

Recent Case Report

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U.S. v. Pineda-Moreno

(9th Cir. 2010) 591 F.3d 1212

Issues

(1) Must officers obtain a search warrant to install a tracking device to the undercarriage of a vehicle? (2) Is a warrant required to walk onto the suspect's driveway to install such a device?

Facts

DEA agents in Portland suspected that Pineda-Moreno and several associates were growing large quantities of marijuana in the area. Having learned that the men had used Pineda-Moreno's Jeep to transport their gardening supplies, the agents decided to keep tabs on them by periodically installing tracking devices to the vehicle. These devices were about the size of a bar of soap, and they were magnetized which made them easy to install. Some of the devices allowed the agents to access the tracking information in real time, while others required that they remove the device and download the information.

On four occasions, they installed trackers while the vehicle was parked in front of Pineda-Moreno's home, and twice they installed them while it was parked in a public parking lot. They also installed a real-time tracker early one morning—at about 4 A.M.—while the Jeep was parked on the unfenced driveway next to Pineda-Moreno's trailer.

Later that day, while monitoring the tracker, they determined that the Jeep had just left the location of a suspected marijuana grow. They then used the tracker to locate the vehicle, at which point they pulled in behind it and made a car stop. There were three men inside; the driver was Pineda-Moreno. After arresting all three on immigration charges, they obtained Pineda-Moreno's consent to search the Jeep and his trailer. The search of the trailer netted two large garbage bags full of marijuana. As a result, Pineda-Moreno was charged with manufacturing and conspiring to manufacture marijuana. When his motion to suppress the evidence was denied, he pled guilty.

Discussion

On appeal to the Ninth Circuit, Pineda-Moreno contended that his motion to suppress should have been granted on grounds that the installation and monitoring of tracking devices is illegal unless authorized by a warrant. The court disagreed.

INSTALLATION: Pineda-Moreno argued that the installation was unlawful for three reasons. First, he claimed that warrants are required to install tracking devices to the undercarriages of motor vehicles. But the court pointed out that it had resolved that issue in 1999 when it ruled that the undercarriage is “part of the exterior” of the vehicle and is therefore “not entitled to a reasonable expectation or privacy.”¹ Consequently, it ruled that the agents did not need a warrant to slip underneath Pineda-Moreno's Jeep and attach the tracking devices.

Second, he claimed that, even if a warrant was not needed to attach the devices to his Jeep, a warrant was required to enter the driveway next to his home. It is settled that a warrant is not required to install a tracking device on a vehicle that was parked on the

¹ Citing *U.S. v. McIver* (9th Cir. 1999) 186 F.3d 1119, 1127.

street, in a public parking garage, or any other public place.² It is also settled that because driveways are only “semi-private areas,” officers do not need a warrant to walk onto a suspect’s private driveway for this purpose if the driveway was readily accessible from the street and the occupant had not taken reasonable steps to prevent entry.³

So, the court examined the physical layout of the driveway and noted that, in addition to the absence of gates and “No Trespassing” signs, there were “no features to prevent someone standing in the street from seeing the entire driveway.” The court added that “[i]f a neighborhood child had walked up Pineda-Moreno’s driveway and crawled under his Jeep to retrieve a lost ball or runaway cat, Pineda-Moreno would have no grounds to complain.” Thus, said the court, “because Pineda-Moreno did not take steps to exclude passersby from his driveway, he cannot claim a reasonable expectation of privacy in it, regardless of whether a portion of it was located within the curtilage of his home.”

Third, Pineda-Moreno argued that, even if he could not ordinarily expect that people would not walk on his driveway, he should be able to expect that they would not do so while he was asleep at around 4 A.M. But the court disagreed, simply saying that the time of day or night that the installation occurred is “immaterial.”

WARRANTLESS MONITORING: Pineda-Moreno also urged the court to rule that officers must obtain a warrant in order to “continuously monitor” the location of vehicles by means of electronic tracking devices. The court refused, ruling instead that a warrant is not required so long as the tracking device only provides officers with information as to the vehicle’s whereabouts in public places. And because the agents only tracked Pineda-Moreno’s Jeep while it was on the street, a warrant was not necessary.

Consequently, the court ruled that the information that led to Pineda-Moreno’s arrest and the search of his trailer was obtained lawfully, and it affirmed his convictions. POV

² See *U.S. v. Pretzinger* (9th Cir. 1976) 542 F.2d 517, 520 [“[N]o warrant is needed to justify installation of an electronic beeper unless fourth amendment rights necessarily would have to be violated in order to initially install the device.”]; *People v. Zichwic* (2001) 94 Cal.App.4th 944, 956 [“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.”].

³ See *U.S. v. McIver* (9th Cir. 1999) 186 F.3d 1119, 1126 [“Assuming *arguendo* that the officers committed a trespass in walking into McIver’s open driveway, he has failed to demonstrate that he had a legitimate expectation of privacy under the Fourth Amendment in this portion of his property.”].