State v. Jean

Citation: 407 P.3d 524 (Ariz. 2018).
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Majority Opinion Authors: Chief Justice Bales as to Parts I and II(A)–(D) and Vice Chief Justice Pelander as to Parts II(E) and III.
Joined by: Justices Brutinel, Timmer, and Bolick as to as to Parts I and II(A)–(D) and Justice Brutinel, Timmer, and Gould, and Judge Espinosa* as to Parts II(E) and III.
Dissent-in-Part: Chief Justice Bales join by Justice Bales, dissenting in part and in the result.
Dissent-in-Part: Vice Chief Justice Pelander, joined by Justice Gould and Judge Espinosa.
Concurrence-in-Part and Dissent-in-Part: Justice Bolick.

Facts: In February 2010, local law enforcement officers attached a Global Positioning System ("GPS") device to a commercial truck owned by David Velez-Colon ("Velez-Colon") due to their discovering that the truck was stolen and their witnessing a suspicious hand-to-hand exchange between Velez-Colon and another individual. Unbeknownst to the officers, Defendant Emilio Jean ("Jean") was traveling with Velez-Colon to California. After having attached the GPS, law enforcement officers tracked the truck's movements to California and its return to Arizona for about thirty-one hours over three days. When Jean and Velez-Colon reentered Arizona, law enforcement officers stopped the truck, found Velez-Colon driving it, found Jean lying in the truck's cabin, and asked them if they could search the truck. Both Jean and Velez-Colon refused to allow the officers to search the truck, so the officers used a drug-detection dog that indicated that the truck had drugs inside of it. The officers then searched the truck, found 2,140 pounds of marijuana, and arrested both Jean and Velez-Colon.

Procedural History: Jean was convicted in the Superior Court of Coconino County, Arizona for money laundering, transportation of marijuana, conspiracy, and illegally conducting an enterprise. The trial court denied Jean's motion to suppress the evidence seized in the truck stop due to lack of standing. He appealed, and the Arizona Court of Appeals affirmed the denial of Jean's motion to suppress, his convictions, and his sentences. Subsequently, Jean appealed to the Arizona Supreme Court.[1]

Issue: Did law enforcement officers violate Jean's Fourth Amendment rights when they used a GPS tracking device without a warrant on a commercial truck in which Jean sometimes was a passenger and sometimes drove while the owner of the truck was present?[2]

Holding: No. Although Jean "was subjected to a warrantless search that violated his reasonable expectation of privacy and thus his Fourth Amendment rights, the evidence

* Justice Lopez IV recused himself.
[1] State v. Jean, 407 P.3d 524, 527 (Ariz. 2018).
[2] *Id.* at 526.

obtained [was] not . . . suppressed because the good-faith exception to the exclusionary rule applie[d]."[3]

Disposition: Affirmed in part and vacated in part. The court affirmed the denial of Jean's motion to suppress and his convictions and sentences, but vacated paragraphs 11–20 of the Arizona Court of Appeal's opinion.[4]

Rule: Passengers who are traveling in a private vehicle with its owner, generally have a reasonable expectation of privacy that is violated by continually tracking the vehicle through a surreptitious GPS device.[5]

Reasoning:

- **Trespass Theory:** Jean could not challenge the GPS monitoring under a trespass theory because he did not have a possessory interest in the truck. Although permissive users who are alone in a car have a Fourth Amendment protection under a trespass theory as bailees, a driver of a vehicle "'in which the owner was an accompanying passenger' does not."[6] However, Jean could challenge the GPS monitoring under a reasonable-expectation-of-privacy theory because when passengers are traveling in a private vehicle with its owner, those passengers generally have a reasonable expectation of privacy that is violated by continually tracking the vehicle through a surreptitious GPS device.[7] This is because such technology allows the government to gather vast amounts of information and does not distinguish between public places and private property, generating data from locations where law enforcement officers themselves would have no right to be, much like cell phone data.[8]

- **Good Faith Exception**: Nevertheless, the good-faith exception to the exclusionary rule applied in this case because the officers conducted this search in objectively reasonable reliance on *Knotts*[9] and *Karo*[10], which were binding appellate precedent under *Davis*.[11] Furthermore, there was neither evidence that the officers conduct was

[3] *Id.*
[4] *Id.* at 536.
[5] *Id.* at 533.
[6] *Id.* at 530 (quoting State v. Orendain, 916 P.2d 1064, 1067 (Ariz. Ct. App. 1996)).
[7] *Id.* at 533.
[8] *Id.* at 532.
[9] United States v. Knotts, 460 U.S. 276, 285 (1983) (holding that the law enforcement officers' use of a radio tracking beeper signal did not invade the individual's expectation of privacy, and thus, was not a search or a seizure under the Fourth Amendment).
[10] United States v. Karo, 468 U.S. 705, 713 (1984) (holding that the installation of a tracking device into a container, with the permission of the original owner, does not constitute a seizure under the Fourth Amendment even though the container is delivered to a buyer with no knowledge of the tracking device).
[11] *Jean*, 407 P.3d at 536 (citing Davis v. United States, 564 U.S. 229, 242 (2011) ("Evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule.")).

deliberate, reckless, or grossly negligent nor that this was a situation in which deterrence holds greater value than the associated costs—both necessary conditions under *Davis*.[12]

Dissent (Bales): Chief Justice Bales dissents from Part II(E) of the majority's opinion and their judgment because applying the good-faith exception to the exclusionary rule in this case "reads *Davis* and *Knotts* too broadly and *Jones* too narrowly."[13] His reasoning is that since neither the United States Supreme Court nor the Arizona Supreme Court has addressed the propriety of GPS monitoring, no binding appellate precedent specifically authorizes the monitoring in this case.[14] Therefore, the evidence should not be admitted under the good-faith exception to the exclusionary rule. The policy behind this being that when the caselaw is unsettled, law enforcement personnel should have to err on the side of obtaining a warrant to better protect privacy rights.[15]

Dissent (Pelander): Vice Chief Justice Pelander dissents from Part II(C) of the majority's opinion because he opines that neither prong of the two-part test found in *Katz*[16] is met in this case.[17] He explains that, under *Katz*, a defendant seeking the protection of the Fourth Amendment has to prove that he or she has "exhibited an actual (subjective) expectation of privacy . . . that society is prepared to recognize."[18] He then states that Jean failed on the first prong of the test because he did not testify at the suppression hearing and the record lacks evidence of his subjective expectation of privacy while law enforcement tracked the commercial truck by GPS on public roads.[19] On the second prong, Vice Chief Justice Pelander says that, in weighing privacy against the government's interest, the short-term installation of the GPS device was reasonable, as doing so was supported by ample and well-supported suspicion of illegal activity.[20] In short, he opines that the law and limited facts in this case do not compel the majority's reasonable-expectation-of-privacy part of its opinion because the two-prong test in *Katz* is not met.[21]

Concurrence-in-Part and Dissent-in-Part (Bolick): Justice Bolick takes the opportunity to state that if Jean had adequately developed his privacy-right argument under the Arizona Constitution, then the court could have decided this case more easily and appropriately.[22] He prognosticates that the court would likely have developed a more certain and predictable

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[12] *Id.*
[13] *Jean*, 407 P.3d at 537 (Bales, C.J., dissenting) (citing. *Davis*, 564 U.S. at 232; *Knotts*, 460 U.S. at 284; United States v. Jones, 565 U.S. 400, 408–409 (2012) (explaining *Knotts* and *Karo*)).
[14] *Id.*
[15] *Id.* at 538.
[16] Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).
[17] *Jean*, 407 P.3d at 538 (Pelander, J., dissenting).
[18] *Id.* (quoting Katz, 389 U.S. at 351 (alteration in original)).
[19] *Id.* at 539–40.
[20] *Id.* at 545.
[21] *Id.*
[22] *Id.* at 546 (Bolick, J., dissenting).

holding by potentially following the Washington Supreme Court's holding in *Jackson*,[23] which was that placing a GPS device on an individual's vehicle was a prohibited trespass under a Washington Constitution provision identical to Arizona's.[24]

[23] State v. Jackson, 76 P.3d 217, 223 (Wash. 2003).
[24] *Jean*, 407 P.3d at 547 (Bolick, J., dissenting); *see also* ARIZ. CONST. art. II, § 8; WASH. CONST. art. I, § 7.