.C. §3006A, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

Opinions Below

The February 4, 2019, opinion of the Seventh Circuit is reported at 915 F.3d 408 (7th Cir.2019). [Pet. App. 1-9]. The district court opinion is unpublished, but available at *United States v. Brewer*, 2017 WL 6055449 (Dec. 7, 2017). [Pet. App. 10-15].

Jurisdiction

The Seventh Circuit issued its opinion on February 4, 2019. The Seventh Circuit had jurisdiction pursuant to 28 U.S.C. §1291 and 18 U.S.C. §3742. This Court has jurisdiction pursuant to 28 U.S.C §1254(1).

Constitutional Provisions Involved

United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Statement of the Case

This case presents the pressing question of whether the Fourth Amendment protects against the monitoring of an individual's whereabouts and movements beyond the in-state geographical perimeters as dictated on the face of the warrant which permitted the placement of an electronic tracking device on an individual's vehicle.

1. During the course of an investigation into a series of multi-state bank robberies, including several in the Northern District of Indiana in 2016, federal law enforcement sought a number of warrants for GPS tracking devices to be attached to vehicles believed to be associated with Petitioner Artez Brewer. As a result, a GPS tracker was placed on Petitioner Artez Brewer's 2002 silver Volvo pursuant to a warrant issued by a State of Indiana magistrate on June 2, 2016.

2. The State of Indiana warrant granted federal law enforcement the authority to "[m]onitor the tracking device on the [2002 silver Volvo] in any public or private area in any jurisdiction, *within the State of Indiana. . .*" [Pet. App. 16] (emphasis added). The GPS tracker provided location information very close to real time on the movement of the Volvo and sent that information to an FBI agent's cell phone. In the early part of June, after having monitored the 2002 Volvo for a number of days, the federal agent received a notification on his cell phone via the GPS tracker that the Volvo was leaving Gary, Indiana and traveling due west. After the vehicle left the State of Indiana, travelled into Illinois, and continued traveling west, the federal agent continued to monitor the Volvo's movement, across the country,

through a Nebraska traffic stop, and, ultimately, to Los Angeles California. The federal agent continued to track the 2002 silver Volvo for a number of days.

3. In Los Angeles, Petitioner Brewer and his co-defendant – they had been travelling together – were arrested and charged with the robbery of the Banner Bank. After his arrest in Los Angeles, Petitioner Brewer made inculpating statements to both FBI agents from Los Angeles and FBI agents who were investigating the Northern District of Indiana bank robberies. Petitioner Brewer and his co-defendant would be convicted of the Banner Bank robbery. Subsequently, Petitioner Brewer would be charged and convicted in this matter with three (3) more bank robberies occurring in the Northern District of Indiana, from which this appeal arises.

4. During pre-trial proceedings, Petitioner Brewer moved to suppress evidence, including inculpating statements, that had been obtained as a result of GPS monitoring of his 2002 silver Volvo while outside the State of Indiana. Petitioner relied on the fact that the face of the State of Indiana warrant limited law enforcement's right to track the 2002 Volvo to movement within the State of Indiana. [Pet. App. 16].

5. Relying *United States v. Jones*, 565 U.S. 400 (2012) and *United States v. Castetter*, 865 F.3d 977 (7th Cir. 2017), the district court denied Petitioner Brewer's motions to suppress. [Pet. App. 12-13]. In essence, the district court reasoned that the federal agent had a warrant for the GPS tracker and the limitation on the face of the State of Indiana warrant did not act as a limitation on the federal agent's

monitoring of the 2002 Volvo outside the State of Indiana. As a result, the government was permitted to introduce evidence of the connection between Petitioner Brewer and his co-defendant passenger, evidence of the Petitioner's movements around other banks as he travelled west, evidence of the surveillance of the individuals before, during and after the robbery of the Banner Bank in Los Angeles; Petitioner's inculpatory statements were also admitted. Petitioner was convicted on all three (3) counts of bank robbery in the Northern District of Indiana for which he was charged.

6. On appeal, the three-judge panel of the Seventh Circuit agreed with the district court. [Pet. App. 6-7]. Citing *United States v. Sanchez-Jara*, 889 F.3d 418, 421 (7th Cir. 2018), *cert. denied*, 139 S.Ct. 282 (2018), the appellate court found Petitioner had no constitutional interest in adherence to the in-state warrant limitation issued by the state court judicial officer.

Reasons for Granting the Writ

I. This case represents an important question on the scope of the Fourth Amendment jurisprudence in the context of GPS tracking.

A. Law enforcement breached the scope of the GPS warrant.

The question at the center of this case is the Fourth Amendment ramifications to law enforcement failing to adhere to geographic limitations on a face of a warrant authorizing GPS tracking of an individual. The Fourth Amendment provides in relevant part that “the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .” U.S. Const. IV. In *Jones*, this Court squarely held that installation of a GPS device and its use to monitor a vehicle’s movements constitutes a “search” under the Fourth Amendment. *United States v. Jones*, 565 U.S. 400, 405 (2012) Thus, a valid warrant is required before law enforcement may install or use a GPS tracking device. *Id.* And here, it is undisputed that federal law enforcement obtained a warrant authorizing the installation and GPS monitoring of Petitioner Brewer’s 2002 silver Volvo from a State of Indiana magistrate. [Pet. App. 16].

However, Fourth Amendment analysis does not simply end when a warrant is issued. Fourth Amendment jurisprudence has long recognized that constitutional searches and seizures are “confined in the area and duration by a warrant’s terms,” *Horton v. California*, 496 U.S. 128, 129 (1990). The Fourth Amendment warrant requirement “is not an inconvenience to be somehow ‘weighed’ against the claims of

police efficiency.” *Coolidge v. New Hampshire*, 403 U.S. 443, 481 (1971). Rather, “[t]he duty of giving the [Fourth Amendment] force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws.” *Marron v. United States*, 275 U.S. 192, 195-96 (1927).

Here, this GPS warrant specifically limited the scope of the Fourth Amendment intrusion to tracking the vehicle within the State of Indiana. [Pet. App. 16]. Yet, without regard for the scope of authority granted under the warrant, law enforcement tracked Petitioner Brewer thousands of miles beyond the geographic boundaries delineated on the face of the warrant – from Indiana, into Illinois, across the country, through Nebraska, and ultimately to Los Angeles, California – monitoring every move and stop along the way. The government’s continued tracking of Petitioner clearly violated that long held premise that the Fourth Amendment requires law enforcement to act strictly within the bounds set by the warrant it is executing. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

The Seventh Circuit opinion in the case at bar acknowledges that “the Fourth Amendment entrusts judges, not law enforcement, to determine the particular places and things that probable cause justifies searching and seizing.” *United States v. Brewer*, 915 F.3d 408, 413 (7th Cir. 2019). But, in a somewhat cursory manner, the Court of Appeals concludes that the geographic limitations set by the neutral and detached magistrate should not be enforced “to constrain officers.” *Brewer*, 915 F.3d at 413-414. Equating the in-state geographic limitation to the statutory concept of knock notice, *citing Richards v. Wisconsin*, 520 U.S. 385, 395-96

(1997), and the “reasonable noncompliance with a warrant’s time limitations,” the Seventh Circuit finds no issue with law enforcement ignoring the particularity of the intrusion authorized by the neutral and detached magistrate and opens the door to law enforcement independently reassessing what the particularized parameters of the warrant should be. *Brewer*, 915 F.3d at 413.

This Court has concluded that the Fourth Amendment “particularity” requirement does not include the conditions precedent to execution of the warrant.” *United States v. Grubbs*, 547 U.S. 90, 98 (2006). Thus, it is unnecessary that a “triggering condition for an anticipatory search warrant be set forth in the warrant itself.” *Id. at 99*. Nor does a warrant issued pursuant to Title III of the Omnibus Crime Control and Safe Street Act of 1968, 18 U.S.C. §2510 et. seq. sanctioning electronic surveillance require explicit authorization for covert entry for placement of the electronic surveillance equipment; such covert entry is anticipated by the nature of the warrant. *Dalia v. United States*, 441 U.S. 238, 248, 252 (1979).

But, here, the issue is not a question of the conditions precedent to the execution of the warrant. Rather, it is one of law enforcement exceeding the authority granted under the warrant. When the government attached the GPS in this case, “[t]he Government physically occupied private property for the purpose of obtaining information.” *Jones*, 565 U.S. at 404. The Fourth Amendment requires particularity as to “the place to be searched.” The place to be searched was the 2002 silver Volvo while it was in the State of Indiana. [Pet. App. 16]. The warrant only granted that physical occupation while the 2002 silver Volvo was in Indiana. Once

the vehicle crossed into Illinois and continued travelling across the country, the physical occupation of the vehicle no longer was authorized by the warrant.

B. The Seventh Circuit holding in the case at bar created a burden on the defendant to prove that the magistrate's particularized parameters of a warrant were justified by probable cause.

The Seventh Circuit opinion turns Fourth Amendment jurisprudence on its head by imposing an unprecedented burden on Petitioner to establish that the lack of "probable cause" justified the magistrate's designation of the particularized place to be searched, i.e. the 2002 silver Volvo while it was in the State of Indiana.

Brewer, 915 F.3d at 414. In announcing this burden shift, the Seventh Circuit stated:

Brewer nevertheless submits that the task force should have obeyed the in-state limitation. Yet he does not argue that it reflected a constitutional requirement – that is, a probable cause determination or a description of the particular search authorized.

Brewer, 915 F.3d at 414.

Though the Seventh Circuit does not provide a case in accord with its burden shifting argument, its citation to *Horton*, 496 U.S. 128, 140, seems to acknowledge opposition to the same conclusion. Horton states:

If the scope of the search exceeds that permitted by the terms of a validly issued warrant or the character of the relevant exception from the warrant requirement, the subsequent seizure is unconstitutional without more. Thus, in the case of a search incident to a lawful arrest, "[i]f the police stray outside the scope of an authorized *Chimel* search they are already in violation of the Fourth Amendment, and evidence so seized will be excluded; adding a second reason for excluding evidence hardly seems worth the candle." *Coolidge*, 403 U.S., at 517, 91 S.Ct., at 2063 (WHITE, J., concurring and dissenting).

Horton, 496 U.S. at 140.

The Seventh Circuit, citing its decision in *United States v. Sanchez-Jara*, 889 F.3d 418, 421 (7th Cir. 2018), *cert. denied*, 139 S. Ct. 282 (2018), further concludes that the mere identification of the 2002 silver Volvo as the effect to be searched is relevant and must be adhered to by law enforcement; while the in-state limitation placed on the location of the vehicle could be completely ignored by federal agents. In *Sanchez-Jara*, the defendant challenged the use of an 18 U.S.C. § 2703 warrant and order to justify the use of a cell site simulator to locate and ultimately arrest Sanchez-Jara. The Seventh Circuit rejected the defendant's claim that 18 U.S.C. §2703 did not adequately answer the "probable cause" demands of the Fourth Amendment for purposes of the cell site stimulator and rejected the defendant's claim of a general warrant problem. Ultimately, the Seventh Circuit determined that the use of the cell site simulator, to the extent a warrant was required, fell within the parameters of the §2703 warrant.

Though the opinion in the case at bar does not explain its citation to *Sanchez-Jara*, the cases are obviously different. In the case at bar, there is no challenge to probable cause to attach the GPS; the challenge is to law enforcement exceeding the parameters set by the magistrate to continue to gather information once the vehicle left the State of Indiana. "[I]ndividuals have a reasonable expectation of privacy in the whole of their physical movements." *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018)(warrant required for cell phone records). The warrant in this case limited the authority to monitor the 2002 silver Volvo and thus Petitioner Brewer's

whereabouts outside the State of Indiana. [Pet. App. 16]. Ignoring the scope of the warrant and continuing to monitor Petitioner Brewer's movements by way of the GPS violated Petitioner Brewer's Fourth Amendment rights. The evidence seized and the statements made as a result of the unauthorized tracking of Petitioner Brewer outside the State of Indiana are fruits of the poisonous tree and should have been suppressed. *See Wong Sun v. United States*, 371 U.S. 471 (1963).

This case offers the Court a significant opportunity to address the substantial question of the expanse of its ruling in *United States v. Jones*, 565 U.S. 400 (2012) and ability of law enforcement to simply ignore the scope of the warrant for GPS monitoring dictated by the issuing magistrate.

CONCLUSION

For the foregoing reasons, Petitioner Artez Brewer respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

By: /s/Kerry C. Connor
Kerry C. Connor
Attorney for Petitioner
ARTEZ BREWER

KERRY C. CONNOR
Attorney at Law
9013 Indianapolis Blvd., Suite C
Highland, IN 46321
Telephone: (219) 972-7111
Facsimile: (219) 972-7110
kcconnor@sbcglobal.net