

No. _____

24-7027

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
APR 11 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

CHARLES HOUSE — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SEVENTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHARLES HOUSE

(Your Name)

FCI - Gilmer
P.O. Box 6000

(Address)

Glenville, WV 26351

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE INSTALLATION OF A POLE CAMERA, WITH A ZOOM LENS, WHOSE PURPOSE WAS TO MONITOR PETITIONER'S MOVEMENTS FROM AND TO HIS RESIDENCE, TWENTY-FOUR HOURS A DAY, AND SEVEN DAYS A WEEK, FOR A PERIOD OF TIME IN EXCESS OF 13 MONTHS, VIOLATED HIS 4th AMENDMENT RIGHT OF PRIVACY?

ASSUMING THE POLE CAMERA DID NOT INFRINGE ON PETITIONER'S RIGHT TO PRIVACY, DID AN ATTACHMENT TO THE POLE CAMERA OF A ZOOM LENS, CHANGE THE EQUATION?

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:

RELATED CASES

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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

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix "A" 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 is unpublished.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 is unpublished.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 _____ 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 is unpublished.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 _____ 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 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 5, 2024.

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: January 13, 2025, 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 _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment to the United States Constitution

STATEMENT OF THE CASE

During the month of October 2018, an employee of the carrier known as Federal Express, contacted a law enforcement officer about a suspicious package which had been shipped through the Federal Express Company. The package was scheduled for delivery. Officers then arranged a meeting with the employee where a canine sniff would be performed of the package. When that occurred, the single package had increased to twelve packages of various sizes, shapes, and packaging material. The ensuing canine sniff resulted in a positive alert to five of the twelve packages. Since the canine had been trained to sniff-out controlled substances, it was presumed by law enforcement officers that the subject five packages contained illegal drugs.

Based solely on the result of the dog-sniff operation, officers obtained a search warrant, or warrants, for the five different locations to which the five packages were to be delivered. While the return address on each package was identical, each was to be delivered to a different post office address. One of the packages was to be delivered to a residence located across from petitioner's address and residence.

Upon opening the packages, officers observed no contain plastic bags of crystal methamphetamine and marijuana. The officers concluded that the respective quantities were

in excess of that normally used for personal consumption. This discovery eventually led to the officers mounting a pole camera on a utility pole directly facing petitioner's residence. Resort to a pole camera was deemed necessary because officers, in their follow-up investigations to the positive dog-sniff operation in October, were unable to gather any evidence that the petitioner was engaging in any unlawful activity, i.e., drug trafficking.

The aforesaid pole camera was activated during the month of January, 2019. Thereafter, officers engaged in a continuous observation, via the camera, of petitioner's daily activities. Their observations continued for over a one year period, or until February of 2020. Because the camera captured everything on a video recording, officers could view petitioner's movements at a later time. Furthermore, a zoom lens on the camera permitted officers to zoom in and obtain more details than if viewing the petitioner, and others, with an unaided eye. Thus, the camera permitted officers to view the details of anything which a person was carrying in his or her hand, which someone merely observing with an unaided eye could not observe. The video recordings enabled officers to identify individuals who were visiting

the petitioner. That resulted in officers being able to recruit an individual who agreed to become an informant against the petitioner.

Ultimately, petitioner was charged with attempted possession with intent to distribute methamphetamine and a conspiracy to possess with intent to distribute marijuana, including the distribution of marijuana. Petitioner's motion to suppress the pole camera evidence was denied. A jury trial resulted in guilty verdicts on all counts. An appeal was taken from the denial of petitioner's motion to suppress the evidence gathered from the pole camera.

The Seventh Circuit court of appeals approached the issue from the perspective of whether the government's conduct here constituted a "search" within the meaning of the Fourth Amendment. It applied the "privacy-based approach" that was first articulated by Justice Harlan in a concurring opinion in Katz v. United States, 389 U.S. 347, 361 (1967). The Seventh Circuit further utilized its prior decision from United States v. Tuggle, 4 F.4th 505 (7th Cir. 2021), to conclude that the officers required no prior judicial authorization in order to mount the pole camera in front of petitioner's residence. Tuggle had concluded

"that a defendant has no expectation of privacy in the activities in front of and outside his house when such activities are readily observable by any ordinary passerby." United States v. House, No. 23-1950 (7th cir., 11-05-2024), at slip opinion *5. Although Petitioner Charles House requested the Seventh Circuit to reconsider its ruling in Tuggle, *supra*, it refused.

In his brief, Petitioner relied on the First Circuit's opinion in United States v. Moore-Bush, 36 F.4th 320 (2022) (en banc), where a concurring opinion supported his position that the prolonged use of a warrantless pole camera surveillance constitutes a search under the Fourth Amendment. Id. at 320-60. However, the court declined, ruling: "The pole camera surveillance here gave law enforcement no greater access to House's residence than would be available to any observer on the sidewalk." House, *supra*, at *6.

Petitioner's "petition for rehearing" was denied by the Seventh Circuit on January 13, 2025.

REASONS FOR GRANTING THE PETITION

MODERN TECHNOLOGY SHOULD NOT BE ALLOWED TO OVER-RIDE THE THE CONSTITUTIONAL RIGHTS OF AMERICAN CITIZENS WHEN IT ACTS AS A SUBSTITUTE FOR A STATE'S ACTIVE INVESTIGATIVE PURPOSES

The security of one's privacy against arbitrary intrusions by the police is basic to a free society. Wolf v. Colorado, 338 U.S. 25, 27 (1949). Instantly, the Seventh Circuit affirmed the district court's refusal to suppress evidence gained by police officers from the pole camera by concluding that the officers acquired "no greater access to House's residence than would be available to any observer on the sidewalk." United States v. House, No. 23-1950 (7th Cir.2024), at Slip Op.; p. 6). However, the lower courts ignored the fact that the subject pole camera was fitted with a zoom lens, enabling officers to obtain a more detailed view of petitioner's activities (including visitors to his residence) than would have been available to "ordinary observers" on the sidewalk, or street. Consequently, the lower courts ignored prior rulings from the Supreme Court which found unconstitutional invasions of citizens right to privacy when agents/officers utilized mechanical or electronic devices to enhance their visual or hearing capabilities.

In affirming petitioner's conviction, the Seventh Circuit struggled to distinguish its reasoning from that reached by the First Circuit in United States v. Moore-Bush,

36 F.4th 320 (1st Cir.2022)(en banc); and the Fifth Circuit's ruling in United States v. Cuevas-Sanchez, 821 F.2d 248 (5th Cir.1987)(relying on the subjective expectation analysis articulated in California v. Ciraolo, 476 U.S. 207, 211 (1986)). Neither did the lower courts adopt the "mosaic theory", to find that petitioner's right to privacy had been infringed by the pole camera. That theory was first articulated in United States v. Maynard, 615 F.3d 544 (D.C. Cir.2010). It examines the government's method of investigation. It further asks "whether a set of nonsearches aggregated together amount to a search because their collection and subsequent analysis creates a revealing mosaic." House, supra, at slip op. 10. Thus, while an isolated use of a pole camera would not be a violation of the 4th Amendment, any prolonged surveillance that captures enough information to create a comprehensive account of a suspect's movements, has violated a suspect's privacy.

Privacy has been recognized by the Supreme Court as having "a source outside the Fourth Amendment, such as understandings that are recognized or permitted by society." Rakas v. Illinois, 439 U.S. 128, 143 n.12 (1978). Expectations of privacy deal, primarily, with information. Therefore, just as information acquired by someone's observations from on obser-

vation of someone departing his or her residence will not be an invasion of that person's privacy (because the information gained will be nil), watching the occupant's movements over an extended period will reveal information that the occupant has not knowingly exposed to the public:

[U]nlike one's movements during a single journey, the whole of one's movements over the course of a month is not actually exposed to the public because the likelihood anyone will observe all those movements is effectively nil. Second, the whole of one's movements is not exposed constructively even though each individual movement is exposed, because that whole reveals more—sometimes a great deal more—than does the sum of its parts.

United States v. Maynard, 615 F.3d 544. 558 (D.C.Cir.2010)

While the Government in Maynard, supra, argued that "because the police lawfully could have followed Jones everywhere he went on public roads over the course of a month", the court reframed the issue to that of "what a reasonable person expects another might actually do." Id. at 559. The Court noted that the Supreme Court had reaffirmed the foregoing in Bond v. United States, 529 US 334 (2000), where a Border Patrol Agent had squeezed the defendant's carry-on luggage stored in a overhead area of

the bus. While a bus passenger can expect his bag to be handled by others, but not in an exploratory manner. The agent's physical manipulation of the bag violated defendant's Fourth Amendment rights. Utilizing the foregoing reasoning, and the Supreme Court's focusing "not upon what other passengers could have done or what a bus company employee might have done, but rather upon what a reasonable passenger expects others he may encounter [] might actually do", the Court turned its attention from theoretical possibilities, to "the actual likelihood, of discovery by a stranger." Id. at 560. (citing *Kyllo v. United States*, 533 US 27 (2001); and *United States v. Katz*, 389 US 347, 351 (1967)):

Applying the foregoing analysis to the present facts, we hold the whole of a person's movements over the course of a month is not actually exposed to the public because the likelihood a stranger would observe all those movements is not just remote, it is essentially nil. It is one thing for a passerby to observe or even to follow someone during a single journey as he goes to the market or returns home from work. It is another thing entirely for that stranger to pick up the scent again the next day and the day after that, week in and week out, dogging his prey until he has identified all the places, people, amusements, and chores that make up that person's hitherto private routine.

Id.

The aforesaid opinion further emphasized the distinction arising between "the whole and the sum of the parts in the Fourth Amendment", by citing Smith v. Maryland, 442 US 735 (1979), and United States Department of Justice v. National Reporters Committee, 489 US 749 (1989); both of which holding that a privacy interest exist in preventing the aggregation of "bits of information". Revealing such information is an invasion of personal privacy. Maynard, 615 F.3d at 561. Thus, a person does not constructively expose one's movements to the public through merely exiting and entering his residence on a daily basis because "[a] reasonable person does not expect anyone to monitor and retain a record of every time he drives his car, including his origin, route, destination, and each place he stops and how long he stays there; rather, he expects each of those movements to remain 'disconnected and anonymous.'"
Id. at 563. "[T]he extended recordation of a person's movements is, like the 'manipulation of a bus passenger's carry-on' canvas bag in Bond, not what we expect anyone to do, and it reveals more than we expect anyone to know." Id. (quoting Bond, 529 US at 339).

The expectation of privacy in one's movements are not to be found, exclusively, in the Fourth Amendment; "'legitimation

of expectations of privacy must have a source outside the Fourth Amendment,' such as 'understandings that are recognized or permitted by society.'" Id. at 563.(quoting United States v. Jacobsen, 466 US 109, 123 n.22 (1984)(quoting Rakas v. Illinois, 439 US at 143 n.12)). In United States v. Katz, 389 US 347, 3512(1967), the Supreme Court clearly stated that a person does not leave his privacy behind when he walks out the front door of his residence: "[W]hat [one] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." This insures that outside one's home, the "Fourth Amendment . . . secures for each individual a private enclave, a 'zone' bounded by the individual's own reasonable expectations of privacy." Reporters Comm. for Freedom of Press v. AT&T, 593 F.2d 1030, 1042-43 (D.C.Cir.1978).

Various states have enacted laws recognizing that any "prolonged GPS monitoring defeats an expectation of privacy that our society recognizes as reasonable." Maynard, 615 F.3d at 564 (citations omitted)(noting that "federal courts that have held use of a GPS device is not a search were not alert to the distinction drawn in Knotts between short-term and prolonged surveillance."). The foregoing is consistent with common sense in regards to someone standing on a

public thoroughfare, in front of a residence, with a notepad, marking down the comings and goings of its residents or visitors, twenty-four hours a day, and seven days a week. No doubt, local law enforcement would be summoned to the scene to investigate because that would be something out of the ordinary, and an invasion which the general public would not tolerate. Comparable facts are found in Grady v. North Carolina, 575 US 306 (2015), where the Supreme Court held it to be an invasion of privacy, and constituted a search under the Fourth Amendment, for a Probation Officer to monitor a sex offender's daily movements through attachment of a monitoring device to his person. It intruded upon his reasonable privacy expectations of privacy. Consequently, there should no distinction between the facts in that case, and the facts surrounding the officers constant observations of petitioner's daily movements. In either situation, it intruds upon a private citizen's entitlement to privacy. Grady, supra. Prior authorization from the judiciary was first required. United States v. Taylor, 979 F.Supp.2d 865 (S.D.Ind. 2013); and Chong v. United States, No. 23-55140 (9th Cir. Aug. 14, 2024). In according with the foregoing judicial opinions, including Grady, supra, it is abundantly clear that petitioner's Fourth

Amendment privacy rights were violated by the installation of a pole camera which monitored his daily movements, to and from his residence, 24 hours a day, for a period of at least 13 months. consequently, petitioner is entitled to a new trial without introduction of evidence derived directly, or indirectly, from those daily observations. This includes fruit of the poisonous tree.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

* C. O. St. Hause

Date: April 3, 2025