

People v. Zichwic
(2001) ___ Cal.App.4th ___

ISSUE

Is a search warrant required to attach an electronic tracking device to the undercarriage of a vehicle parked in a driveway?

FACTS

Mountain View police had reason to believe that Zichwic was responsible for a series of burglaries at construction sites. Hoping to follow Zichwic to his next burglary, officers went to his apartment at about 11 P.M. and attached an electronic tracking device, commonly known as a “beeper,” under his truck. At the time, the truck was parked in Zichwic’s driveway.

About an hour later, Zichwic got into his truck and drove to a nearby PG&E yard. With the help of the beeper, officers were able to follow him there. When they arrived, they apprehended Zichwic in the process of burglarizing the premises and arrested him.

Under the “three strikes” law, Zichwic was sentenced to 25 years to life.

DISCUSSION

Zichwic contended that the officers’ act of attaching a beeper under his truck constituted an illegal search. It follows, he reasoned, that without the tracking device the officers wouldn’t have known he had gone to the PG&E site. Therefore, the court should have prohibited officers from testifying that they found him there. The Court of Appeal disagreed.

It is settled that the act of attaching a beeper under a vehicle is not a “search.” As the court in *Zichwic* noted:

There can be no objectively reasonable expectation of privacy in what is regularly exposed to public view. While the undercarriage of a vehicle is not as readily seen as the hood, doors, and other parts of its exterior, the undercarriage is part of the exterior that is ordinarily exposed to public view. It does not amount to a search to examine the undercarriage, to touch it, or to attach a tracking device, so long as a police officer does so from a place where the officer has a right to be.

Zichwic argued that even though a warrant was not required to attach the beeper under his truck, the officers were trespassing when they did so because the truck was parked on his private driveway. The court responded that even if officers were trespassing, it was merely a technical trespass because Zichwic could not reasonably expect that people would not walk on his driveway.¹ Said the court:

¹ See *People v. Camacho* (2000) 23 Cal.4th 824, 836 [“Since *Katz*, [the U.S. Supreme Court has] consistently held that the presence or absence of physical trespass by police is constitutionally irrelevant to the question whether society is prepared to recognize an asserted privacy interest as reasonable.” Quoting from *California v. Ciraolo* (1986) 476 US 207, 223 [dis.opn. of Powell, J.]; *Oliver v. United States* (1984) 466 US 170, 183, fn.15; *United States v. Karo* (1984) 468 US 705, 712-3 [“The existence of a physical trespass is only marginally relevant to the question of whether the Fourth Amendment has been violated.”]; *People v. Edelbacher* (1989) 47 Cal.3d 983, 1015; *Burkholder v. Superior Court* (1979) 96 Cal.App.3d 421, 428; *Dean v. Superior Court* (1973) 35 Cal.App.3d 112, 118; *People v. Superior Court (Stroud)* (1974) 37 Cal.App.3d

The normal route for a visitor to defendant's front door from the public street would be to walk up the private street, walk a short distance up defendant's driveway, and walk up a sidewalk to the front door. In doing so, any visitor would have to navigate around part of defendant's truck in the residence's driveway. [T]he detective who walked up the driveway and placed an electronic tracking device on the undercarriage of the truck did not violate any reasonable expectation of privacy and that the detective's conduct in this case did not amount to a search within the meaning of the Fourth Amendment.

Consequently, the court ruled the installation of the beeper was lawful, and Zichwic's conviction was affirmed.²

836, 840. **NOTE:** Although such an entry onto the suspect's property is common known as a "technical trespass," in most cases it is neither technically nor legally a trespass under California law. See Penal Code § 602.

² **NOTE:** Zichwic was on parole at the time the officers attached the beeper and, therefore, he was subject to a parole search condition. There are, however, cases holding that parole searches are not lawful if they were arbitrary or capricious. See *People v. Reyes* (1998) 19 Cal.4th 743, 752. Zichwic contended the officers' actions were arbitrary but the court disagreed, noting the officers had good reason to believe Zichwic was the person committing the burglaries.