

19-6640

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

RAMELUS D. BRADLEY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

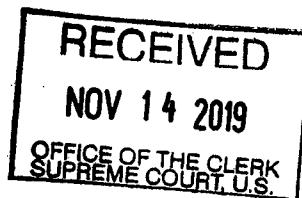


On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

RAMELUS D. BRADLEY,
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QUESTIONS PRESENTED

Whether the circuit court erred when it failed to find that the state court had; (1) violated federal law; and (2) in doing so, violated petitioner Bradley's Fourth Amendment rights by placing a GPS tracking device on his vehicle after this Court issued its decision in Jones?

PARTIES INVOLVED

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Ramelus D. Bradley respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit, that was rendered in Case No. 18-2295 on May 13, 2019, affirming the judgment of the District Court for the District of Missouri-Jefferson City Case No. 2:15-cr-04054-SRB-1.

OPENION BELOW

The Openion of the United States Court of Appeals for the Eighth Circuit, United States v. Ramelus D. Bradley, 924 F.3d 476; 2019 U.S. App. LEXIS 14136 (8th Cir.2019), was issued on May 13, 2019, and is attached as Appendix A to this Petition. Rehearing denied by, Rehearing, en banc, denied by United States v. Bradely, (8th Cir. Mo., 2019 U.S. App. LEXIS 25011 August 21,2019), and is attached as Appendix B to this Petition.

JURISDICTION

The Court of Appeals filed its openion in this matter on May 13, 2019. Petitioner moved for rehearing and the Court of Appeals denied rehearing on August 21,2019. This Court has jurisdiction under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(c).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 841(a)(1)

28 U.S.C. § 841(b)(1)(C)

28 U.S.C. § 841(b)(1)(B), and

851

18 U.S.C. § 922(g)(1)

18 U.S.C. § 924(a)(2)

INTRODUCTION

The question in this case is whether placement of a GPS tracking device on a defendant's vehicle is a search within the meaning of the Fourth Amendment that require probable cause and a warrant. Although, this Court has answered this question in *United States v. Jones*, 565 U.S. 400, S. Ct. 948, 181 L.Ed. 2d 911 (2012). In *Jones*, this Court held that police officers had engaged in a "search" within the meanining of the Fourth Amendment when they installed and monitored a Global Positioning System (GPS) tracking device on the suspect's car.

This Court has held that the Fourth Amendment protects "[t]he right of the people to be secure in thier persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "'The Amendment guarantees the privacy, dignity, and security of persons against certaine arbitrary and invasive acts by officers of the Government,' without regard to whether the government actor is investigating crime or performing another function," *City of Ontario, Cal. v. Quon*, 560 U.S. 746, 755-56, 130 S. Ct. 2619, 177 L.Ed. 2d 216 (2010)(quoting *Skinner v. Railway Labor Execs. Ass'n*, 489 U.S. 602, 613-14, 109 S. Ct. 1402, 103 L.Ed. 2d 639 (1989)), such as "act[ing] in its capacity as an employer," *id.* at 756 (citing *Treasury Emps. v. Von Raab*, 489 U.S. 656, 665, 109 S. Ct. 1384, 103 L.Ed. 2d 685 (1989)).

This Court has therefore held that "the Fourth Amendment generally requires that the government obtain a warrant based on probable cause before conducting a search," *United States v. Hood*, 920

F.3d 87, 90 (1st Cir.2019)(citing *Katz v. United States*, 389 U.S. 347, 362, 88 S. Ct. 507, 19 L.Ed. 2d 576 (1967)(Harlan, J., concurring)), "with regard to those items ('persons, houses, papers, and effects') that it enumerates," *United States v. Jones*, 565 U.S. 400, 411 n.8, 132 S. Ct. 945, 181 L.Ed. 2d 911 (2012). This Court held that an "official intrusion into th[e] private sphere generally qualifies as a search," only where "an individual 'seeks to preserve something as private,' and his expectation of privacy is 'one that society is prepared to recognize as reasonable.'" *Carpenter v. United States*, 138 S. Ct. 2206, 2213, 201 L.Ed. 2d 507 (2018)(quoting *Smith v. Marland*, 442 U.S. 735, 740, 99 S. Ct. 2577, 61 L.Ed. 2d 220 (1979)). In *Jones*, five Justices concluded that privacy concerns would be raised by **GPS tracking**, for example, "surreptitiously activating a stolen vehicle detection system" in *Jones*'s car to track *Jones* himself, or conducting GPS tracking of his cell phone. *Id.*, at 426, 428, 132 S. Ct. 945, 181 L.Ed. 2d 911 (Alito, J., concurring in judgment); *id.*, at 415, 132 S. Ct. 945, 181 L.Ed. 2d 911 (Sotomayor, J., concurring).

This Court therefore found that since GPS monitoring of a vehicle tracks "every movement" a person makes in that vehicle, the concurring Justices concluded that "longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy"-regardless whether those movements were disclosed to the public at large. *Id.*, at 430, 132 S. Ct. 945, 181 L.Ed. 2d 911 (openion of Alito, J.); *id.*, at 415, 132 S. Ct. 945, 181 L.Ed. 2d 911 (openion of Sotomayor, J.).

The Eighth Circuit Court of Appeals has refused to protect the Petitioner's Fourth Amendment rights in this matter by failing to apply this Court's long standing principle against unreasonable searches and seizures. For these reasons, Petitioner's case is so worthy of certiorari review by this Court.

STATEMENT OF THE CASE

Detective Brandon Weber applied for a warrant to place a GPS tracker on Petitioner Bradley's truck. In Weber's affidavit in supporting his reasons for the GPS tracker Weber alleged that a drug buy took place, one for which he never observed himself:

Within the past four days, at my direction and while under my direct surveillance, [Reliable Confidential Informant] #1 was provided money to purchase cocaine from Bradley in Boone County, Missouri. I watched RCI #1 and Bradley meet at an undisclosed [location] in Boone County. Bradley arrived at the meeting location driving a black, Ram, 4-door pickup bearing Missouri Registration 4MV269. After the transaction RCI #1 gave me cocaine **they stated had been sold to them by Bradley**. RCI #1 positively identified Bradley from pictures that I provided. The cocaine field-tested positive. A state judge issued the GPS warrant based upon this information alleged in Weber's affidavit.

Weber's affidavit did not state that he had personally witnessed or observed a drug transaction take place between Bradley and RCI #1. What Weber's affidavit does allege is that:

After the transaction RCI #1 gave me cocaine **they stated had been sold to them by Bradley**.

Therefore, there was no evidence or testimony placed in the record that Weber had personally witnessed or observed a drug transac-

tion ever take place. The record in this case also does not support that Weber notified his superiors of a impending transaction, and he never recorded the serial numbers of the (sic) alleged marked bills he claimed he gave to RCI #1 before he went to meet Bradley at the undisclosed [location] in Boone County, or place these bills into evidence or preserve them in any other way.

The record in this case does not support that a drug buy ever took place and is further supported by the testimony of Detective Clark Luntsford, who was present during the investigation in this case. See Appendix C.

The Eighth Circuit Court of Appeals found that the district court properly denied Bradley's motion to suppress because the GPS warrant application had more than sufficient information to establish probable cause as the officer applying for the warrant (Weber) detailed a recent, supervised, controlled buy between Bradley and a confidential informant. The Eighth Circuit also found that the district court did not err in denying Bradley a Franks hearing as he offered no proof for his conclusory denial to selling a controlled substance to a confidential informant. Furthermore, the Eighth Circuit found that the district also did not err in failing to deny Bradley's request for disclosure of the confidential informant's and tipsters' identites because he failed to explain how disclosure would be material to his defense or a fair trial.

As so outlined by the record in this case and the testimony of Detective Clark Luntsford that they never posseded anything that would or could show that Bradley sold any drugs to them. See Appendix C.

The state court also violated federal law when it issued granted Detective Brandon Weber's request for a warrant to put a GPS tracker on Petitioner Bradley's truck after this Court had issued its decision in *United States v. Jones*, 565 U.S. 400, 132 S. Ct. 945, 181 L.Ed. 2d 911 (2012), were, (five Justices had concluded that privacy concerns would be raised by GPS tracking). Likewise, the district court and the Court of appeals was in error when they failed to recognize this Constitutional violation.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ because the circuit court failed to recognize that the state court had violated federal law and the Petitioner's Constitutional rights to expectation of privacy when they allowed Detective Brandon Weber's request to place a GPS tracker on Petitioner's truck after this Court issued its decision in *United States v. Jones*, 565 U.S. 400, 132 S. Ct. 945, 181 L.Ed. 2d 911 (2012). In *Jones*, FBI agents installed a GPS tracking device on *Jones*'s vehicle and remotely monitored the vehicle's movements for 28 days. This Court decided the case based on the Government's physical trespass of the vehicle. 565 U.S., at 404-405, 132 S. Ct. 945, 181 L.Ed. 2d 911. At the same time, five Justices of this Court agreed that related privacy concerns would be raised by, for example, "surreptitiously activating a stolen vehicle detection system" in *Jones*'s car to track *Jones* himself, or conducting GPS tracking of his cell phone. *Id.*, at 426, 428, 132 S. Ct. 945, 181 L.Ed. 2d 911 (Alito, J., concurring in judgment); *id.*, at 415, 132 S. Ct. 945, 181 L.Ed. 2d 911 (Sotomayor, J., concurring). This Court found that

since GPS monitoring of a vehicle tracks "every movement" a person makes in that vehicle, the concurring Justices concluded that "longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy"-regardless whether those movements were disclosed to the public at large. *Id.*, at 430, 132 S. Ct. 945, 181 L.Ed. 2d 911 (opinion of Alito, J.); *id.*, at 415, 132 S. Ct. 945, 181 L.Ed. 2d 911 (opinion of Sotomayor, J.). The Eighth Circuit has therefore failed to recognize this Constitutional violation.

As this Court has pointed out in *Jones* "the installation of a GPS device on a target's vehicle, by the Government, in this case a state judge issued the GPS warrant, and its use of that device to monitor the vehicle's movements, constitutes a 'search'" 565 U.S., at __, 132 S. Ct. 945, 181 L.Ed. 2d 911, 918 (footnote omitted).

In this case the circuit court based its judgment in affirming petitioner Bradley's conviction that the district court had properly denied his motion to suppress because the GPS warrant application had more than sufficient information to establish probable cause as the officer applying for the warrant detailed a recent, supervised, controlled buy between petitioner Bradley and a confidential informant.

Petitioner Bradley point out that the warrant in this case was not based on probable cause before conducting the search of petitioner Bradley's vehicle. *United States v. Hood*, 920 F.3d 87, 90 (1st Cir.2019)(citing *Katz v. United States*, 389 U.S. 347, 362, 88 S. Ct. 507, 19 L.Ed. 2d 576 (1967)(Harlan, J., concurring)), "with regard to those items ('persons, houses, papers, and effects'), that it

enumerates," United States v. Jones, 565 U.S. 400, 411 n.8, 132 S. Ct. 945, 181 L.Ed. 2d 911 (2012).

Although Detective Brandon Weber stated in his affidavit the following:

Within the past four days, at my direction and while under my direct surveillance, [Reliable Confidential Informant] #1 was provided money to purchase cocaine from Bradley in Boone County, Missouri. I watched RCI #1 and Bradley meet at an undisclosed [location] in Boone County. Bradley arrived at the meeting location driving a black, Ram, 4-door pickup bearing Missouri Registration 4MV269. After the transaction RCI #1 gave me cocaine they stated had been sold to them by Bradley. RCI #1 positively identified Bradley from pictures that I provided. The cocaine field-tested positive.

The record in this case does not support Detective Weber's affidavit that a drug transaction ever took place between the petitioner Bradley and a confidential informant in this case. The record also does not support that Detective Weber ever witnessed a drug transaction take place, nor does the record support that Detective Weber ever notified any of his superiors of an impending transaction was going to take place. Again, the record also does not support that Detective Weber recorded the serial numbers of the (sic) alleged marked bills he claimed to have given to the Confidential Informant [RCI #1]. These bills also was not placed into evidence or preserved in anyway by Detective Weber.

This Court has found that the Fourth Amendment protects not only property interests but certain expectations of privacy as well. Kalz v. United States, 399 U.S. 347, 351, 88 S. Ct. 507, 19 L.Ed. 2d 576. Thus, when an individual "seeks to preserve something as private,"

and his expectation of privacy is "one that society is prepared to recognize as reasonable," official intrusion into that sphere generally qualifies as a search and requires a warrant supported by probable cause. *Smith v. Marland*, 442 U.S. 735, 740, 99 S. Ct. 25-77, 61 L.Ed. 2d 220 (internal quotation marks and alterations omitted).

In this case the state court allowed a GPS tracking device to be placed on petitioner Bradley's vehicle based on the affidavit of Detective Brandon Weber, after this Court had issued its decision in *Jones*, and remotely monitored the movements of petitioner Bradley's vehicle for over 30 days. The circuit court found that the district court did not err in denying petitioner Bradley's motions to suppress; for a Franks hearing, disclosure, and production; and for acquittal. The circuit court also found that it was not err to place the GPS tracking device on petitioner Bradley's vehicle because Detective Weber's affidavit was supported by probable cause. Petitioner argued that probable cause was lacking in Detective Weber's affidavit because the record does not support his affidavit.

This Court has stated that while courts should use a "flexible, common-sense standard" for probable cause," and that 'bare bones' affidavits" are insufficient. *Illinois v. Gates*, 462 U.S. 213, 239, 103 S. Ct. 2317, 76 L.Ed. 2d 527 (1983). For instance, an affidavit stating that" affiants have received reliable information from a credible person and believe' that heroin is stored in a home" is insufficient to establish probable cause after *Gates*. *Id.* (citing *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct: 1509, 12 L.Ed. 2d 723 (1964)).

The first paragraph of Detective Weber's affidavit states that:

Within the past four days, at my direction and while under my direct surveillance, [Reliable Confidential Informant] #1 was **provided money to purchase cocaine** from Bradley in Boone County, Missouri.

The record in this case as stated above does not support that Detective Weber provided **any buy money** to a reliable confidential informant in this case. The record is therefore devoid of any information that would give any support to Detective Weber's affidavit that this ever took place. For instance, a recording of the buy money's serial numbers on the marked bills or a notification to his superiors of an impending transaction was about to take place and they signed off on releasing the buy money funds.

The second paragraph of Detective Weber's affidavit states that:

I watched RCI #1 and Bradley meet at an undisclosed [location] in Boone County.

The only reasonable inference that [can] be drawn from this paragraph of Detective Weber's affidavit is that Bradley met with this person. The affidavit does not support that Bradley met this person to sale him drugs, nor does the record support that he did so.

The fourth paragraph of Detective Weber's affidavit states that:

After the transaction RCI #1 gave me cocaine **they stated had been sold to them by Bradley.**

Detective Weber's affidavit does not state that he witnessed a drug transaction take place between Bradley and this other person. What Weber's affidavit does state is that, RCI #1 gave me cocaine

they stated had been sold to them by Bradley. But the record in this case does not support that Bradley sold anyone cocaine on the day in question. For instance, Detective Clark Luntsford testified that they did not have anything showing that Bradley sold dope to anyone. See Appendix C.

The sixth paragraph of Detective Weber's affidavit states that:

The cocaine field-tested positive.

The record in this case does not support that any cocaine in this case was ever sent to a lab to be field-tested. In fact, the Government in this case never presented any such evidence before the court that cocaine in this case field-tested positive. And rightfully so, because there was never a field-test did in this case as Detective Weber claimed in his affidavit.

In *Herring v. United States*, 555 U.S. 135, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009), this Court held that, if a police officer have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrest, exclusion would certainly be justified under this Court's cases should such misconduct cause a Fourth Amendment violation. Further noting that this Court had said as much in *Leon*, explaining that an officer could not "obtain a warrant on the basis of a 'bare bones' affidavit and then rely on colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search." Id. at 923, n.24, 104 S. Ct. 3405, 82 L.Ed. 2d 677 (1984).

Petitioner Bradley argue that the affidavit presented by Detective Weber in support of the GPS warrant in this case included a number of false statements by him knowingly and intentionally or with reckless disregard for the truth, thus misleading the issuing judge." Leon, 468 U.S. at 923 ("Suppression therefore remains an appropriate remedy if the magistrate or judge in issuing a warrant was misled by information in the affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth." (citing *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L.Ed. 2d 667 (1978)).

The record in this case also support's that Detective Weber never (1) searched the alleged RCI #1 to ensure that RCI #1 did not have any drugs, money, or other contraband prior to the alleged buy; (2) not documenting Police Department money to use in the buy; (3) not following RCI #1 to and from the buy location; (4) not searching RCI #1 again for drugs, money, or other contraband to make sure that the CI did not obtain any of the items in the process of making the alleged buy; and (5) searching RCI #1's vehicle to make sure that the CI did not have any drugs in his vehicle before the alleged buy took place.

The record in this case therefore support that none of these things was done in this case by Detective Weber. Only this Court can now resolve the conflict existing from the decision issued below that clearly contradict this Court's decisions in *Jones*, *Kalz*, *Gates*, *Herring*; and *Simth v. Marland*, 442 U.S. 735, 740, 99 S. Ct. 25-77, 61 L.Ed. 2d 220 (internal quotation marks and alterations omitted).

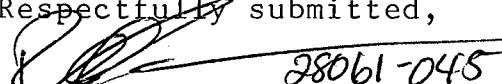
The decision below also conflict with decisions issued by every

other circuit court and cannot be reconciled with the law of these circuit's or the decisions issued by this Court.

CONCLUSION

For the reasons stated above, the Court should grant the writ.

Respectfully submitted,


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Dated this 7th day of November 2019