

No. 17-6399

IN THE SUPREME COURT OF THE UNITED STATES

CORY S. CASTETTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

JOHN P. CRONAN
Acting Assistant Attorney General

DAVID M. LIEBERMAN
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner's Fourth Amendment rights were violated when law enforcement officers procured a search warrant for his residence based on information gleaned from a GPS tracking device, attached to a third party's vehicle, that had traveled outside the territorial jurisdiction of the state court that had issued the tracking warrant.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-5) is reported at 865 F.3d 977. The opinion and order of the district court is reported at 115 F. Supp. 3d 968.

JURISDICTION

The judgment of the court of appeals was entered on August 4, 2017. The petition for a writ of certiorari was filed on October 12, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional guilty plea in the United States District Court for the Northern District of Indiana, petitioner was convicted on one count of possession with intent to distribute methamphetamine, in violation of 21 U.S.C. 841(a)(1). Judgment 1. Petitioner was sentenced to 108 months of imprisonment, to be followed by four years of supervised release. Id. at 2-3. The court of appeals affirmed. Pet. App. 1-5.

1. Law enforcement officers in Michigan obtained a search warrant from a Michigan magistrate judge authorizing the installation of a Global Positioning System (GPS) tracking device on a 1998 Ford Crown Victoria registered to Mark Allen Holst and another individual. 115 F. Supp. 3d at 969. The warrant authorized officers to monitor the car's movements for 90 days, beginning on August 20, 2014. Id. at 969-970.

On August 30, 2014, the GPS information showed that Holst's car had traveled to petitioner's residence in Indiana, stayed for 30 minutes, and returned to Michigan. 115 F. Supp. 3d at 970. An informant told authorities that Holst had driven to Indiana and returned with methamphetamine. Ibid.

On September 4, 2014, the GPS information showed that Holst's car had again traveled to petitioner's residence in Indiana, stayed for over an hour, and returned to Michigan. 115 F. Supp. 3d at 970. Upon its return to Michigan, law enforcement officers

conducted a warrant-authorized search of the car, identified Holst as the driver, and seized four ounces of methamphetamine. Ibid.

That same day, a DEA task-force officer in Indiana obtained a warrant from an Indiana court authorizing the search of petitioner's residence. 115 F. Supp. 3d at 969. The officer's affidavit relayed the information received from Michigan authorities, including the movements of Holst's car as recorded by the GPS tracking device. Id. at 970. Law enforcement officers executed the warrant at petitioner's residence and seized one ounce of methamphetamine, a fentanyl patch, scales, lidocaine, loaded syringes, and \$62,000 in cash. Id. at 969.

2. A federal grand jury in the Northern District of Indiana returned an indictment charging petitioner with one count of possession with intent to distribute methamphetamine, in violation of 21 U.S.C. 841(a)(1); one count of operating a drug premises, in violation of 21 U.S.C. 856(a)(2); and one count of possession of methamphetamine, in violation of 21 U.S.C. 844. Indictment 1-3.

Petitioner filed a motion to dismiss the indictment or, in the alternative, to suppress the evidence seized from his residence. 115 F. Supp. 3d at 968-969. He contended that the search warrant for his residence was based on information obtained from a prior warrantless search of his residence "accomplished by the GPS device attached to Holst's vehicle." Id. at 971.

The district court denied the motion. 115 F. Supp. 3d 969. The court observed, as a threshold matter, that petitioner was not challenging the search of Holst's car or the warrant for the GPS device. 115 F. Supp. 3d at 971 n.1. "Rather," the court explained, petitioner "is challenging what he contends was a warrantless search of his home by electronic means" when the GPS device attached to Holst's car "was used to monitor who was inside [petitioner's] home and the duration of their stay." Id. at 971.

The district court found that there was "no infringement of [petitioner's] Fourth Amendment privacy interests in his home." 115 F. Supp. 3d at 973. The court explained that the GPS device "d[id] not reveal who was in [petitioner's] home, what activities may have occurred there, or even how long individuals may have been in the home." Ibid. And because the GPS device did not reveal any information about the interior of petitioner's home, the court determined that the police did not "search" petitioner's home when they monitored the movements of Holst's car pursuant to a warrant-authorized GPS device. Id. at 974.

Petitioner entered a conditional guilty plea to one count of possession with intent to distribute methamphetamine, in violation of 21 U.S.C. 841(a)(1). Plea Agreement 4. He reserved his right to appeal the district court's order denying his motion to suppress. Id. at 3. The district court sentenced petitioner to

108 months of imprisonment, to be followed by four years of supervised release. Judgment 2-3.

3. The court of appeals affirmed. Pet. App. 1-5.

The court of appeals rejected petitioner's argument that police lacked authority to monitor the location of Holst's car in Indiana based on a Michigan search warrant. Pet. App. 2-4. The court stated that the Fourth Amendment "does not concern state borders" but demands only that a warrant be supported by probable cause, an oath, and particularity, all of which were present here. Id. at 3. The court reasoned that although a State could decide as a matter of state law not to authorize its police to acquire information outside of the State, or a State could decide to ignore information relayed by a sister State, "federal courts do not use the exclusionary rule to enforce state-law doctrines." Ibid. (citing Virginia v. Moore, 553 U.S. 164 (2008)).

The court of appeals also rejected petitioner's argument that the police were forbidden by the Fourth Amendment "to learn who was doing business on [petitioner's] property without obtaining a warrant based on [petitioner's] own activities." Pet. App. 2, 4-5. The court observed that the GPS device attached to Holst's car did not "authorize anyone to learn about the inside of [petitioner's] home, as the infrared device did in Kyllo v. United States, 533 U.S. 27 (2001)." Pet. App. 4. The court explained that "[a]ll the police learned by monitoring the GPS device was

the location of Holst's car, and [petitioner] lacked a privacy interest in that location." Ibid. The court reasoned that "[t]he Constitution is not offended if, by executing a warrant to search one person (such as Holst), police learn incriminating details about another (such as [petitioner])." Id. at 5.

ARGUMENT

Petitioner renews his contention (Pet. 4-17) that law-enforcement officers violated the Fourth Amendment by using a GPS device, authorized by a Michigan warrant, to observe Holst's car travel to petitioner's residence in Indiana. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court, another court of appeals, or a state court of last resort. This Court recently denied review of a similar question. See Patterson v. United States, 138 S. Ct. 501 (2017) (No. 16-9693). The same result is warranted here.

1. As an initial matter, petitioner does not challenge the court of appeals' determination that police did not "search" petitioner's house using the GPS device. Pet. App. 4-5. Michigan police needed a warrant to attach the GPS device to Holst's car because that action was a physical trespass on Holst's property and thus constituted a Fourth Amendment search. United States v. Jones, 565 U.S. 400, 408-411 (2012). But the court of appeals correctly concluded that police did not conduct a search of petitioner's home in Indiana using the GPS device, as that device

did not enable police to learn anything about the inside of petitioner's home. Pet. App. 4. Although police used the GPS device to monitor the location of Holst's car as it drove into Indiana, petitioner lacked any privacy interest in that information and has no individualized Fourth Amendment interest that would permit him to challenge the tracking of Holst's car. Ibid.; see Rakas v. Illinois, 439 U.S. 128, 148-149 (1978).

2. Even assuming petitioner were entitled to challenge the tracking of Holst's car, his challenge lacks merit.

a. As the court of appeals explained, the Fourth Amendment does not contain any explicit geographical restrictions but requires only that a warrant be based on probable cause, supported by a sworn affidavit, and describe with particularity the place to be searched and the type of evidence to be seized. Pet. App. 3 (citing U.S. Const. Amend. IV); see Groh v. Ramirez, 540 U.S. 551, 557 (2004). Both of the warrants obtained in this case complied with those requirements. Petitioner points to nothing in the Fourth Amendment, or any decision of this Court interpreting it, that would preclude police officers in Michigan, acting pursuant to a warrant, from collecting GPS tracking data from a device installed in Michigan simply because the car on which it was installed briefly traveled out of state. Accordingly, even assuming that Michigan law does not permit police officers to acquire any information outside of Michigan, that would at most

implicate state law, not the Fourth Amendment.¹ This Court's decision in Virginia v. Moore, 553 U.S. 164 (2008), illustrates that "federal courts do not use the exclusionary rule to enforce state-law doctrines." Pet. App. 3.

In Moore, police officers arrested a motorist for driving with a suspended license and seized narcotics during the subsequent search of his person. 553 U.S. at 166-167. The arrest violated Virginia law, which authorized only a court summons for individuals committing that offense. Id. at 167. The Court nonetheless upheld the arrest as "constitutionally reasonable" because the officers had probable cause to believe the motorist had committed a crime. Id. at 171. "[S]tate restrictions," the Court held, "do not alter the Fourth Amendment's protections." Id. at 176; see id. at 172 ("We thought it obvious that the Fourth Amendment's meaning did not change with local law enforcement practices -- even practices set by rule."). Accordingly, even if state law did not permit Michigan police officers to gather information about the movements of Holst's car in Indiana, the use of that information to obtain an Indiana search warrant for petitioner's home did not violate the Fourth Amendment. See id. at 178 ("[I]t is not the province of the Fourth Amendment to enforce state law."); California v.

¹ Petitioner references (Pet. 16-17) a number of jurisdictions that impose geographic restrictions on the execution of warrants. Those restrictions also emanate from state law, rather than the Fourth Amendment.

Greenwood, 486 U.S. 35, 43 (1988) ("We have never intimated * * * that whether or not a search is reasonable within the meaning of the Fourth Amendment depends on the law of the particular State in which the search occurs.").

b. Petitioner contends (Pet. 5-9) that the court of appeals' decision will resurrect a "silver platter" practice, whereby evidence collected by state law-enforcement officers is "beyond review by a federal court, regardless of whether the collection of that evidence violate[s] [the Constitution]," Pet. 7, that will enable state police to provide evidence to the federal government that will be immune from suppression. That contention reflects a misunderstanding of the court of appeals' decision. The court of appeals correctly acknowledged that evidence obtained by state law-enforcement officers in violation of the Fourth Amendment -- as well as its fruits -- is subject to suppression. Pet. App. 3. The court of appeals' decision thus does not create an end-run around Fourth Amendment protections.

c. Petitioner further contends (Pet. 9-11) that the court of appeals' decision will have the effect of giving legal documents like subpoenas "universal application in every other state." Pet. 9. That is a considerable overreading of the court of appeals' decision. The court of appeals neither considered nor took any position on any of the scenarios petitioner posits. Rather, the court determined only that the remedy of suppression in a federal

criminal prosecution was not required in the circumstances of this case, where police in Michigan relied on a warrant to install a GPS device in Michigan and monitor it from Michigan. Pet. App. 3-5.

3. Petitioner identifies no decision of this Court or any other court of appeals or state court of last resort that finds a Fourth Amendment violation, or excludes evidence, on facts like the ones here. And he identifies no sound reason why further review would nonetheless be warranted.

a. Petitioner contends (Pet. 11-13) that the Court should grant certiorari to resolve "tension" between the court of appeals' decision and this Court's cases "[r]ecognizing the sovereignty of states." Pet. 11 (capitalization omitted). Petitioner's suggestion is misplaced. As the court of appeals explained, "[t]he process of tracking a car's location by GPS does not offend any state's sovereign rights." Pet. App. 4. Indeed, Michigan police could have, using routine surveillance techniques, followed Holst's car into Indiana and observed his arrival at petitioner's house without trenching on any sovereignty concerns. See 115 F. Supp. 3d at 974 ("The information gathered by the GPS device could just as easily have been obtained through traditional visual surveillance.").

Moreover, as the court of appeals observed, Indiana could elect, as a matter of state law, "to ignore information given to

[it] by other state's officers." Pet. App. 3. For instance, the Indiana court presented with the warrant application for petitioner's residence could have refused to rely on the information obtained pursuant to the GPS warrant if the court "th[ought] that the Michigan police ha[d no] business insinuating their GPS locators into th[e] state." Ibid. The court of appeals correctly recognized, however, that the Constitution does not compel that result. See ibid.

b. Petitioner also suggests (Pet. 13-16) that the court of appeals' decision creates tension with decisions of other courts of appeals. That suggestion is likewise incorrect.

In United States v. Krueger, 809 F.3d 1109 (2015), the Tenth Circuit affirmed a district court's decision to suppress evidence obtained during the execution of a search warrant issued by a magistrate judge outside the judicial district where the search occurred. Id. at 1117. The infirmity in the warrant, however, was based not on the Fourth Amendment, but instead on Federal Rule of Criminal Procedure 41(b)(1), which the government conceded had been violated. Id. at 1113-1114. Indeed, the court expressly declined to decide whether a violation of the territorial limits on the power of a federal magistrate judge amounts to a Fourth Amendment violation. Id. at 1114-1115. The decision is therefore not in conflict with the decision below here.

Then-Judge Gorsuch concurred in the judgment and concluded that a warrant issued in contravention of statutory limits on a magistrate judge's authority cannot satisfy the Fourth Amendment because such a warrant is "no warrant at all." Krueger, 809 F.3d at 1118. In a decision later vacated by this Court, the Ninth Circuit reached a similar conclusion in Bishop Paiute Tribe v. County of Inyo, 291 F.3d 549 (2002), vacated, 538 U.S. 701 (2003), which held that California officers violated the Fourth Amendment when they executed a warrant for the seizure of tribal property on tribal land, which Congress had not granted a California judge the authority to authorize. Id. at 568. Neither opinion demonstrates that the Ninth or Tenth Circuits would be bound to reach a different result from the court below in the circumstances of this case. Indeed, as previously discussed, petitioner has not demonstrated that extraterritorial application of the Michigan GPS-tracking warrant exceeded any limitation imposed on the issuing judge, and even if he could, he lacks a personal Fourth Amendment interest in the tracking of Holst's car pursuant to that warrant. See pp. 6-7, supra.

c. Petitioner further errs in suggesting (Pet. 15-17) that the court of appeals' decision conflicts with the Supreme Court of New Hampshire's decision in State v. Mello, 27 A.3d 771 (2011). In that case, all parties agreed that a New Hampshire court lacked authority to authorize the seizure of documents from a New Jersey

corporation. Id. at 773. The court discussed the procedures through which such information might lawfully have been obtained without purporting to exhaustively detail all available options, and it did not address a scenario like the one at issue here. Id. at 773-774. Moreover, the court's ultimate decision not to suppress the evidence at issue -- because even though the warrant was defective as a matter of state law, no warrant was required under the Fourth Amendment because petitioner had no reasonable expectation of privacy in the subscriber information obtained from Comcast (id. at 774-775) -- is consistent with the result here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

JOHN P. CRONAN
Acting Assistant Attorney General

DAVID M. LIEBERMAN
Attorney

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