

Supreme Court, U.S.
FILED

MAY 15 2020

OFFICE OF THE CLERK

19-8725
NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JARVIS LEE GLENN — PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE OF MICHIGAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Supreme Court Lansing, Michigan
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JARVIS LEE GLENN
(Your Name)

ALGER CORRECTIONAL FACILITY
(Address)

MUNISING, MICHIGAN 49862
(City, State, Zip Code)

(906) 387-5000
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. DID THE STATE OF MICHIGAN SUPREME COURT DENY MR. GLENN THE EQUAL PROTECTION UNDER THE STATE AND FEDERAL CONSTITUTION WHEN IT RUBBER-STAMPED MR. GLENN's APPLICATION FOR LEAVE TO APPEAL DUE TO WARRANTLESS ACCESSING OF CELL PHONE RECORDS PURSUANT TO FEDERAL STATUTE (1.) WAS SEARCH UNDER FEDERAL CONSTITUTION'S FOURTH AMENDMENT; AND (2.) VIOLATED FOURTH AMENDMENT BECAUSE SHOWING REQUIRED UNDER STATUTE FELL SHORT OF PROBABLE CAUSE REQUIRED FOR WARRANT. THEREBY, DENYING HIM A MEANINGFUL REVIEW OF HIS APPEAL WHERE THE CASE WAS DENIED IN UNPRECEDENTED RECORD TIME.

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STATUTES AND RULES

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OTHER

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[] reported at People v. Glenn, 2020 Mich. LEXIS 395; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Michigan Court of Appeals court appears at Appendix B to the petition and is

[] reported at People v. Glenn, 2019 Mich. App. LEXIS 5653; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was 9/19/19. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment, applicable to the states through the Fourteenth Amendment, provide: 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 person or things to be seized. (U.S. Const. Amend IV.)

Const 1963, art 1, § 11 Searches and Seizures: THE PERSON, houses, Papers and Possessions of every Person shall be secure from unreasonable Searches and Seizures. No warrant to search any place or to seize any Person or things shall issue without describing them, nor without Probable Cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state.

Const 1963, art 1, § 2 EQUAL Protection; discrimination: No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights to be discrimination(ed) against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

Const 1963, art 1, § 17 Self-incrimination; due process of law; fair treatment at investigations.

STATEMENT OF THE CASE

Following a jury trial in the Wayne County Circuit Court, wherein Mr. Glenn was convicted of one count of armed robbery, MCL 750.529; The Jury could not reach verdicts on additional charges of first-degree felony murder and felony firearm (Trial transcript ["TT"], 09/15/2014, 6). Those two latter offenses were subsequently dismissed (Sentence transcript, 10/31/2014, 13). Mr. Glenn was tried with co-defendant Jessie Lewis, whose convictions of second-degree murder, armed robbery, and felony firearm were upheld by the Court of Appeals [Michigan], in People v. Jessie Vornell Lewis, unpublished opinion per curiam of the Court of Appeals, decided July 26, 2016 (Docket No. 324267).

Cellular telephone records from Glenn's cell phone showed 24 references to "Jarvo," which was Glenn's nickname. Cellular telephone records from Lewis's cell phone showed seven references to Lewis's nicknames, "Mook" and "Dymook." The records showed references to Glenn's and Lewis's nicknames on the day of the shooting, suggesting that Glenn and Lewis carried their cell phones with them on April 7, 2014. The records also revealed that between 5:40 P.M. and 5:46 P.M. — the time when the first 911 call was made — the cell phones belonging to Glenn, Lewis, and Robinson were interacting with the same cellular sites, showing that the three men were in the same general location at the same time.

Glenn did not testify at trial, but Lewis did. Lewis admitted that he owned the black Huawei phone and that he knew Glenn, but denied knowing Robinson. According to Lewis, his text message conversation was not about a plan to rob Robinson, but to rob another individual — Lewis planned to steal two cell phones and a computer from a nearby prostitution house. Lewis also claimed that he was texting Glenn's brother, not Glenn, and that Glenn's brother was using Glenn's cell phone to talk to Lewis. Lewis also claimed that his cellular records of his telephone were incorrect with respect to the timing because he was texting Glenn's brother an hour before the shooting occurred.

REASONS FOR GRANTING THE PETITION

1. The Supreme Court of Michigan denied Petitioner Mr. Glenn a meaningful review of his appeal by rubber-stamping Mr. Glenn's Application for Leave to Appeal in unprecedented record times thus, denying him equal protection under the state and federal Constitution where warrantless accessing of cell phone records pursuant to federal statute, (1.) Was there an search under federal Constitution's fourth Amendment's and (2.) did said search violate fourth Amendment because showing required under the statute fell short of probable cause required for warrant.

The Government's acquisition of Glenn's cell-site records was a fourth Amendment search. Pp. 103, (Trial Transcript Pg(s.) 154 - 163).

The Fourth Amendment Protects not only property interests but certain expectations of privacy as well, Katz v. United States, 389 U.S. 317, 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. Maryland, 442 U.S. 735, 740, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (internal quotations marks and alterations omitted). The analysis regarding which expectations of privacy are entitled to protection is informed by historical understandings "of what was deemed an unreasonable search and seizure when [the Fourth Amendment] was adopted." Carroll v. United States, 267 U.S. 132, 149, 45 S. Ct. 280, 69 L. Ed. 543, T. D. 3686. These founding-era understandings continue to inform this court when applying the fourth Amendment to innovations in surveillance tools. See, e.g., Kyllo v. United States, 533 U.S. 27, 121 S. Ct. 2038, 150 L. Ed. 2d 94, Pg(s) 130 - 2206, 201 L. Ed. 2d, at 516 - 518.

Records from the Cell Phone carriers who serviced the Defendant, Co-defendant, and victim showed that the defendant's phone was in the same cell tower sector as the victim's phone in the hours before the shooting, even as the victim travelled across several different areas. These records also showed that the phones belonging to the defendant, co-defendant, and victim were all within the same sector - the sector that serviced the area on Maine Street where the shooting occurred at the time the 9-1-1 call was made. (See trial transcripts dated 9/10/2014, pg(s) 18-32, 67.

A majority of the court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements. Allowing government access to cell-site records -- which "hold for many Americans the 'privacies of life'" Riley v. California, 573 U.S. 373, 374 - 375, 134 S. Ct. 2473, 184 L. Ed. 2d 430. Contravenes that expectation. In fact, historical cell-site records present even greater privacy concerns than the GPS monitoring considered in Jones: They give the government near perfect surveillance and will allow it to travel back in time to retrace a person's whereabouts, subject only to the five-year retention policies of most wireless carriers. The government contends that CSLI data is less precise than GPS information, but it thought the data accurate enough here to highlight it during closing argument in Glenn's Preliminary Examination to have his proceedings bound over for a trial. (See, pre-lim. transcripts dated 05/23/2014 pg(s) 144 - 150).

At any rate, the rule the court adopts "must take account of more sophisticated systems that are already in use or in development," Kyllo 533 U.S. at 36, 121 S. Ct. 2038, 150 L. Ed. 2d 94, and the accuracy of CSLI is rapidly approaching GPS-level precision. Pp. 138 - 220 - 201 L. Ed. 2d. at 521-523.

The digital data at issue -- Personal Location information monitored and / or Maintained by a third Party -- does not fit neatly EXISTING Precedents but lies at the intersection of two lines of cases. One Set addresses a Person's expectation of Privacy in his Physical Location and Movements. See, e.g., United States v. Jones, 565 U.S. 400, 132 S. Ct. 945, 187 L. Ed. 2d 911 (five Justices Concluding that Privacy Concerns would be raised by GPS tracking.) The other addresses a Person's expectation of Privacy in information Voluntarily turned over to third Parties. See, United States v. Miller, 425 U.S. 435, 96 S. Ct. 1619, 48 L. Ed. 2d 71 (no expectation of Privacy in financial records held by a bank), and Smith, 442 U.S. 735, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (NO EXPECTATION of Privacy in records of dialed telephone numbers Conveyed to telephone Company). Pp. 138 - 2206, 201 L. Ed. 2d, at 518-520.

The Government contends that the third-party doctrine governs this case, because cell-site records, like the records in Smith and Miller, are "business records" created and maintained by wireless carriers. But there is a world of difference between the limited types of Personal information addressed in Smith and Miller and the Exhaustive Chronicle of Location information casually collected by witnesses (third Party) wireless carriers.

Cell Phones Perform their wide and growing variety of functions by Continuously Connecting to a set of radio antennas called "Cell-sites". Each time a phone connects to a cell site, it generates a time-stamped record known as Cell-site Location information ("CSLI"). Wireless carriers Collect and Store this information for their own business Purposes. Tracking a Person's Past Movements through CSLI Partakes of many of the Qualities of GPS monitoring Considered in Jones -- it is detailed, encyclopedic, and effortlessly Compiled. At the same time, however, the fact that the individual Continuously reveals his location to his wireless carrier implicates the third-party Principle of Smith and Miller. Given the unique nature of cell-site records, this Court declined to extend Smith and Miller to cover them. Pp. 138 - 2206, 201 L. Ed. 2d, at 520-525.

The Government's Contention is that the Detroit Police officials whose job duties as Police officers responded to Maine Street after a 9-1-1 call reported the shooting, and they found the victim lying dead just outside his vehicle. They also discovered two cell phones lying by the victim's head. (See, Trial Transcript(s) Dated 9/14/2014) at Pg(s) 185-188; also 210-11; Date of 9/19/2014, Pg(s) 11-12; Date of 9/10/2014 Pg. 85.

However; at Petitioner's Preliminary Examination held before the Honorable Judge(Magistrate) Joseph N. Baltimore; on the Date of Friday, MAY 23, 2014... Officer Jeb Rutledge - R-U-T-L-E-D-G-E, was allowed to testify as to these (3) THREE Cell Phones... "THREE" AS in 1-2-3, Not "TWO" (2)... as the Government's first contention of "THREE"; And, there was only the (1) one phone that Petitioner's Co-defendant later testified as belonging to "himself"... on Metro PCS "Third-Party" wireless carrier.

The Question was Presented to this state's witness of their being any "Search Warrant(s)" obtained lawfully for retrieval of any of its content(s)... and was told in response that "We Did!"...

The Government's Contention, however, that the activities of its agents in this case should not be tested by fourth Amendment requirements, for the surveillance technique they employed. It is difficult to imagine how any of these exceptions could ever apply to the sort of search and seizure involved in this case. Even electronic surveillance substantially contemporaneous with an individual's arrest could hardly be deemed an "incident" of that arrest. Nor could the use of electronic surveillance without prior authorization be justified on grounds of "Hot Pursuit". And, of course, the very nature of electronic surveillance precludes its use pursuant to the suspect's consent.

The Government does not question these basic principles. Rather it urges the creation of a new exception to cover this case. It urges that Surveillance by Cell-Site Location information ("CSLI"), should be Exempted from the usual requirements of advance authorization by a Magistrate upon a showing of probable cause. Omission of such authorization "By-Passes the Safeguards Provided by an objective Predetermination of Probable Cause, and Substitutes instead the far less reliable Procedure of an after-the-event Justification for the ... Search, to likely to be Subtly influenced by the familiar Shortcomings of hindsight Judgment." And, bypassing a neutral Predetermination of the scope of a search leaves individuals Secure from Fourth Amendment violations "only in the direction of the Police." *Id.* at 97 (*Katz v. United States*, 389 U.S. 347 (1967))

Those Considerations do not vanish when the search in question is transferred from the setting of a home, an office, or a hotel room to that of a CellPhone... Specifically, Cell-Site Location information ("CSLI"), or the generic term for all such devices regardless of the manufacturer or model is "Stingray".) Wherever a man may be, he is entitled to know that he will remain free from unreasonable Searches and seizures.

The Government agent(s) here (Detroit Police officials) ignored "the procedure of antecedent justification... that is central to the Fourth Amendment," a procedure that should be held to be a constitutional precondition of the kind of electronic surveillance involved in this case. Because the surveillance here failed to meet that condition, and because it led to the Petitioner's conviction, the judgment must be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X Fairuza Glenn

Date: 5-14-20 X