No. 19-

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

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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915 F.3d 408
United States Court of Appeals, Seventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Artez BREWER, Defendant-Appellant.

No. 18-2035
|
Argued November 5, 2018
|
Decided February 4, 2019

Synopsis

Background: Defendant was convicted in the United States District Court for the Northern District of Indiana, No. 2:16-cr-00084-JVB-JEM-1, Joseph S. Van Bokkelen, J., of bank robbery, after his motion to suppress was denied, 2017 WL 6055449. Defendant appealed.

Holdings: The Court of Appeals, St. Eve, Circuit Judge, held that:

[1] defendant received all he was entitled to under Fourth Amendment;

[2] tracking defendant's car to California where he committed another bank robbery did not violate Fourth Amendment;

[3] government demonstrated that other-act evidence of Ohio and California robberies was relevant to legitimate purpose of proving identity of robber at Indiana robberies through modus operandi and to show defendant's intent;

[4] other-act evidence of Ohio and California robberies was not unfairly prejudicial to defendant;

[5] evidence was sufficient to convict defendant of bank robbery;

[6] teller's testimony on cross-examination that she did not have independent recollection of day of bank robbery and suggesting that she could not distinguish that day from any other day that defendant visited bank did not require exclusion of surveillance footage for lack of authentication; and

[7] any error by district court was harmless in admitting bank's surveillance footage without authentication.

Affirmed.

West Headnotes (20)

[1] Telecommunications
Warrants or judicial authorization

Global positioning system (GPS) vehicle monitoring generally requires a warrant. U.S. Const. Amend. 4.

Cases that cite this headnote

[2] Searches and Seizures
Execution and Return of Warrants

Violating a search warrant is not the same as violating the Fourth Amendment. U.S. Const. Amend. 4.

Cases that cite this headnote

[3] Searches and Seizures
Places, persons, and things within scope of warrant

Officers generally cannot search more than the particular places or things described in the warrant, and they violate the Fourth Amendment if they do. U.S. Const. Amend. 4.

Cases that cite this headnote

[4] Searches and Seizures
Places, objects, or persons to be searched

The Fourth Amendment entrusts judges, not law enforcement, to determine the particular places and things that probable cause justifies searching and seizing. U.S. Const. Amend. 4.

Cases that cite this headnote

[5] Searches and Seizures
Places, objects, or persons to be searched

While the Fourth Amendment entrusts judges to authorize the particular places or things to be searched, it does not require judges to constrain officers with other "unenumerated" particularities. U.S. Const. Amend. 4.

Cases that cite this headnote

[6] **Searches and Seizures**
Fourth Amendment and reasonableness in general

Like certain warrant terms, state law does not by proxy heighten the Fourth Amendment's protections. U.S. Const. Amend. 4.

2 Cases that cite this headnote

[7] **Searches and Seizures**
Fourth Amendment and reasonableness in general

If law enforcement executes a state-issued warrant beyond the limits of state law, the search nevertheless may comply with the Fourth Amendment. U.S. Const. Amend. 4.

Cases that cite this headnote

[8] **Telecommunications**
Warrants or judicial authorization

Defendant received all he was entitled to under Fourth Amendment, where warrant to track his car issued upon good-faith affidavit from independent magistrate, based on probable cause, with particular description of place or thing to be searched. U.S. Const. Amend. 4.

Cases that cite this headnote

[9] **Telecommunications**
Warrants or judicial authorization

Tracking defendant's car to California through global positioning system (GPS) vehicle monitoring where he committed another bank robbery did not violate Fourth Amendment; although warrant permitted monitoring only in Indiana and defendant may have had constitutionally protected privacy interest in his whereabouts, that interest was no greater on Indiana roads than it was on Illinois or California roads and in-state limitation did not have any effect on probable-cause determination that described multistate bank robbery spree or description of particular search authorized. U.S. Const. Amend. 4; 18 U.S.C.A. § 2113(a).

Cases that cite this headnote

[10] **Searches and Seizures**
Objects or information sought

Telecommunications
Warrants or judicial authorization

Judges must describe the specific person, phone, or vehicle to be tracked to satisfy the Fourth Amendment's particularity requirement; they need not specify or limit the tracking to a geographic location. U.S. Const. Amend. 4.

Cases that cite this headnote

[11] **Searches and Seizures**
Fourth Amendment and reasonableness in general

Fourth Amendment did not provide remedy for noncompliance with state-based, ancillary restriction in search warrant. U.S. Const. Amend. 4.

1 Cases that cite this headnote

[12] **Criminal Law**
Robbery

Criminal Law
Similar means or method;modus operandi

In defendant's trial on charges of bank robbery, government demonstrated that other-act evidence of Ohio and California robberies was relevant to legitimate purpose of proving identity of robber at Indiana robberies through modus operandi and to show defendant's intent; defendant's lingering around banks in Ohio and California just before they were robbed by person clothed

head to toe, who used stick and a give-me-the-cash note, made it more likely that he was individual recorded at Indiana banks just before they were robbed by person who dressed similarly and used similar methods because of idiosyncratic way of robbing banks even if tactics differed slightly. 18 U.S.C.A. § 2113(a); Fed. R. Evid. 404(b).

Cases that cite this headnote

[13] **Criminal Law**
Other Misconduct as Evidence of Offense Charged in General

After an objection, the proponent of other-act evidence must demonstrate that the evidence is relevant to a legitimate purpose through a chain of reasoning that does not rely on the forbidden inference that the person has a certain character and acted in accordance with that character on the occasion charged in the case; if the proponent does so, the district court then must determine whether the probative value of the other-act evidence is substantially outweighed by the risk of unfair prejudice, taking into account the extent to which the non-propensity fact for which the evidence is offered actually is at issue in the case. Fed. R. Evid. 403, 404(b).

Cases that cite this headnote

[14] **Criminal Law**
Robbery

Criminal Law
Similar means or method;modus operandi

In defendant's trial on charges of bank robbery, other-act evidence of Ohio and California robberies that was relevant to central purpose of proving identity of robber at Indiana robberies through modus operandi and to show defendant's intent was not unfairly prejudicial to defendant; other-act evidence was probative of defendant's identity as person present at Indiana banks and it was equally probative in showing that he was there for bank-casing purposes, not numismatic ones. 18 U.S.C.A. § 2113(a); Fed. R. Evid. 403, 404(b).

Cases that cite this headnote

[15] **Robbery**
Identity of accused

Evidence was sufficient to convict defendant of bank robbery, where bank teller authenticated surveillance footage that depicted man resembling defendant, and man with his appearance, wearing clothes matching what man who lingered in bank wore, was seen loitering across street for so long that he needed to relieve his bladder next to his car which matched title found in defendant's home. 18 U.S.C.A. § 2113(a).

Cases that cite this headnote

[16] **Criminal Law**
Purpose and Effect of Evidence

Instruction for jury to consider evidence of Ohio and California bank robberies only if it first found that defendant likely participated in them, making clear that jury could use that evidence only to help it decide defendant's motive, intent, knowledge and modus operandi during charged bank robberies in Indiana, properly directed jury in its consideration of other-act evidence, in defendant's trial on charges bank robbery in Indiana. 18 U.S.C.A. § 2113(a); Fed. R. Evid. 404(b).

Cases that cite this headnote

[17] **Criminal Law**
Photographs and videos

Bank teller's testimony on cross-examination that she did not have independent recollection of day of bank robbery and suggesting that she could not distinguish that day from any other day that defendant visited bank did not require exclusion of surveillance footage for lack of authentication, in defendant's trial on bank robbery charges; government met its threshold burden through teller's direct-

examination testimony that surveillance footage fairly and accurately depicted events as they happened that day, and it fell to jury to decide evidence's true authenticity and probative value. 18 U.S.C.A. § 2113(a); Fed. R. Evid. 901.

Cases that cite this headnote

[18] **Criminal Law**
Evidence dependent on preliminary proofs

Abuse of discretion standard of review applied to defendant's claim that government at his trial on bank robbery charges did not properly authenticate surveillance footage of his presence at bank few hours before robbery. 18 U.S.C.A. § 2113(a); Fed. R. Evid. 901.

Cases that cite this headnote

[19] **Criminal Law**
Foundation or Authentication

A party seeking to admit evidence must first establish a foundation for its authenticity. Fed. R. Evid. 901.

Cases that cite this headnote

[20] **Criminal Law**
Reception of evidence

Any error by district court was harmless in admitting bank's surveillance footage without authentication in defendant's trial on bank robbery charges, since jury still heard about defendant's confession and his all-too-coincidental presence at four other banks just before they were robbed, it heard five tellers identify defendant, and it heard about compelling evidence government recovered from defendant's home, including titles for vehicles that matched getaway cars. 18 U.S.C.A. § 2113(a); Fed. R. Crim. P. 52(a); Fed. R. Evid. 901.

Cases that cite this headnote

***410** Appeal from the United States District Court for the Northern District of Indiana, Hammond Division. No. 2:16-cr-00084-JVB-JEM-1—**Joseph S. Van Bokkelen**, *Judge*.

Attorneys and Law Firms

David E. Hollar, Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Hammond, IN, for Plaintiff-Appellee.

Kerry Clementine Connor, Attorney, Highland, IN, for Defendant-Appellant.

Before Bauer, Rovner, and St. Eve, Circuit Judges.

Opinion

St. Eve, Circuit Judge.

***411** Artez Brewer and his girlfriend, Robin Pawlak, traveled the country robbing banks, à la Bonnie and Clyde. Agents today, however, have investigative tools that their Great Depression predecessors lacked. With a warrant for real-time, Global-Positioning-System (GPS) vehicle monitoring, a task force tracked Brewer's car to California where he and Pawlak committed another robbery. Brewer was arrested and essentially confessed to the crime spree. The government charged him with three counts of bank robbery, 18 U.S.C. § 2113(a), and a jury convicted him on each count.

Brewer appeals. He argues that the government violated the Fourth Amendment by tracking him to California when the warrant only permitted monitoring in Indiana. But the in-state limitation did not reflect a probable-cause finding or a particularity requirement, and the Fourth Amendment is unconcerned with state borders. Brewer also argues that the district court abused its discretion in admitting evidence of unindicted robberies. Yet that other-act evidence was directly probative of Brewer's identity, modus operandi, and intent, and it therefore fell within the bounds of Federal Rule of Evidence 404(b)(2). We affirm.

I. Background

Five bank robberies, committed in three states over the course of about six weeks, led to Artez Brewer's arrest and prosecution.

The first robbery happened on April 28, 2016. The day before, a young man entered Centier Bank in Griffith, Indiana, and made an odd request: he asked for change in two-dollar bills. The next day, a woman walked into the bank wearing a jogging suit, gloves, and a mask while carrying a yard-long wooden stick, a black bag, and a note. She put the stick in between the bank's entrance doors, approached the teller counter, and held up the note, which read, "All money in drawer, no bait." She received $162, exited the bank, and ran into the alley. Security footage showed a dark Chevrolet Impala fleeing the scene.

The day after the first robbery, on April 29, 2016, a young man walked into State Bank & Trust in Perrysburg, Ohio. He lingered, waited in line for a couple of minutes, pulled out his cell phone, and left without being assisted. The man was then seen loitering across the street from the bank. After relieving himself on a nearby garbage bin, the man got back into his car—a black sedan—where he sat facing the bank. A bit later, a woman entered the bank dressed head to toe in dark clothing, carrying a stick, a black bag, and a note. The woman dropped the stick at the bank's entrance doors, approached the teller counter, and handed up a note demanding cash. She left with over $1,000.

On the morning of May 6, 2016, a young man entered the MainSource Bank in Crown Point, Indiana. He approached the teller and made a request she thought odd: change in two-dollar bills. That afternoon, a beige Toyota sedan pulled up near the bank. A woman got out, wearing all black and carrying a long stick, a purple and black bag, and a note. She put the stick at the front doors, reached the teller desk, and held up a note demanding money. She received all the money in the teller's top drawer, about $1,700. She fled, got back into the Toyota, and took off.

About three weeks later, in the late afternoon of May 26, 2016, a young man walked into Horizon Bank in Whiting, Indiana. He approached the teller desk *412 and requested change in one-dollar gold coins, which the teller found unusual. The next morning, on May 27, a Toyota Corolla pulled up to an auto-shop lot next to the bank. A woman dressed in dark clothing entered the bank, carrying a bag and a note. Without saying a word, she approached the teller desk and held up the note demanding money. She made off with a little more than $6,000 before jumping into the Toyota. The robber left behind a stick wedged between the doors.

These (and other) heists drew the attention of an FBI task force, which pinned Brewer as the young man present at the banks just before the robberies. It conducted surveillance and gathered that Brewer lived with a woman, Robin Pawlak, in Gary, Indiana. Officers observed a Toyota matching the one from the robberies parked outside their residence, and they later discovered that Brewer sometimes drove another car—a silver Volvo. A task-force officer sought a warrant from a state-court magistrate to monitor the Volvo with GPS tracking. The officer's supporting affidavit referenced eleven bank robberies, in Indiana, Illinois, and Ohio. The magistrate issued the warrant, which permitted the use of a "tracking device ... in any public or private area in any jurisdiction, *within the State of Indiana*, for a period of 45 days." The in-state limitation was, apparently, an anomaly. The task force had obtained multiple GPS vehicle-monitoring warrants during the investigation from the same magistrate, none of which included the limitation.

The task force quickly installed the GPS tracker, consistent with the warrant's terms. A few days later, on June 7, 2016, a task-force officer noticed that the Volvo was on the move heading west. He monitored the car as it left Indiana and traveled through Illinois and continued westward until it arrived in Los Angeles, California. The officer was unaware that the warrant limited the monitoring to Indiana, and he failed to consult it while tracking the car. Once in L.A., the officer noticed that the Volvo was circling a bank.

The officer called the FBI's bank-robbery coordinator in L.A. to give him the heads-up about Brewer's presence near Banner Bank. On the morning of June 10, 2016, officers observed Brewer and Pawlak in the Volvo near the bank. Brewer got out of the car, walked around the bank for about thirty minutes, occasionally staring through its large windows. That afternoon, the Volvo again approached the bank. A woman got out of the car, dressed in black and carrying a stick. She dropped the stick at the door, approached the tellers, and held up a note, which read, "ALL the money No cops No DYE OR your dead." She received about $1,000 in cash, and then ran out

of the bank and into the Volvo. Officers stopped the car, arrested Brewer and Pawlak, and found a bag of cash.

Agents questioned Brewer at the stationhouse. They told him that he was seen at Horizon Bank in Indiana just before it was robbed, but Brewer claimed to be a coin collector. When an agent pressed, however, and asked whether anyone else was involved in the robberies, Brewer said:

> I tell you what, I can tell you, I told you about this shit, I didn't come up with it by my damn self, I can tell you that shit right now but like, ya know. I was not uh—I was not uh—It was like a spur of the moment shit like fuck ya know....

Agents later searched Brewer's residence. They found car titles to an Impala and a Corolla. They also found clothes matching those worn by the young man who had been present before many of the robberies.

A grand jury returned an indictment against Brewer charging him with three counts of bank robbery, ***413** 18 U.S.C. § 2113(a), for each of the three Indiana robberies. After Brewer lost a motion to suppress regarding, in part, the tracking of his Volvo outside of Indiana, he went to trial. At trial, and over Brewer's objection, the government presented evidence of the Ohio and California robberies pursuant to Rule 404(b). Eyewitness testimony identified Brewer as the young man present before many of the robberies, and surveillance footage showed the same. The government also presented a recording of Brewer's post-arrest statements.

The jury convicted Brewer on all three counts, and the district court sentenced him to 137 months in prison. He had already been convicted in the Central District of California for the L.A. robbery, and sentenced to 125 months in prison for that crime. The net effect of the district court's sentence below was therefore an additional twelve months in custody. Brewer appealed.

II. Discussion

Brewer offers three reasons for a new trial: (1) the district court should have excluded certain evidence under the Fourth Amendment; (2) the district court erred in admitting evidence of the unindicted robberies under Rule 404(b); and (3) the government used surveillance-footage evidence that had questionable authenticity under Rule 901. We address these points in turn and conclude that none merits reversal.

A. The Fourth Amendment and the Tracking Warrant

[1] GPS vehicle monitoring generally requires a warrant, *United States v. Jones*, 565 U.S. 400, 404, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012), and the government obtained one here. Brewer argues that by not abiding by the in-state limitation set forth in the warrant the government effectively conducted a warrantless search, so the evidence of the California robbery and his confession were fruits of the poisonous tree. *See Wong Sun v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). Two principles of the Fourth Amendment lead us to disagree.

[2] **[3]** **[4]** **[5]** The first is that violating a search warrant is not the same as violating the Fourth Amendment. We know from as far back as *Marron v. United States*, 275 U.S. 192, 196, 48 S.Ct. 74, 72 L.Ed. 231 (1927), that officers generally cannot search more than the particular places or things described in the warrant, and that they violate the Fourth Amendment if they do. *See also Horton v. California*, 496 U.S. 128, 140, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990); *United States v. Mann*, 592 F.3d 779, 782 (7th Cir. 2010). That rule makes sense: the Fourth Amendment entrusts judges, not law enforcement, to determine the particular places and things that probable cause justifies searching and seizing. But not everything in a warrant is so inviolable. In *Richards v. Wisconsin*, 520 U.S. 385, 395–96, 117 S.Ct. 1416, 137 L.Ed.2d 615 (1997), for example, the Supreme Court held that a no-knock search was reasonable even though the warrant expressly declined to authorize no-knock entry. Courts, similarly, have held that reasonable noncompliance with a warrant's time limitations does not offend the Fourth Amendment. *See, e.g., United States v. Burgess*, 576 F.3d 1078, 1097 (10th Cir. 2009); *United States v. Gerber*, 994 F.2d 1556, 1558–59 (11th Cir. 1993); *see also United States v. Martin*, 399 F.3d 879, 881 (7th Cir. 2005). This, too, makes sense: while the Fourth Amendment entrusts judges to authorize the particular places or things to be searched, it does not require judges to con-strain officers with other "unenumerated" particularities. *See* ***414** *United States*

v. Grubbs, 547 U.S. 90, 97–98, 126 S.Ct. 1494, 164 L.Ed.2d 195 (2006); *Dalia v. United States*, 441 U.S. 238, 255–58, 99 S.Ct. 1682, 60 L.Ed.2d 177 (1979); *see also United States v. Patrick*, 842 F.3d 540, 544 (7th Cir. 2016); *Shell v. United States*, 448 F.3d 951, 957 (7th Cir. 2006).

[6] [7] The second Fourth Amendment principle is similar. Like certain warrant terms, state law does not by proxy heighten the Fourth Amendment's protections. *See Virginia v. Moore*, 553 U.S. 164, 168–73, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008); *California v. Greenwood*, 486 U.S. 35, 43–44, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988). If, for example, law enforcement executes a state-issued warrant beyond the limits of state law, the search may nevertheless comply with the Fourth Amendment. *See United States v. Gilbert*, 942 F.2d 1537, 1541–1542 (11th Cir. 1991). We recognized as much in *United States v. Castetter*, 865 F.3d 977, 978–79 (7th Cir. 2017), where we put it simply: "the Fourth Amendment does not concern state borders."

Other courts have applied these Fourth Amendment principles to cases like this one. In *United States v. Faulkner*, 826 F.3d 1139 (8th Cir. 2016), *cert. denied*, —— U.S. ——, 137 S.Ct. 2092, 197 L.Ed.2d 897 (2017), for example, the Eighth Circuit held that the installation of a GPS tracker outside of the county where the warrant authorized the installation to occur did not implicate the Fourth Amendment. That the installation violated the warrant and state law was irrelevant, according to *Faulkner*, because the Fourth Amendment's requirements of probable cause and particularity were satisfied. 826 F.3d at 1145–46. Even more on point is *United States v. Simms*, 385 F.3d 1347 (11th Cir. 2004) (Cudahy, J., sitting by designation). In *Simms*, the Eleventh Circuit held that the GPS tracking of a vehicle into Alabama, even though the authorizing court order only allowed tracking in Texas, did not violate the Fourth Amendment. The Fourth Amendment's requirements were met, and the warrant's in-state limitation was, at most, a state-law problem. *Simms*, 385 F.3d at 1355–56.

[8] We hold the same. Upon a good-faith affidavit, the warrant to track Brewer's car issued from (1) an independent magistrate, (2) based on probable cause, (3) with a particular description of the place or thing (the Volvo) to be searched. Brewer therefore received all he was entitled to under the Fourth Amendment. *E.g.*, *Dalia*, 441 U.S. at 255, 99 S.Ct. 1682; *Archer v. Chisholm*, 870 F.3d 603, 614 (7th Cir. 2017).

[9] [10] 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. *Cf. Horton*, 496 U.S. at 140, 110 S.Ct. 2301. For good reason: Judges must describe the specific person, phone, or vehicle to be tracked to satisfy the Fourth Amendment's particularity requirement. They need not specify (or limit) the tracking to a geographic location. *United States v. Sanchez-Jara*, 889 F.3d 418, 421 (7th Cir. 2018), *cert. denied*, —— U.S. ——, 139 S.Ct. 282, 202 L.Ed.2d 186 (2018); Wayne R. LaFave, 2 SEARCH & SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 4.5(e) (5th ed. 2018). Nor was there any reason to do so here. The affidavit supporting the warrant in this case described a multistate bankrobbery spree, and we do not see how such evidence could justify monitoring only within Indiana. Brewer may have had a constitutionally protected privacy interest in his whereabouts, *see Carpenter v. United States*, —— U.S. ——, 138 S.Ct. 2206, 2215–17, 201 L.Ed.2d 507 (2018), but that interest was ***415** no greater on Indiana roads than it was on Illinois or California roads.

[11] What we are left with, then, is the task force's noncompliance with a state-based, ancillary restriction in the warrant.[1] The Fourth Amendment gives no remedy for that.

B. Rule 404(b) and the Unindicted Robberies

[12] Brewer also submits that the district court erred in admitting evidence of the unindicted robberies in Ohio and California under Federal Rule of Evidence 404(b). We review Rule 404(b) decisions, like most evidentiary decisions, for an abuse of discretion. *United States v. Norweathers*, 895 F.3d 485, 490 (7th Cir. 2018).

[13] Rule 404(b)(1) bars evidence of uncharged misdeeds to prove that the defendant had a propensity for committing crime. Rule 404(b)(2), on the other hand, permits the introduction of such evidence for other purposes, including to prove identity, modus operandi, or intent. Fed. R. Evid. 404(b)(2); *United States v. Carson*, 870 F.3d 584, 599 (7th Cir. 2017), *cert. denied*, —— U.S. ——, 138 S.Ct. 2011, 201 L.Ed.2d 266 (2018). In *United States v. Gomez*, 763 F.3d 845 (7th Cir. 2014) (en banc), we set the roadmap for determining which camp a particular

piece of other-act evidence falls into. Per *Gomez*, after a Rule 404(b) objection, the proponent of the other-act evidence must demonstrate that the evidence is relevant to a legitimate purpose "through a chain of reasoning that does not rely on the forbidden inference that the person has a certain character and acted in accordance with that character on the occasion charged in the case." 763 F.3d at 860. If the proponent does so, the district court must then use Rule 403 to determine "whether the probative value of the other-act evidence is substantially outweighed by the risk of unfair prejudice," taking into account "the extent to which the non-propensity fact for which the evidence is offered actually is at issue in the case." *Id.*; *see also United States v. Thomas*, 897 F.3d 807, 813 (7th Cir. 2018).

The district court followed course in admitting evidence of the Ohio and California robberies. The government offered that other-act evidence to prove identity through modus operandi and to show Brewer's intent. *See Gomez*, 763 F.3d at 864. It supplied propensity-free reasoning for those purposes, too. That Brewer lingered around banks in Ohio and California just before they were robbed by a person clothed head to toe, who used a stick and a give-me-the-cash note, makes it more likely that he was the individual recorded at the Indiana banks just before they were robbed by a person who dressed similarly and used similar methods. That is so not because Brewer has a propensity for committing crimes, or even bank robberies, but because he and his partner had established an idiosyncratic way of doing so. *See United States v. Price*, 516 F.3d 597, 603–04 (7th Cir. 2008); *United States v. Smith*, 103 F.3d 600, 603 (7th Cir. 1996).

Urging a different conclusion, Brewer points out dissimilarities among the robberies. In California, for example, the robber dropped the stick at the door, rather than jamming it in between the doors. And in neither Ohio nor California did he make a strange change request, as he did before the Indiana robberies. Our cases, however, ***416** have considered modus operandi to mean a "distinctive"—not identical—"method of operation." *Carson*, 870 F.3d at 599; *see also, e.g.*, *United States v. Robinson*, 161 F.3d 463, 468–69 (7th Cir. 1998); *United States v. Hudson*, 884 F.2d 1016, 1021 (7th Cir. 1989). Brewer identifies slightly different tactics, but those differences do not undermine the distinct resemblance among the robberies.

[14] The district court also properly weighed the evidence under Rule 403, as *Gomez* requires. Brewer offered two lines of defense at trial—that he was not the person identified before the Indiana robberies, and that, even if he was, he was there for the innocent purpose of obtaining gold coins and two-dollar bills. He repeatedly cross-examined eyewitnesses on these topics and made the arguments in closing. Brewer's identity and intent were therefore central to the case. *Gomez*, 763 F.3d at 857, 860; *cf. United States v. Miller*, 673 F.3d 688, 697 (7th Cir. 2012). For reasons we just explained, the other-act evidence was probative of his identity as the person present at the Indiana banks. It was equally probative in showing that he was there for bank-casing purposes, not numismatic ones. The evidence of the Ohio and California robberies was of course prejudicial—all other-act evidence is—but given that Brewer put his identity and intent squarely at issue, it was not unfairly so. *See* Fed. R. Evid. 403.

[15] Brewer takes an additional issue with the evidence of the Ohio robbery, arguing that there was not enough proof tying him to it. There was plenty. A State Bank & Trust teller authenticated surveillance footage (as we discuss below) that depicted a man resembling Brewer. What is more, a man with his appearance, wearing clothes matching what the man who lingered in the bank wore, was seen loitering across the street for so long that he needed to relieve his bladder next to his car, a car which matched a title found in Brewer's home.

[16] Brewer also makes a passing challenge to the jury instructions, but we see no problem there either. The district court twice instructed the jury to consider the evidence of the Ohio and California robberies only if it first found that Brewer likely participated in them. *See* Pattern Criminal Jury Instructions of the Seventh Circuit 3.11 (2012 ed.). The court further made clear that the jury could only use the evidence to help it decide "the defendant's motive, intent, knowledge and modus operandi during" the charged robberies—precisely as Rule 404(b)(2) allows.

On the whole, the district court showed sensitivity to Rule 404(b)'s pitfalls throughout the prosecution. It excluded evidence of Brewer's conviction for the California robbery. It did the same for several arrest photos of Brewer and Pawlak. In admitting the other-act evidence that it did, the district identified the propensity-

free chain of reasoning and carefully performed the Rule 403 balancing. There was no abuse of discretion.

C. Rule 901 and Footage of the Ohio Robbery

[17] **[18]** Brewer's third and final challenge concerns the government's evidence of the Ohio robbery. He contends that the government did not properly authenticate surveillance footage of his presence at State Bank & Trust a few hours before the robbery. We review the district court's contrary decision for an abuse of discretion. *See Mathin v. Kerry*, 782 F.3d 804, 812 (7th Cir. 2015).

[19] A party seeking to admit evidence must first establish a foundation for its authenticity. *United States v. Fluker*, 698 F.3d 988, 999 (7th Cir. 2012); ***417** *United States v. Emerson*, 501 F.3d 804, 813 (7th Cir. 2007). Federal Rule of Evidence 901 states that "[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Fed. R. Evid. 901(a). Rule 901 does not expressly describe how videotape evidence may be authenticated, but we have held that the government can authenticate a recording "by offering testimony of an eyewitness that the recording accurately reflects" the events as they occurred. *United States v. Eberhart*, 467 F.3d 659, 667 (7th Cir. 2006); *see also United States v. Cejas*, 761 F.3d 717, 723 (7th Cir. 2014). That is what the government did here. It called Sarah Felzer to testify, the teller on duty when Brewer visited State Bank just before the robbery. She testified that the footage "fairly and accurately depict[ed] the events as they happened" that day.

On cross-examination, Felzer's recollection seemed foggier. She testified that she did not have an "independent recollection" of that day, and she seemed to suggest that she could not distinguish that day from any other day that Brewer visited the bank. Brewer is right that this testimony was inconsistent with Felzer's direct-examination testimony. But he is wrong to think it required exclusion of the footage. Felzer's initial testimony was clear and sufficient under Rule 901, *see Eberhart*, 467 F.3d at 667, so the district court did not abuse its discretion in finding that the government met its threshold burden. It fell to the jury to decide "the evidence's true authenticity and probative value." *Fluker*, 698 F.3d at 999.

[20] Even if it were otherwise, we would find harmless error. Fed. R. Crim. P. 52(a). Take away the footage of Brewer at State Bank and the jury still heard about his confession and his all-too-coincidental presence at the four other banks just before they were robbed. It heard five tellers—from the Indiana robberies alone—identify Brewer. The jury also heard about the compelling evidence the government recovered from Brewer and Pawlak's home, including titles for vehicles that matched the getaway cars. The government's case would not have been made significantly less persuasive absent the State Bank footage. *See, e.g.*, *United States v. Jett*, 908 F.3d 252, 267 (7th Cir. 2018).

III. Conclusion

There was no Fourth Amendment violation in the task force's execution of the warrant. There was no error in the district court's evidentiary decisions. We AFFIRM the district court's judgment.

All Citations

915 F.3d 408, 108 Fed. R. Evid. Serv. 779

Footnotes

1 We do not know for certain why the warrant included the in-state limitation. Perhaps there were state-law reasons, although neither party has pointed to any, or perhaps, as counsel for the government suggested at oral argument, the limitation was a vestige from some stock template. The answer is unimportant. On this record, we can rule out the only reasons that would matter—a probable-cause finding or a particularity requirement.

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2017 WL 6055449
Only the Westlaw citation is currently available.
United States District Court, N.D.
Indiana, Hammond Division.

UNITED STATES of America,
v.
Artez BREWER

Case No. 2:16-CR-84 JVB
|
Signed 12/07/2017

Attorneys and Law Firms

Jennifer S. Chang, US Attorney's Office, Hammond, IN, for United States of America.

OPINION AND ORDER

JOSEPH S. VAN BOKKELEN, UNITED STATES DISTRICT JUDGE

*1 Defendant Artez Brewer moved to suppress various evidence the government may use against him at trial on bank robbery charges. The Court held an evidentiary hearing and the parties briefed the issues. Having considered the evidence and the parties' arguments, the Court denies Defendant's motions to suppress.

A. Factual Background

Beginning in February 2016, the government began suspecting that Defendant and his co-defendant, Robin Pawlak, were involved in a series of bank robberies. On April 28, Centier Bank in Griffith was robbed and, on May 6, the Main Source Bank in Crown Point was robbed. Before each of these robberies, a young black man would come into the bank making unusual requests. On May 27, the Horizon Bank in Whiting was robbed, and the FBI investigators, noticing the pattern from the previous two robberies asked one of the employees if she observed anything unusual before the robbery. The employee told the investigators that the day before the robbery a young black man came in near closing time asking about gold coins. The man didn't make any transactions at the bank. The employee said she took a good look at the man because he acted suspiciously and said she would be able to recognize him in the future. The agents then showed the employee images from surveillance videos related to the earlier bank robberies and the employee identified the person in the images as the same person who inquired about the gold coins. The agents then secured the image of the person who came to inquire about the gold coins from the surveillance video of the Horizon Bank. The image was distributed to area law enforcement officers and one of them recognized the person in the image as Defendant.

As a result of the FBI's investigation, on June 2, 2016, the government sought and obtained warrants from an Indiana judge to install GPS tracking devices on four cars associated with Defendant, including a silver Volvo. The warrant limits the tracking of the cars to Indiana territory.

A few days after the GPS tracker was installed on the Volvo, Defendant and Pawlak began driving the car to Los Angeles, and the government continued tracking the car. Along the way, on June 7, they were stopped in Omaha by an Omaha criminal interdiction police officer, Jeffrey Vaughn. The stop had nothing to do with the bank robbery investigation; rather, Officer Vaughn saw the Volvo drive twice for a second or two over the white lane dividers separating the lanes. Officer Vaughn believed that Defendant, the driver of the car, violated Nebraska law requiring drivers to maintain a single lane of traffic, Nebraska State Statute 60-6, 139 ("... a vehicle shall be driven as nearly as practicable within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety ...").

Officer Vaughn, who has been a police officer for almost twenty years, is a police dog handler and assists with narcotics investigations. He also patrols highways in Omaha, looking for persons involved in criminal activity. When Officer Vaughn approached Defendant's car, he smelled perfume emanating from the car.

*2 To avoid being hit by passing vehicles, Officer Vaughn told Defendant to come to his police car. He asked Defendant where he was coming from and where he was going and for what purpose. (He later asked Pawlak the same questions and received inconsistent answers from her.) While waiting on the dispatcher to check out Defendant's driver's license and to determine if any warrants were outstanding for him, Officer Vaughn took out his dog, Nacho, to sniff around the Volvo. While he

was walking Nacho around the front of the car, Nacho got excited, moving faster toward the driver's window. Once there, it lifted its nose toward the open driver window and sat down, thus alerting Officer Vaughn to the odor of narcotics.

After this, Officer Vaughn called for additional officers and once they arrived, the car was searched. Officer Vaughn could smell marijuana but no actual drugs were found.

Meanwhile, FBI Special Agent Michael Peasley had been monitoring Defendant's drive across the country. He became concerned when he saw that the car had stopped for a prolonged time on a highway in Omaha. Concerned that Defendant was stopped by police and that his investigation might be derailed, Agent Peasley contacted Special Agent Hallock in Omaha and asked him to drive to the location where Defendant was stopped. Agent Peasley asked Agent Hallock to take pictures if certain items were found in the car. After about an hour and a half from the moment Defendant was stopped, he was let go with just a warning ticket.

Soon after their arrival in Los Angeles, on June 10, Defendant and Pawlak began staking out a bank to rob. Agent Peasley, seeing GPS indications that the Volvo was near a bank, alerted the FBI in Los Angeles about a possible plan to rob the bank. Defendant and Pawlak did indeed rob the bank but the FBI was ready for them and they were arrested.

Defendant was then interviewed by Special Agent Jonathan Bauman and Detective Joseph Harris. Agent Bauman read Defendant his *Miranda* rights, to which he responded "[y]ou know we don't sign shit like this, right?" (Gov't Exh. B at 8). The following exchange ensued:

> Agent Bauman: Well, if you want to talk, without signing anything, we can do that. I just—you got to tell us that it's okay to talk.
>
> Artez Brewer: Sure. I can talk—what you want to know but shit, I'm—aint' gon' sign nothing, bro, cause I ain't —hey, you know. Come on, man. You know better than that.
>
> Agent Bauman: Okay. Well, then what I'll do is I'll fill it out, and say you refused to sign, but we're gonna talk to you.
>
> Artez Brewer: Okay. That's fine, yeah.
>
> Agent Bauman: Okay?
>
> Artez Brewer: Yeah; okay. Sure.

(*Id.* at 8–9.)

About a minute later, Agent Bauman again confirmed that Defendant wanted to speak with them:

> Agent Bauman: So you refused to sign. We read you your rights, but you're willing to talk to us. You just don't want to sign the paper; right?
>
> Artez Brewer: Yeah.

(*Id.* at 10.)

As the interview continued, Defendant made the following statements at one point or another:

> "I don't want to say about what happened today." (*Id.* at 15.)
>
> "I ain't trying to talk about shit. Book me. Take me downstairs and do what the fuck y'all gotta do. Take me to court. Whatever. Do what I gotta do. Y'all ain't gonna incriminate me on this shit." (*Id.* at 39.)
>
> "Nah. We ain't talking." (*Id.* at 40.);
>
> "Just book me man." (*Id.* at 52.)

"It doesn't matter, man. Nah, it doesn't matter. It doesn't matter. It doesn't matter. Come on. It doesn't matter. Just book me, book me, get me a car, whatever, just go about my life." (*Id.* at 55.)

Defendant was interviewed again the next day (June 11) by Agent Peasley. Agent Peasley read Defendant the *Miranda* rights and continued:

> Agent Peasley: Okay. Having those rights in mind, do you want to talk to me?
>
> Artez Brewer: No.

*3 Agent Peasley: You don't want to answer any questions?

Artez Brewer: Uh-uh. (Negative response).

Agent Peasley: You don't want to talk to me at all, about anything?

Artez Brewer: What is there to talk about? (Inaudible)

Artez Brewer: Take me back upstairs if that's what you have to do.

Agent Peasley: I'm sorry. I did not hear you.

Artez Brewer: You can take me back upstairs. That's what you all can do.

Agent Peasley: So you don't want to talk to me?

Artez Brewer: Nothing to talk about after yesterday.

Agent Peasley then answers that he didn't want to talk about the same subject matter as Agent Bauman did the day before but about Indiana, which piqued Defendant's interest. Agent Peasley told Defendant that he was from Indiana and that he was going to fly home if Defendant didn't want to talk to him. After some hesitation, Defendant indicated that he would talk but that he wouldn't sign the *Miranda* statement. As during the previous interview, as the conversation continued, Defendant made some incriminating statements.

B. Discussion

(1) GPS Location Tracker

Defendant wants to suppress from trial any evidence derived outside of Indiana as a result of the GPS tracking device being placed on the silver Volvo. Defendant maintains that, while the warrant was issued properly, it authorized the car to be tracked within Indiana only and, once it left the state, the government should have applied for a new warrant if the agents intended to keep tracking the car. According to Defendant, "[l]aw enforcement, ignoring the limitations placed on the authorization of that search, exercised unfettered and unconstitutional discretion in flagrantly expanding the search over numerous jurisdictions and thousands of miles without the permission or authorization of a neutral magistrate as required by the Fourth Amendment." (DE 94, Df.'s Br. at 2.) Defendant accuses the government of using cases that predate *United States v. Jones*, 565 U.S. 400 (2012) (holding that "the Government's installation of GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search' ") to justify its position.

The government, on the other hand, argues that the territorial limitation in the warrant applied at best only to Indiana law enforcement officers, not the FBI agents. The government submits that only evidence obtained in violation of the Constitution or federal law is inadmissible, but not evidence that merely violates state law.

The government does rely on some cases that came before *Jones* but they are consistent with *Jones*. For example, *United States v. Simms*, 385 F.3d 1347 (11th Cir. 2004), while decided before *Jones*, dealt with a car-tracking device that was installed on a suspect's car pursuant to a court order. The order limited the tracking of the car to the territory of Texas but the officers used information obtained from the tracking device in Alabama. Defendant Simms argued that the police exceeded the scope of the search but the Court of Appeals for the Eleventh Circuit disagreed:

> Even if we assume that the use of the tracking device beyond the bounds of the warrant may have violated Texas state law governing the installation and use of mobile tracking devices, this still leaves us several steps away from being able to reach a conclusion that suppression is warranted. As we have earlier noted, "constitutional considerations, rather than the demands of state law, direct our resolution of this issue." *United States v. Gilbert*, 942 F.2d 1537, 1541 (11th Cir. 1991). The use of the tracking device outside the scope of the warrant simply does not implicate federal constitutional concerns, and there is therefore no "taint" for purposes of applying the exclusionary rule.

*4 *Simms*, 385 F.3d at 1355–56.

The Court agrees with this reasoning. The warrant in this case, and there's no dispute that it was based upon probable cause, authorized the tracking (the search) of the silver Volvo. For Constitutional purposes, that gave the FBI sufficient authority to monitor its whereabouts, even outside of Indiana. While Defendant likens the placement of the GPS device on his car to an authorization to

search for an item inside a dwelling in places particularly described in a warrant, a state magistrate's limitation that the GPS device be used to track the car in Indiana is not the same. As far as the Constitution is concerned, the particularity here is the car, not the state of Indiana.

This is consistent with the jurisprudence in the Seventh Circuit. In *United States v. Castetter*, 865 F.3d 977 (7th Cir. 2017), defendant moved to suppress evidence found when police used information from a tracking device outside of Michigan, where the warrant for the tracking device was issued. As Defendant "saw things, Michigan's police lacked authority to monitor the location of a car [outside the state], no matter what the Michigan warrant says." *Castetter*, 865 F.3d at 978. But the Court of Appeals found no merit in this argument:

> The problem with [defendant's] principal argument is that the Fourth Amendment does not concern state borders. It reads: "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." Nothing there about state lines. The Constitution demands that a warrant be supported by probable cause, an oath, and particularity.

Id.

For these reasons, the Court denies Defendant's motion to suppress the information derived from the GPS tracker outside of Indiana.

(2) The traffic stop in Omaha

Defendant likewise wants to suppress any evidence derived as a result of the traffic stop in Omaha. He claims that under Nebraska law, he committed no traffic violation and thus should not have been stopped. He also insists that Officer Vaughn should not have relied on Nacho's alert to search the car for narcotics because Nacho wasn't a reliable dog. Next, he wants to suppress the statements he made to Officer Vaughn while sitting in the police cruiser. Lastly, Defendant believes that, even if the search was justified, taking pictures of the contents of the car exceeded the allowable scope once the drugs weren't located.

Defendant claims that Officer Vaughn had no probable cause to stop him because crossing the boundaries of the lane in which he was travelling didn't constitute a violation of Nebraska law. He relies upon a Nebraska Supreme Court decision in *State v. Au*, 829 N.W.2d 695 (Neb. 2013), which held that a police officer had no probable cause to stop a motorist who was merely touching or crossing the divider line. The Nebraska Supreme Court held that the Nebraska statute upon which Officer Vaughn relied in stopping Defendant must be considered in light of the totality of the circumstances and when considered as such, the officer who stopped Mr. Au could not have believed that its provision requiring that the car be driven "as nearly as practicable within a single lane" was violated. The Court based its decision upon the following considerations:

> *5 [Police officer's] testimony failed to establish that the vehicle was not driven "as nearly as practicable" in the right-hand lane. He admitted that just before crossing the line, the vehicle crossed a "break in the road," and that the pavement there was a "little bit" uneven. He also acknowledged that the vehicle was traveling around a curve and that it is "more difficult" to maintain one's lane when driving around a curve as opposed to going straight. But he failed to explain how, in the light of these circumstances, it was still feasible for the vehicle to not touch or slightly cross the line. Instead, he evidently assumed that any touching or crossing of the lane divider line necessarily constituted a traffic infraction.

Id. at 700.

No such circumstances existed in Officer Vaughn's case. His testimony didn't describe any obstacles, uneven surfaces, curves in the road, or traffic conditions that might have made one veer outside one's lane by necessity.

Rather, the portion of the highway where Defendant's alleged traffic violation took place appears to have been straight and road conditions were normal. Hence this case is distinguishable from *Au*. Moreover, the issue in suppression cases is not whether one could have been convicted of the alleged violation but whether there was probable cause to believe that a traffic law had been violated. Here it seems that there was such probable cause.

Defendant also argues that Nacho is an unreliable dog and that Officer Vaughn should not have searched his car upon Nacho's alert. Defendant's argument is unconvincing. Nacho is a certified narcotics search dog and there's no evidence that it has a dismal record of searches, so as to make it unreliable. During the stop, its demeanor (lifting the nose toward the open window and sitting down) indicated an alert for narcotics. That gave sufficient basis for Officer Vaughn to search Defendant's car. The fact that pictures were taken of some items located in the car changes nothing about the validity of that search.

Finally, there's no need to exclude any of Defendant's statements to Officer Vaughn. Defendant wasn't in custody and Officer Vaughn's questions didn't exceed the scope of his duties. In fact, Defendant provides no case law showing that his statements to Officer Vaughn should be excluded from trial.

(3) Custodial Statement in Los Angeles

Defendant believes that FBI agents Bauman and Peasley violated his *Miranda* rights by questioning him on June 10 and 11 while he was held in police custody. He maintains that all questioning should have stopped when on both days he expressed his reluctance to talk (Defendant categorizes his actions as absolute expressions of desiring to remain silent).

The Court finds no *Miranda* violations. On both days, Defendant refused to sign the *Miranda* notice but continued to talk. While initially he seemed to indicate a desire to stop the conversation, upon both agents asking for clarification on his intentions, he indicated his willingness to continue. During the June 10 interview, his issue was with signing the *Miranda* notice; that is, he was adamant that he wouldn't sign it, but had no problem with talking. On June 11, he insisted that there was nothing to talk about because he had already talked the day before, but upon clarification from Agent Peasley that he was from Indiana and that the conversation would be about the events in Indiana, Defendant acceded to continue with the conversation. There's nothing in either interview to suggest that the agents overpowered Defendant's will or somehow tricked him into continuing the interviews. Rather, Defendant appeared to have been aware of his rights and his occasional defiant stances cannot be construed as unequivocal requests to end the interviews.

***6** For these reasons, the Court denies Defendant's motion to exclude the Los Angeles custodial interviews from evidence at trial.

(4) Pretrial identification

Defendant argues that showing his pictures to the Horizon Bank employee from surveillance cameras of other banks was unduly suggestive, unnecessary, and ultimately made the identifications unreliable.

Defendant's argument ignores the facts. There was a spree of bank robberies in Northwest Indiana and the FBI was investigating whether there were any links between them. When the FBI agents showed the Horizon Bank employee pictures of the suspect from other bank robberies, they did not know who he was. They showed his pictures after getting an assurance from the employee that she had a good opportunity to observe the person who came to the bank acting suspiciously and that she would recognize him if she saw him again. This wasn't a case of police officers bringing the suspect in handcuffs to the bank lobby so as to risk undue influence upon the witness.

In addition, the employee's identification was corroborated when FBI retrieved the images of the suspect in other bank robberies from Horizon Bank's surveillance system from around the time identified by the employee. In fact all the factors for reliable identification—the witness's opportunity to observe the suspect, the witness's degree of attention, the accuracy of the description, the level of certainty, the length of time between the crime and the identification, *see Lee v. Foster*, 750 F.3d 687, 692 (7th Cir. 2014)—suggest that the bank employee was in a position to confirm if the suspect in the other bank robberies was the same person who acted suspiciously the day before. *See Simmons v. United States*, 390 U.S. 377, 384–385 (1968) (discussing the factors for ascertaining whether identification procedures are reliable).

For these reasons, the Court denies Defendant's motion to preclude identification evidence from trial.

In summary, the Court denies all of Defendant's motions to suppress (DEs 27, 28, and 36).

SO ORDERED on December 7, 2017.

All Citations

Not Reported in Fed. Supp., 2017 WL 6055449

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STATE OF INDIANA	)	LAKE SUPERIOR COURT
	) ss:	CRIMINAL DIVISION
COUNTY OF LAKE	)	CROWN POINT, INDIANA

IN THE MATTER OF THE APPLICATION FOR	)	
INSTALLATION AND MONITORING OF A	)	Cause Number
REAL-TIME TRACKING DEVICE ON A	)	
SILVER 2002 VOLVO BEARING ILLINOIS	)	_____
REGISTRATION Q455651 AND VEHICLE	)	
IDENTIFICATION NO. YV1TS91DX21273788	)	

WARRANT AND ORDER AUTHORIZING THE INSTALLATION AND MONITORING OF A REAL-TIME TRACKING DEVICE

WHEREAS, an Application and Affidavit has been presented to this court pursuant to Indiana Code 35-33-5-2, for the purpose of obtaining a real time tracking instrument warrant and order authorizing the installation and monitoring of a real time tracking instrument on the target vehicle, described as a silver 2002 Volvo bearing Illinois registration Q455651, Vehicle Identification Number (VIN) YV1TS91DX21273788, the "Target Vehicle"; and full consideration having been given to the matters set forth therein, this court hereby finds that there is probable cause to believe that the installation and monitoring of a real time tracking device on the target vehicle will be evidence of the crime of Robbery.

IT IS HEREBY ORDERED that Law Enforcement Officers may:

a. install a real-time tracking device on the target vehicle and complete said installation at any time during the day or night within ten (10) days from the issuance of this warrant, but only at a location within the State of Indiana.
b. Monitor the tracking device on the Target Vehicle in any public or private area in any jurisdiction, within the State of Indiana, for a period of 45 days, measured from the date this warrant is issued.
c. Enter onto private property in the State of Indiana for the limited purpose of installing, maintaining, adjusting, or removing the tracking device.
d. Return the warrant to the undersigned judicial officer upon completion of monitoring period, or once the device is removed.

IT IS SO ORDERED this 2nd day of June, 2016 at 7:05 p.m.

s/ Kathleen A. Sullivan
Magistrate,
Lake Superior Court