IN THE SUPREME COURT OF OHIO **ORIGINAL**

STATE OF OHIO	: On Appeal from the
	: Court of Appeals,
Plaintiff-Appellee	: Twelfth Appellate District
	: Butler County, Ohio
vs.	:
	: Case Number 11-0033
SUDINIA JOHNSON	:
	: Appellate Case No. CA2009-12-307
Defendant-Appellant	:

MERIT BRIEF OF APPELLANT-SUDINIA JOHNSON

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF FACTS

Under the cover of darkness, Butler County Sheriff Deputy Hackney crawled under Sudinia Johnson's locked van parked on the street in front of the Johnson home across the street. On his back in the grass parkway, Hackney slid under the van and placed a GPS tracking device on Sudinia's van. (Tp. 49) The purpose was to track Sudinia's movements. Hackney had no warrant for the placement of the GPS device nor had he contacted any judge for authorization. Hackney tracked Sudinia's van for six days as it traveled through at least 3 states. Their tracking came to an end at a "traffic stop" conducted at gunpoint by over a dozen sheriff deputies and State Police officers.

Three Months Earlier

Over a number of months Deputy Hackney received information Sudinia might be involved in the trafficking of cocaine. The person told police he believed Johnson would acquire more cocaine in the future. This person did not provide a date or who else was involved. The only other information provided was it might involve Chicago and "...Sudinia Johnson was using a van during this process, I guess to move these kilos." (Tp. 11) Although Hackney described the informant as "reliable" in testimony, he never applied for a warrant, and thus there is no record offering a basis for Hackney's conclusion.

Placement of GPS Device

On October 23, 2008, late at night Hackney and others went to Mr. Johnson's home armed with a description of his van. Without a warrant, Hackney surreptitiously placed a GPS tracking device underneath on the bottom of the van. While Hackney was placing the GPS device on the van, other officers were taking the trash from in front of Johnson's home. While

examining the trash at a later time, police found a receipt for gas purchased a month earlier in the Chicago area. (Tp.11) This receipt is not in evidence.

Butler County Sheriffs monitored Sudinia Johnson and his van with the GPS device. It permitted police officers and even a dispatcher to monitor the movements of Sudinia Johnson by use of a website displaying all the information gathered by the GPS device. Police monitored it on weekdays as well as through the weekend. (Tp. 14) The use of the GPS would permit officers to constantly monitor the van should any officers who might be following it lose sight of it. (Tp. 17) A determination was made to use the device after concluding constant visual surveillance was impractical. (Tp.29)

Police monitored the location, movement and activity of Johnson's van for days by use of a computer. Police are able to obtain a longitude and latitude reading which is accurate to within feet through satellite surveillance.(Tp. 42) Police have the ability to "ping" the location of the GPS tracked vehicle every minute if so desired. The only limitation is the battery life of the equipment being used. The GPS device and software creates a permanent record of the movements. (Tp. 41) The GPS device cannot make the distinction of when the van enters private property. (Tp. 43)

Surveillance

Six days after placing the device on Sudinia's van, police discovered from GPS records the van had traveled from Ohio to Illinois. At the time of this discovery, information accumulated by the GPS device indicated to police the van was located in a shopping center parking lot in suburban Illinois. The records kept by the device to the police the van had been at a private residence before traveling to the shopping center. With the van now in suburban Chicago, police in Butler County sought the assistance of other law enforcement to visually

monitor the car, follow it and report on the occupants. A retired law enforcement officer was engaged to follow the van, its occupants and report information back to Butler County Sheriff Deputies. In addition to requesting surveillance of the van, Butler County Sheriff's related the earlier location of the van to their agent in case visual surveillance was lost. (Tp. 15)

The van was followed from the Shopping Center to a private residence in suburban Chicago. Sudinia Johnson and another man, Otis Kelly, were observed leaving the private residence in the van and in a car respectively. (Tp. 16) The agent followed Johnson and Kelly from the private residence in suburban Chicago into Ohio.

Police first waited at the state border for the van and car to come into Ohio. However, near Harrison, Indiana the van exited the expressway while the car continued into Ohio where it continued to be followed. Police were able to maintain monitoring of the van through use of the GPS device placed on it even though they had lost visual surveillance. (Tp. 18, line 12) With the assistance of the GPS, Butler County Sheriffs were able to recover visual surveillance as the van reentered the expressway.

Arrest

The investigating officers ordered a patrol car to conduct a "probable cause" stop of the van driven by Sudinia Johnson. Following the order, a patrol car pulled in behind Mr. Johnson and in short time conducted a stop of the van. The basis for the stop was reportedly for an "improper change of course." Officers from many cars surrounded the van at gun point to effectuate the "traffic stop" and ordered Sudinia from his van. The van was physically searched by officers. The van was then driven to a new location. Sudinia was handcuffed and placed in the back seat of a police car and eventually moved from the "traffic stop" location to a new location for additional investigation. No contraband was ever located in the van.

Mr. Otis Kelly was driving the car traveling from Illinois to Ohio. He was the subject of a "traffic stop" at another location. Mr. Sudinia Johnson was taken from the place where he "committed the traffic violation" to where Mr. Kelly and police were located. It was then police searched Mr. Kelly's car and found cocaine hidden in a secret location in Mr. Kelly's car.

Procedural

Prosecutors notified the defense it intended to introduce at trial statements made by Johnson to police after being arrested, location and travel information obtained through the use of the GPS device in addition to the drugs and police testimony.

Johnson filed a Motion to Suppress the information obtained from the use of the GPS device and any additional information and evidence which was obtained as a result of police action based on information obtained from the GPS tracking device. Following a hearing, the trial court overruled the motion. Johnson entered a No Contest plea, was sentenced to the Ohio Department of Corrections and appealed to the 12th District Court of Appeals. On November 20, 2010 the appellate court issued a decision and opinion which serve as the basis for this appeal.

PROPOSITION OF LAW: The uninterrupted electronic tracking and recording of a person's movements by use of a GPS tracking device without spatial or temporal limitation is constitutionally impermissible absent a warrant based upon probable cause.

If the Fourth Amendment's proscription against unreasonable searches and seizures is to maintain its protection of "people and not places" and is to remain forceful in a world of advancing technologies, this Court must construe the clandestine installation of tracking devices intended to conduct 24/7 surveillance and digital recording an individual's every movement, without limitation as to duration or location, as a search mandating constitutional protection and judicial oversight.

The Global Positioning System ("GPS") is a network of twenty-four satellites which continually send radio signals transmitting their locations.[1] The receivers triangulate a three-dimensional position that fixes current longitude, latitude, and time.[2] GPS receivers calculate latitude, longitude and altitude by listening to and processing information from the unencrypted transmissions of the four nearest of the current GPS satellites in orbit. The technology is such that once a small handheld device is installed and activated, it is able to track record and report every movement, every location, every few seconds, 24/7.

This locational and directional data can even synchronize with applications such as *Google Earth* to enable the viewing of the target's movements in real-time, on real maps and landscapes. It can also provide movement alerts through email and text messaging. These handheld, mountable GPS devices are also capable of storing the data so that the entire history of recorded movements and locations from the moment of installation is easily downloadable. The accuracy of GPS today is ever increasing, with devices capable of recording and reporting

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[1] Aaron Renenger, *Satellite Tracking and the Right to Privacy*, 53 Hastings L.J. 549, 550 (2002).
[2] David A. Schumann, *Tracking Evidence with GPS* Technology, 43 WIS. LAW. 8, 10 (2004).

pinpoint locations within feet. (Tp. 42) It is critical to note, however, GPS cannot shut itself down when the target crosses from the "public" to "private" areas.[3]

Police can now conceal GPS tracking devices on the exterior or interior of suspects' vehicles and track the movements of the vehicles without people knowing they are being tracked. GPS based surveillance offers police proven, substantial value in investigating the movements of criminal suspects. Police departments using the technology are able to follow the movements of vehicles in real time or retrieve attached GPS units and use the data in the unit's log to determine the identity of locations visited, distance traveled and the totality of all movements. [4]

GPS technology permits law enforcement to monitor more than location and movement. It permits law enforcement to conduct secret uninterrupted tracking of a person's pattern of travel for an unlimited duration, unlimited space, both private and public. Police can compile a digital record of a person's whereabouts, associations, affiliations, practices, preferences ranging from the personal to the political. This technology empowers the government the power to compile complete virtual profiles on anyone it chooses.

Through GPS technology, police easily and inexpensively gather evidence they would have otherwise obtained through physical tails by pursuing officers.[5]

The government claims we are all subject to police monitoring regardless of whether there is probable cause, hunch or reasonable suspicion to believe one is engaged in criminal activity. In the absence of any judicial oversight, there is no legal limitation on such monitoring

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[3] See Renee McDonald Hutchins, *Tied up in Knotts? GPS Technology and the Fourth Amendment,* 55 UCLA Law Review 409 (2007).

[4] *See Police Cozy Up to StarChase: Cannon-Fired GPS Tracking Devices that Stick to Your Car*, GPS Magazine, Oct. 1, 2007, http://www.GPSmagazine.com/2007/10/police_cozy_up_to_starchase_ca.php (discussing police use of real time GPS tracking during hot pursuits).

[5] John S. Ganz, *It's Already Public: Why Federal Officers Should Not Need Warrants To Use GPS Vehicle Tracking Devices,* 95 J. CRIM L AND CRIMINOLOGY 1325, 1357 (2005).

for malicious or self-serving purposes by a rogue officer. Unless a person is charged with a crime, she might never learn of the surveillance or whether illegal use was made of it. This Court must decide whether such limitless discretion is something our state and federal constitutions have surrendered to the police as technology advances.

GPS technology is an effective law enforcement tool that should be available in appropriate circumstances. It is, however, qualitatively, quantitatively, and durationally different from mere augmentation of visual surveillance or the "tailing" of a suspect. Its unfettered use by law enforcement absent judicial approval and constitutional restraint, poses a significant threat to what has been described as an individual's "right to be let alone" from government intrusion "The most comprehensive of rights and the right most valued by civilized men.[6]

GPS devices are being secretly installed and used by law enforcement throughout the State of Ohio and elsewhere. In the era leading up to the decision in *Katz v United States*[7] it might have said "if you do not want your conversations overheard, don't use a public phone booth." But with the advances in technology, people cannot function in society without safeguards protecting their privacy. In *Katz*, the Court found Mr. Katz had a reasonable expectation of privacy in the words he spoke in the phone booth despite the existence of technology used by law enforcement to overhear without judicial authorization.[8] With ever greater and inexpensive technology available, people have become increasingly powerless to protect and preserve their right to privacy. As it is with law enforcement's unwarranted and unsupervised use of GPS devices, it is impossible to require a person who wishes to avoid monitoring to forego the use of a car.

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[6] *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J. dissenting)
[7] *Katz v United States*, 389 U.S. 347 (1967)
[8] *Id* at 352 (1967).

In *Katz*, FBI agents attached an electronic listening and recording device to the outside of a phone booth.[9] In deciding *Katz,* the United States Supreme Court discussed the nature of the "right to privacy".[10] The Court's ruling adjusted the previous definition of what is an unreasonable search in light of changing technology. It made clear the Fourth Amendment protect "people not places." The Supreme Court held the government's activity of electronically recording words spoken into a telephone receiver in public telephone booth, violated the privacy upon which the defendant had justifiably relied upon while using the telephone booth, and therefore constituted a "search" under the Fourth Amendment.[11] The Court further stated the fact the electronic device did not penetrate the wall of the phone booth had no constitutional significance.[12] *Katz* extended Fourth Amendment protection to all areas where a person has a "reasonable expectation of privacy".[13]

Although technological advances have all but eliminated the use of phone booths, the legal test for a reasonable expectation of privacy that emerged from Justice Harlan's concurrence in *Katz* remains good law. When examining whether a method of surveillance qualifies as a Fourth Amendment "search," a court must ask "does an individual engaged in the activity at issue, under the circumstances in which he is placed under surveillance, have a reasonable expectation of privacy which society is "prepared to recognize as reasonable.'"[14]

The government will argue the Katz test does not apply in this case, that this court need not consider whether Johnson's expectation of privacy was reasonable. That these facts are covered by *United States v. Knotts*, where the United States Supreme Court held the use of a

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[9] *Id* at 348.
[10] *Id* at 347.
[11] *Id* at 347.
[12] *Id.*
[13] *Id.*
[14] *Id.*

beeper to assist in tracking a suspect was not a search.[15] Respectfully, *Knotts* does not govern this case. The police action in this case is a search. The use of the GPS device without a warrant violates Johnson's reasonable expectation of privacy which society recognizes as reasonable.

This Court has a history of responding to questions of advancing technology and the government's ability to gather information or evidence without a warrant. Recently, in *State v. Smith* this Court issued a ruling on whether police may incident to an arrest, search the contents of a cell phone.[16] Faced with what was labeled a "novel" question, the analysis depended on how a cell phone was characterized, noting the reasonableness of a search is always fact driven.[17] "Given their unique nature as multifunctional tools, cell phones defy easy categorization."[18] In finding a modern cell phone is more than just a phone, it could not be labeled a "closed container" and therefore any search would need to be authorized by a search warrant.[19]

Recognizing the rapid advancement in cell phone technology, this Court acknowledges there are legitimate concerns regarding the effect of permitting warrantless searches of cell phones which now contain "tremendous amounts of private data."[20] In explaining its reasoning, this Court stated; "[b]ecause a person has a high expectation of privacy in a cell phone's contents, police must then obtain a warrant before intruding into the phones contents."[21] This is in line with its earlier statements that "Modern understandings of the Fourth Amendment

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[15] *United States v. Knotts*, 460 U.S. 276, 103 S.Ct. 1081 (1983)
[16] *State v. Smith*, 124 Ohio St.3d 163, 2009 Ohio 6426, 920 N.E.2d 949
[17] *Id* at 165
[18] *Id* at 168
[19] *id*
[20] *Id at 163*
[21] *id*

recognize that it serves to protect an individual's subjective expectation of privacy if that expectation is reasonable and justifiable." [22]

The Installation of a GPS tracking device and subsequent tracking and recording of its complete and uninterrupted pattern of movements is a search

The application of the Fourth Amendment depends on whether the person invoking its protection can claim a justifiable and reasonable or a legitimate expectation of privacy that has been invaded by Government action.[23] A "reasonable expectation of privacy" is an expectation of privacy that is "legitimate" or that "society is prepared to recognize as reasonable."[24] The surreptitious installation and unlimited 24/7 monitoring and recording of a driver' movement conducted from a remote location infringes on an expectation of privacy society is certainly prepared to recognize as reasonable. Accordingly, its installation and use by law enforcement is a search under the Constitution.

The United States Court of Appeals for the District of Columbia ruled last year the warrantless use of a GPS device violated the defendant's rights under the Fourth Amendment in *United States v. Maynard.*[25] In finding *Knotts* did not control its decision, the Court of Appeals found prolonged, continuance surveillance by use of a GPS device was a search invoking the warrant requirement. In doing so, it applied the test announced in *Katz* and found there exists a reasonable expectation of privacy which society had embraced which was violated by use of the GPS device. Although the court found each trip in isolation was exposed to the public, the

[22] *Id* citing to *State v. Buzzard*, 112 Ohio St.3d 451, 2007 Ohio 373, 860 N.E.2d 1006 and *Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421 (1979)
[23] *Knotts,* supra.
[24] *United States v Jacobsen*, 466 U.S. 109, 122-23 (1984)
[25] *United States v. Maynard*, 615 F.3d 544 (D.C. Cir. 2010) Cert Petition Filed 4-15-11 (No. 10-1259)

entirety of the movements was not. "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.'"[26] The court found because GPS surveillance reveals a more detailed picture of one's life than any one person would be expected to have, an expectation of privacy in the aggregate of one's public movements is reasonable.

The court in *Maynard* found people have a reasonable expectation of privacy in the totality of their movements over a period of time.[27] The court found there was a clear distinction with the holding in *Knotts* and *Karo* on the basis "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."[28]

> "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."[29]

The court likened the aggregate of the target's movements to a mosaic, where the whole is more than the sum of its parts. This analysis was imported from national security cases in which courts grappled with determining what kinds of security-related documents are subject to Freedom of Information Act ("FOIA") requests. In the FOIA context, the mosaic theory addresses the fact that "disparate items of information, though individually of limited value or no utility to their possessor, can take on added significance when combined with other items of

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[26] *Id* at 563, quoting *Nader v General Motors*, 255 N.E2d 765 (N.Y. 1970)
[27] At 556
[28] At 558
[29] At 560

information."[30] The danger is that a potential adversary could use FOIA to gather individual items of information and piece them together to discover and exploit vulnerabilities.[31] In other words, the difference between the whole and its individual components "is not one of degree but of kind."[32]

Although the defendant in *Maynard* did not have an expectation of privacy in any one of his individual journeys, the court found he did have an expectation of privacy in the mosaic created over the course of the month-long surveillance.[33] The court explained how a privacy expectation springs from the picture of activities:

> "Repeated visits to a church, a gym, a bar, or a bookie tell a story not told by any single visit, as does one's not visiting any of these places over the course of a month. The sequence of a person's movements can reveal still more; a single trip to a gynecologist's office tells little about a woman, but that trip followed a few weeks later by a visit to a baby supply store tells a different story. A person who knows all of another's travels can deduce whether he is a weekly churchgoer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups - and not just one such fact about a person, but all such facts. "[34]

In *Knotts*, the Supreme Court held the secret monitoring of contraband ingredients inside a container in an individual's car through the use of an implanted beeper tracking device did not constitute a search under the Fourth Amendment, unless and until the monitoring crossed the threshold of the home.[35] Noting the diminished expectation of privacy in a car and reasoning

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[30] David E. Pozen, Note, The Mosaic Theory, National Security, and the Freedom of Information Act, 115 Yale L.J. 628, 630 (2005)
[31] See id. (citing the government's use of mosaic theory to foreclose access to documents requested by the public).
[32] *Maynard* at 562
[33] Id at 563
[34] Id at 562
[35] *See United States v. Knotts*, 460 U.S. 276 (1983)(beeper tracking in a container on public roads not a search); *see also United States v Karo*, 46 U.S. 705 (1984)(beeper tracking in a container inside the home is a search).

there is no expectation in a car's movement on public streets, the Supreme Court held the monitoring of the beeper only on the public road in neither case was a search requiring constitutional protection.

Acknowledging *Knotts*, the *Maynard* court found the expectation of privacy against prolonged and comprehensive surveillances is legitimate under *Katz*.[36] The privacy interest is legitimate because of the additional information revealed through the use of prolonged surveillance that is not available to the public. "The intrusion such monitoring makes into the subject's private affairs stands in stark contrast to the relatively brief intrusion at issue in *Knotts*."[37]

In *United States v. Karo*, the Supreme Court drew a line when the beeper container crossed the public/private threshold and was monitored inside the home, notwithstanding the fact had the agents been continuously watching, presumably they could have seen the container with the beeper enter and exit private property. The question in *Karo* was whether "the monitoring of a beeper in a private residence, a location not open to visual surveillance, violates the Fourth Amendment rights of those who have a justifiable interest in the privacy of the residence."[38] It was decided such surveillance without a warrant violates the Fourth Amendment. The Court stated:

> The beeper tells the agent that a particular article is actually located at a particular time in the private residence and is in the possession of the person or persons whose residence is being watched. Even if visual surveillance has revealed that the article to which the beeper is attached has entered the house the later monitoring not only verifies the officers' observations but also establishes that the article remains on the premises...The monitoring of an electronic device such as a beeper is, of course, less intrusive than a full scale search, but it does reveal a critical fact about the interior of the premises that the

[36] At 555
[37] At 563
[38] *Karo* at 714

Government is extremely interested in knowing and the it could not have otherwise obtained without a warrant.[39]

Unlike the primitive device discussed in *Karo,* GPS devices allow police to conduct surveillance beyond a targeted investigation into a specific crime. The device permits police hoping to piece together evidence of illegal behavior by undertaking prolonged surveillance of a particular individual. This could include evidence of illegal conduct that was not suspected prior to the surveillance. The practical result of *Karo* is the Court will permit the warrantless use of primitive electronic devices so long as they are not intrusive, used to obtain information about a private area or information about the interior of a private area.[40]

Knotts held only "a person traveling in an automobile on a public thoroughfare has no reasonable expectation of privacy in those movements from one place to another."[41] *Knotts* was a single isolated trip with police in visual surveillance. It did not hold a person has no reasonable expectation of privacy in his movements for extended periods of time everywhere he decides to travel and with everyone he comes into contact with until the government decides to cease accumulating such information. *Knotts* in fact refused to decide that issue as recognized by the Fifth Circuit Court of Appeals; "As did the Supreme Court in *Knotts*, we pretermit any ruling on worst-case situations that my involve persistent, extended, or unlimited violations of a warrant's terms."[42]

Several courts that have relied on both *Karo* and *Knotts* to sanction wholesale, unsupervised use of the GPS devices by law enforcement, have read these cases far too narrowly

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[39] *Id at 715*
[40] *Id at* 716. See also *Kyllo* at 40 (law enforcement could not use thermal imaging to obtain information about the inside of residences without a warrant despite never entering the inside of the residence)
[41] *Id* at 281
[42] *United States v. Butts*, 729 F.2d 1514, 1518 n.4 (1984)

and applied them far too expansively. These courts fail to recognize the constitutionality of the "dragnet-type law enforcement practices" now capable of being employed by this newer technology was an unanswered question left wide open in the Supreme Court's decision in *Knotts*. (announcing if the "24 hours surveillance of any citizen of this country will be possible, without judicial knowledge or supervision ..dragnet type law enforcement practices as respondent envisions should eventually occur, there will be time enough then to determine whether different constitutional principles may be applicable.") That time has arrived. In addressing the question this court should not ignore the fundamental precept what an individual "seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected [.]"[43]

While there may be a reduced expectation of privacy in a car for a number of reasons no court has held here is none.[44] While a driver on a public road may expect to be seen or pulled over, that does not equate to a reasonable expectation she will be subject to the trespass of a secret installation to permit the monitoring of the long term pattern of her every movement, association and activity. In fact the Court in *Katz* declared; "what [s]he seeks to preserve as private, even in an area accessible to the public may be constitutionally protected."[45]

The attempts to uphold the unregulated use of GPS device by distinguishing between public road and private property is constitutionally flawed. The device does not determine or much less anticipate when and where it will cross from public to private property. It continues to track, record and download regardless of its global position. The US government concedes this

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[43] *Katz,* at 351-353. See *Bond v. United States*, 529 U.S. 334 (2000)(knowing exposure of luggage to public did not eliminate privacy right or constitute knowing exposure to all law enforcement tactics.)

[44] See *Cardwell v Lewis*, 417 U.S. 583, 590 (1974).

[45] *Katz at 351*

to be true even with simple beepers in *Karo*. The government argued, unsuccessfully, a warrant for tracking beepers into a home was too much of a hardship for law enforcement and would require warrants in every case since trackers could not know in advance where the device might travel.[46] The Supreme Court rejected the argument holding the use of the device was a search and required a warrant.

The public/private road distinction ignores the development of Fourth Amendment jurisprudence regarding technology away from neat "locational" boundaries.[47]

Finally, while trespass alone may not be the *sine qua non* of whether a Fourth Amendment violation has occurred, the secret attachment of a device to permit long-term tracking goes well beyond the confines of trespass and real property law.[48] This technology and its exploitation is trespass plus. The degree of this intrusion is not the same as keeping watch visually of a car on a public street.

Many courts have questioned the constitutionality of government access to cell phone records to be used to approximate location.[49] The tracking here is more offensive to the 4th Amendment. The subject of the surveillance in no way voluntarily communicates the data this GPS tracker generates to a 3rd party, leaving the government no argument the tracking is constitutional under *United States v Miller*.[50] In cases that involve tracking a cell phone, the government neither trespasses on private property nor installs any device. Here, the government

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[46] See *Karo* at 717-8.
[47] See e.g. *Katz* at 352 n.9 ("It's true this Court has occasionally described its conclusions in terms of "constitutionally protected areas, but we have never suggested that this concept can serve as a talismanic solution to every 4th Amendment problem.")
[48] compare *Katz* (no trespass but finding a 4th Amendment violation) with *Oliver v United States*, 389 U.S. 347 (1984) (trespass, but no violation),
[49] See, e.g. *In the Matter of the Application*, 534 F.Supp. 585, 599-600 (W.D. Pa 2008) aff'd 2008 WL 4191511.
[50] 425 U.S. 435 (1976)

affirmatively trespassed to secretly attach a surveillance device to private property in order to monitor Johnson's movements for six days and create records of his movements which will last much longer. The tracking here is more accurate, more persistent and more clandestine. This combination of trespass, tracking and absolute secrecy is far more invasive, and more certainly unconstitutional.

The secret installation of a monitoring device into a person's private vehicle that affords law enforcement spatially and temporarily unlimited surveillance capabilities should be deemed a trespass plus and accordingly constitutes an unreasonable search absent the issuance of a warrant by a neutral magistrate.

In *Katz*, holding a person has a reasonable expectation of privacy in his conversation on a public telephone, the Court pointed out "to read the constitution more narrowly is to ignore the vital that the public telephone has come to play in private communications."[51] To read the Constitution more narrowly in the context of surreptitious GPS monitoring is to ignore the vital role that the automobile has come to play as an integral necessity of daily life as the sole means by which many individuals can participate in social, personal, political, religious and private affiliations. The secret conversion by law enforcement of that necessity into a transmitter of an individual's pattern of movements, without demonstrating probable cause and absent judicial oversight, ignores the vital role of the car today; much like the public telephone had come to play in the *Katz* era.

It is important to note that in neither *Karo* nor *Knotts* was the installation of the device effectively challenged. In *Knotts*, the defendant lacked standing to raise the issue and in *Karo*,

[51] *Katz* at 352

installation was conducted with the consent of the owner at the time of installation.[52] Unlike here, in *Karo* and *Knotts*, the tracking was not of a car but of a container.

The approach in *Katz* remains viable and preferable because it was based in part on recognition that technological advances in surveillance techniques made possible government interference with privacy without physical invasions.[53] In *Katz* the Court did not examine whether the government has violated the person's property interest in the phone booth, but whether it have violated a person's legitimate expectation of privacy in the phone booth.

A warrant based upon probable cause should be required before implantation of a GPS monitoring device in an individual's car by law enforcement

The holding in *Knotts* is not adverse to Johnson's position in this case. In *Knotts*, the surveillance technology was utilized for the purpose of tracking the progresses of a car over predominately public roads in a single trip with these movements were exposed to "anyone who wanted to look."[54] This case provides a clear distinction from *Knotts.*

The facts and technology in *Knotts* dictated it's holding applying the reasoning in *Katz.* "What a person knowingly exposes to the public..is not subject of Fourth Amendment protection."[55] The government argues this reasoning should apply to Johnson under the theory Johnson's movements over the course of six days were exposed to the public because the police

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[52] See also Advisory Committee Note to Fed R. Crim. P. 41(d)(3)(A)(noting "The Supreme Court has acknowledged the standard for installation of a tracking device is unresolved, and has reserved ruling on the issue." Citing *Karo*, at 718 n.5)

[53] See *Olmstead v. United States*, 277 U.S. 438, 474 (1927)(Brandeis dissenting)("Subtlerand more far-reaching means of invading privacy have become available to the government. Discovery invention have made it possible for the government far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet")

[54] *Id* at a 281

[55] 389 U.S. 351, 88 S.Ct. 507

could have followed him everywhere he went over public roads. This is not the correct statement of the question.

When analyzing whether something is "exposed" to the public as the Court in *Katz* used that term the question is what a reasonable person expects another might actually do not what he could physically and legally do. [56] Justice O'Connor noted in *Riley;*

> Ciraolo's expectation of privacy was unreasonable not because the airplane was operating where it had a 'right to be' but because public air travel at 1,000 feet is a sufficiently routine part of modern life that it is unreasonable for persons on the ground to expect that their curtilege will not be observed from the air at that altitude.
> ...
> If the public rarely, if ever, travels overhead at such altitudes, the observation cannot be said to be from a vantage point generally used by the public and Riley cannot be said to have "knowingly exposed" his greenhouse to public view."[57]

The Supreme Court has re-affirmed this position when analyzing police squeezing luggage in an open overhead storage area of a bus to determine if the bag contained drugs.[58] In considering the placement of the GPS device on Johnson's car and his expectation of privacy in his car visible to the public, the facts closely align with those in *Bond.* Johnson parked his locked van in front of his home.[59] He did expose his car to the public similar to Bond placing his luggage in the open overhead rack of a bus, but Johnson did not forfeit his expectation of privacy

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[56] See *California v. Ciracola*, 476 U.S. 207, 213, 214, 106 S.Ct. 1809 (1986) (defendant did not have a reasonable expectation of privacy in location that "any member of the public flying in this airspace who glanced down could have seen"); *California v. Greenwood*, 486 U.S. 35, 40, 108 S.Ct. 1625 (1988)("it is common knowledge plastic garbage bags left on or at the side f a public street are readily accessible to animals, children, scavengers, snoops and other members of the public"); *Florida v. Riley*, 488 U.S. 445, 450, 109 S.Ct. 693 (1989)(helicopter and fixed wing flights were commonplace in this country and there was no indication such flights were unheard of in defendant's county).

[57] 486 at 453, 109 S.Ct. 693

[58] *Bond v. United States*, 529 U.S. 334, 120 S.Ct. 1462 (2000)

[59] *See United States v. Gino-Perez,* 214 F.Supp.2d 205, 225 (D.P.R. 2002) remanded on other grounds 90 F.3d (1st Cir. 2004)(presence of a password to lock a phone indication of a subjective expectation of privacy)

by parking it on a public street. The Court in *Greenwood* noted the act of placing the garbage on the curb demonstrated a forfeiture of any expectation of privacy defeating his objection to later police action.[60] No one can claim Johnson abandoned his expectation of privacy in later travel or movements. The Court in *Bond* stated; "A bus passenger clearly expects that his bag may be handled. He does not expect that other passengers or bus employees will, as a matter of course, feel the bag in an exploratory manner. But this is exactly what the agent here did. We therefore hold that the agent's physical manipulation of petitioner's bag violated the Fourth Amendment."[61]

The Supreme Court looked at what a reasonable bus passenger expects others he may encounter might do. The Court did not look at what others could have done. The government's position that police could have followed Johnson for six days and nights across at least three states is not what the United States Supreme Court has dictated should be the analysis. Instead, it is whether Johnson or any member of the public would reasonably expect police to conduct constant electronic surveillance by use of a GPS device for days and days when driving a car in public? This same focus is reiterated in *Kyllo v. United States* where the use of technology (thermal imaging) defeated the homeowner's reasonable expectation of privacy.[62]

Danny Kyllo was suspected of growing marijuana in his home by federal agents. Knowing growing indoors would involve heat lamps, the agent scanned the exterior with a thermal imaging device. It revealed information about the heat emitting from different areas of the Kyllo home. In contrast to permitting the use of sense augmentation technology in *Knotts*, the Supreme Court restricted the warrantless use of extrasensory aids. The decision found it was

[60] *California v. Greenwood*, 486 U.S. 35, 40, 108 S.Ct. 1625 (1988)
[61] *Id* at 338-39, 120 S.Ct. 1462
[62] *Kyllo v. United States,* 533 U.S. 27 (2001)

extrasensory because the device revealed information that was "otherwise imperceptible" to the public.[63] For the majority in *Kyllo*, the classification of "extrasensory" rather than "sense augmentation" deemed a review of the information potentially revealed unnecessary. However, the Supreme Court noted the simple classification of a surveillance device does not end the constitutional analysis. The Court noted the quantity of information the technology can disclose is a very important aspect in determining constitutional limitations on its use.[64] As a result, the constitutional inquiry does not end with a determination on whether the device is classified as "extrasensory" or "sense augmentation."

There is a clear distinction in the technology of GPS tracking and the technology used in *Knotts*. *Knotts* involved the use of a very primitive tracking device. The device was used by police to ascertain the destination of a container. In this application, during a single trip on public roads from where the device was place to the destination the beeper was correctly described by the Court as having functioned merely as an enhancing adjunct to the surveilling officers' senses. The officer actively followed the vehicle and used the beeper as a means of maintaining actual visual contact. This technology was analogized by the Court to a searchlight, a marine glass, or field glasses.[65]

This case is not one with a mere beeper to augment the surveillance during a single trip. GPS is remarkably different. Its powerful technology and inexpensive cost provides virtual and precise tracking capability. The addition of new GPS satellites, and new technological advances allow any person or object may be tracked with awe inspiring accuracy to any interior or exterior

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[63] At 38
[64] See United *State v. Place*, 462 U.S. 696, 707 (1983)(where in the use of a detector dog the Court examined the information revealed and the quantity of information learned)
[65] *Id* at 263 citing *United States v Lee*, 274 U.S. 559 (1927)

location, at any time regardless of the time of day and atmospheric conditions. Continuous, relentless tracking of anyone or anything is no longer theoretical, it is reality. It is more practicable than the surveillance used in *Knotts*. GPS is not a mere enhancement of human senses, it facilitates a new perception of the world in which any object may be followed and exhaustively recorded over an unlimited period of time. Consider what information may be learned by the planting of a single device. A person's total movement in private and public places can be recorded over unlimited periods of time. Instantaneous access of a person's whereabouts is available. Trips to a minister, a psychiatrist, abortion clinic, union meeting, home of a police critic, divorce attorney office, gay bar, and AIDS treatment clinic and on and on. A highly detailed profile can be assembled from a laptop computer not based on where we go but by inferences of our associations and of a pattern of pursuits. The unsupervised use of multiple GPS devices will provide information not only on where people are traveling, but who they are meeting, when they are meeting.

The unsupervised use of this technology is not compatible with any notion of personal privacy or ordered liberty. This is especially true when placed in the hands of agents of the state "engaged in the often competitive enterprise of ferreting out crime." [66]

The science discussed in *Knotts* was quite simple. It did not provide much more than could be observed by the eye. The Court correctly noted the technology "in this case" raised no Fourth Amendment issue.[67] It very boldly reserved for a future time the question of whether a 4th Amendment issue would be posed if "twenty four hour surveillance of any citizen in this country [were] possible, without judicial knowledge or supervision.[68] Here the *Knotts'* Court is stopping

[66] *Johnson v. United States*, 333 U.S.10, 13 (1948)
[67] *Knotts* at 282
[68] *Id* at 283

short of approving the type of surveillance conducted with a GPS device; "If such dragnet type law enforcement practices as respondent envisions should eventually occur, there will be time enough to determine whether different constitutional principles are applicable"[69] Justice Stevens joined in concurring the decision in *Knotts* and noted there is a limitation to the use of technology by police; "Although the augmentation in this case was unobjectionable, it by no means follows that the use of electronic detection techniques does not implicate especially sensitive concerns."[70] The Court in *Knotts* is clearly stating its preference for limitations being put in place as technology advances.

It is well established that travel in a car provides a diminished expectation of privacy. It is not so diminished that it should be deemed consent to unsupervised disclosure to police of all that GPS devices will reveal. The courts have held a ride in a car does not deprive the occupants of any reasonable expectation of privacy.[71] Most recently in *Arizona v. Gant,* the Court reaffirmed this view when it stated; "the state seriously undervalues the privacy interests at stake. Although we have recognized that a motorist's privacy interest in his vehicle is less substantial than in his home..the former interest is nevertheless important and deserving of constitutional protection." [72]

The reduced expectation of privacy retained in Johnson's car travel is still adequate to support his right to be free of unreasonable searches and seizures was violated. The invasion of privacy resulting from the prolonged use of the GPS device is inconsistent with the reasonable expectation of privacy.

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[69] *id*
[70] Id at 288
[71] See *Adams v. Williams*, 407 U.S. 143, 146, (1972).
[72] *Arizona v. Gant,* 556 U.S. ___, 129 S.Ct. 1710 (2009) at *8

There may be some exigent circumstances which will permit law enforcement to ignore the requirement for a warrant issued with probable cause when using a GPS device for a criminal investigation. No emergency prompted the police action in this case. "Over and again [the Supreme] Court has emphasized that the mandate of the [fourth] Amendment requires adherence to judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions."[73] The use of the GPS device in this case does not fall under any of the few well delineated exceptions.

State Constitutional Protection

Johnson urges this Court to conclude the Ohio Constitution provides protection to residents of Ohio against the prolonged uninterrupted monitoring of all activity by means of electronic surveillance unless authorized by a warrant or meeting one of the limited exceptions to the warrant requirement. This protection is found in Article 14 Section I of the Ohio Constitution. While this Court has held this section affords the same protection as the 4th Amendment in felony cases,[74] it has a history of recognizing areas of additional protection.[75] This is consistent with the language in *Robinette*; "In general, when provisions of the Ohio Constitution and United States Constitution are essentially identical, we should harmonize our interpretations of the provisions, unless there are persuasive reasons to do otherwise."[76] The technology involved, the nature of its use and the vast amounts of information obtainable through its use present persuasive reasons for affording residents of Ohio the protections of requiring judicial oversight before a GPS tracking device can be utilized by police.

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[73] *Katz* at 357
[74] *State v. Robinette,* 80 Ohio St.3d 234, 238-239, 1997 Ohio 343, 685 N.E.2d 762
[75] See *State v. Brown*, 99 Ohio St. 3d 323, 2003 Ohio 3931, 792 N.E.2d 175
[76] *Robionette* at 329

The Ohio Constitution "is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups."[77]

The United States Supreme Court has repeatedly reminded state courts they are free to construe their state constitutions as providing different or even broader individual liberties than those provided under the federal Constitution.[78] This is exactly the conclusions reached by a significant number of state courts.

Because the nature of the surveillance is so different than what was used in *Knotts,* a growing number of states are relying upon state constitutional protections when faced with the use of GPS tracking devices. The Court in *Knotts* noted there was no search when officers could lawfully observe the suspect on a public thoroughfare. It likened the use of a primitive beeper to the use of a flashlight or binoculars which only enhances what one can observe through simple surveillance. The Washington Supreme Court was unwilling to accept this analysis when confronted with GPS technology:

> "When a GPS device is attached to a vehicle, law enforcement does not in fact follow the vehicle. Thus, unlike binoculars or a flashlight, the GPS device does not merely augment the officers' senses, but rather provides a technological substitute for traditional visual

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[77] *Arnold v. Cleveland,* 67 Ohio St. 3d 35, 616 N.E.2d 163 (1993)

[78] See, *e.g., City of Mesquite v. Aladdin's Castle, Inc.* (1982), 455 U.S. 283, 293, 102 S.Ct. 1070, 1077, 71 L.Ed.2d 152, 162 ("* * * [A] state court is entirely free to read its own State's constitution more broadly than this Court reads the Federal Constitution, or to reject the mode of analysis used by this Court in favor of a different analysis of its corresponding constitutional guarantee."); and *California v. Greenwood* (1988), 486 U.S. 35, 43, 108 S.Ct. 1625, 1630, 100 L.Ed.2d 30, 39 ("Individual States may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution.").

> tracking..We perceive a difference between the kind of uninterrupted 24 hour surveillance possible through the use of a GPS device, which does not depend on whether an officer could in fact have maintained visual contact over the tracking period, and an officers' use of binoculars or a flashlight to augment his or her senses."[79]

When it reached this decision, the Washington Supreme Court was deeply troubled by the "particularly intrusive" nature of the devices and it making it possible for the government to "acquire an enormous amount of personal information about the citizen" [80]

The New York Court of Appeals reached similar conclusion when distinguishing the technology in *Knotts* versus the GPS device at issue in *People v. Weaver.*[81] The court noted the sophisticated nature of the technology and its virtually unlimited and precise tracking capability.[82] The court found GPS devices permit law enforcement to obtain information beyond what visual surveillance can obtain and thus a warrant is required. The court stated:

> "It is, of course, true, that the expectation of privacy has been deemed diminished in a car upon a public thoroughfare. But it is one thing to suppose that the diminished expectation affords a police officer certain well circumscribed options for which a warrant is not required and quite another to suppose that when we drive or ride in a vehicle our expectation of privacy are so utterly diminished that we effectively consent to the unsupervised disclosure to law enforcement authorities of all that GPS technology can and will reveal."[83]

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[79] *Washington v Jackson*, 150 Wash 2d 251, 76 P.2d 217 (2003); see also *Oregon v. Campbell* 306 Or 157, 759 P.2d 1040 (1988)
[80] *Id* at 224
[81] *People v. Weaver,* 12 N.Y.3d 433; 909 N.E.2d 1195 (May 12 2009)
[82] *Id* at 1199
[83] *Id* at 1200

The court held the nature of the surveillance was unlike that used in *Knotts* in type and scope and GPS devices infringed on both a subjective and an objective expectation of privacy. Id. The surveillance was prohibited unless authorized by a warrant. [84]

Most recently in Delaware, a superior court found it did not have to consider whether *Knotts* controlled its analysis of warrantless uninterrupted GSP tracking. Instead it found the state constitution of Delaware protected its citizens' right to privacy at a level where the constant 24/7 surveillance of residents was unreasonable unless supported by a warrant.[85]

Technological advances have provided useful tools for law enforcement to aid in the detection of criminal activity and many more will be available in the future. Without judicial oversight, the use of these extremely powerful devices presents an unacceptable risk for abuse. Absent exigent circumstances, the installation of a GPS device to monitor an individual's whereabouts requires a warrant supported by probable cause.

Because not every search and seizure of every individual results in the offering of evidence or a criminal prosecution, the full extent and use of this unsupervised practice is unknowable. The vast amount of sensitive information secretly being tracked and stored demands the oversight of a detached and neutral magistrate in advance, through a warrant supported by probable cause. Any rule adopted by this Court must "take into account of more sophisticated systems that are already in use or development.[86]

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[84] *Id* at 1201

[85] *State v. Holden*, 2010 Del. Super. Lexis 493 (Dec. 14, 2010); see also *Commonwealth v. Connelly*, 454 Mass. 808, 913 N.E.2d 356 (2009) finding the use of a GPS device on a van constituted a "seizure" under its constitution and need not reach the question of a "search" while requiring police obtain a warrant before using such surveillance equipment.

[86] *Kyllo* v United States, 533 U.S. 27, 36 (2001)

Requiring a warrant based upon probable cause is a fair balance of law enforcement interest and individual privacy rights

Application of technological advancements can, of course, serve as a useful tool in law enforcement efforts to combat crime and law enforcement should not be precluded from utilizing advancements in technology to that end. GPS tracking is an inexpensive and effective investigative tool. It is certainly cheaper than "another 10 million police officers to tail every vehicle" hypothesized by the court in *Garcia.*[87] Increased manpower costs coupled with the low cost of tracking devices have led to rapid growth in their use to track people's movements. Accordingly, some pre-determined judicial constraints must be implemented to balance law enforcement needs with the liberty and privacy interests of the individual. That balance is best met through the warrant application process upon a showing of probable cause.

A presumption has been created that a warrant is required unless not feasible for a search to be reasonable.[88] To require police "whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure" serve to ensure a determination of the reasonableness of the search result from a neutral balancing of the need for the intrusion and the severity of the invasion on an individual's legitimate expectation of privacy.[89] The balancing test in GPS cases should be done in advance of any installation and monitoring.

In *Karo*, the government argued it would be an undue burden to do so in beeper cases. The Supreme Court rejected this argument. It is precisely because law enforcement cannot know if the monitoring will occur only on public roads, or traverse into a driveway, a private garage, across state lines or onto private land, that pre-authorization through the warrant application is necessary.

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[87] See *United States v. Garcia*, 474 F.3d at 998

[88] See e.g. *United States v Leon*, 468 U.S. 897 (1984); *Mincey v. Arizona*, 437 U.S. 385 (1978) and *Henry v United States*, 361 U.S. 98 (1958)

[89] See *Terry v Ohio* 392 U.S. 1 (1968).

Law enforcement can describe with particularity why the installation of a GPS is necessary to obtain evidence of a crime, where the device will be installed and the duration of the tracking. It is significant that a warrant was secured in *Karo* with the beeper itself, "seemingly on probable cause."[90]

Seeking judicial approval before installing a tracking device cannot be described as a hardship resulting in significant delay of the investigation. This is especially true given the fact the information the device collects is only useful over a period of time. In this case the GPS device was in place for 6 days. Given the minimal time required for the actual surreptitious installation, which is a prerequisite for the effectiveness as a crime fighting tool, a brief lapse of time to secure a warrant would not impede the usefulness of the device. Practically speaking a warrant may be secured in a manner of hours.

If an investigation requires immediate police action, there are emergency/exigency exceptions enough to the warrant requirement, well settled within the 4th Amendment to meet those needs. [91]

Law enforcement is hard pressed to suggest judicial pre-authorization through the warrant application process is an undue burden in cases involving GPS. In Ohio, federal agents are required by the Department of Justice to seek warrants authorizing installation.

"Bypassing a neutral predetermination of the scope of a search leaves individuals security from 4th Amendment violations 'only in the discretion of the police.'"[92] Given the vast amount of personal date that can be secretly tracked, recorded and stored, the relative ease with which a warrant can be secured, the practical utility of the tool over an extended period of time, and the

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[90] *Karo* at 718
[91] See e.g. *Warden v Hayden*, 387 U.S. 294 (1967).
[92] *Katz* at 358 citing *Beck v. Ohio*, 379 U.S. 89 (1964)

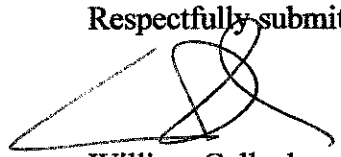
well-settled exceptions for exigent circumstances, the analysis tips the balance in favor of a pre-authorized warrant requirement. An authorized warrant set reasonable limits on the duration of the tracking, where and when it can be installed, where the device can be tracked, and ensures in advance there is probable cause to believe the target has committed or is committing a crime.

CONCLUSION

For all of the reasons stated above, Sudinia Johnson requests this Court the uninterrupted electronic tracking of a person by use of a GPS device requires a warrant supported by probable cause.

Therefore, Mr. Sudinia Johnson asks this Court to reverse the judgment of the 12th District Court of Appeals and remand this matter for trial.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify I served a copy of Appellant's merit brief upon Michael Oester, Assistant Prosecuting Attorney by US mail on this 2 day of June 2011.

William Gallagher

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, Appellee	:	Case No. CA2009-12-307 Trial No. CR2008-11-1919
vs.	:	
SUDINIA JOHNSON, Appellant	:	11-0033

APPEAL FROM THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT

NOTICE OF APPEAL

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A-1

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-12-307
	:	JUDGMENT ENTRY
- vs -	:	
SUDINIA JOHNSON,	:	
Defendant-Appellant.	:	

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

William W. Young, Presiding Judge

Robert P. Ringland, Judge

Robert A. Hendrickson, Judge

A-2

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-12-307
- vs -	:	OPINION 11/29/2010
SUDINIA JOHNSON,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2008-11-1919

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William R. Gallagher, The Citadel, 114 East Eighth Street, Cincinnati, Ohio 45202, for defendant-appellant

HENDRICKSON, J.

{¶1} Defendant-appellant, Sudinia Johnson, appeals his conviction in the Butler County Court of Common Pleas for one count of trafficking in cocaine and the accompanying specifications and forfeitures. We affirm the decision of the trial court.

{¶2} Detective Mike Hackney, a supervisor in the drug and vice investigations unit for the Butler County Sheriff's Office, received information from three separate confidential

A-3

informants that Johnson was trafficking in cocaine. Specifically, Hackney was informed that Johnson recently dispersed multiple kilos of cocaine, Johnson was preparing to acquire seven more kilos, and that Johnson moved the cocaine in a van. According to Hackney's testimony at the motion to suppress hearing, he had been familiar with Johnson possessing and driving a white Chevy van at the time the informants gave him the information.

{¶3} Hackney and two other agents performed a trash pull at Johnson's residence, and while there, attached a GPS device to Johnson's van that was parked on the east side of the road opposite the residences. Hackney testified that he attached the GPS device to the metal portion of the undercarriage of the van. Hackney stated that the device was "no bigger than a pager," and was encased in a magnetic case so that the device did not require any hard wiring into the van's electrical systems.

{¶4} Hackney also testified regarding the information the agents received from the trash pull. Within Johnson's trash, the agents found credit card transaction receipts from gas purchased on the same day from stations in Cincinnati and Chicago.

{¶5} After attaching the device, the agents intermittently tracked the GPS through a secured website. The Tuesday after installation, the GPS indicated that the van was located in a shopping center in the area of Cook County, Illinois. Hackney began making arrangements with law enforcement in Chicago to verify the location of Johnson's van. Bob Medellin, a retired Immigration and Customs officer and employee of the Butler County Sherriff's Office, informed Hackney that he was from the Chicago area and was familiar with the shopping center. Medellin then contacted his brother, Rudy Medellin, also a retired Immigration and Customs officer, who agreed to go to the shopping center and verify the location of Johnson's van.

{¶6} Medellin arrived at the Chicago shopping center and confirmed the van's location, and that the van matched the description and license plate number of the van

Johnson was known to possess and drive. Hackney and Medellin continued to communicate, and Medellin reported that two men were in the van. Medellin then followed the van from the shopping center to a residence in the Chicago area, where he saw the two men exit the van and enter the residence.

{¶7} Medellin saw one man, later identified as Johnson, exit the residence carrying a package or box, and enter the van. Medellin saw the other man, later identified as Otis Kelly, drive away in a Ford that had Ohio plates. Medellin followed Johnson's van and the Ford until they reached the Butler County area, and communicated with Hackney via cell phone during the surveillance.

{¶8} Hackney continued to contact law enforcement officials throughout Ohio, readying them to assist once Johnson and Kelly entered Ohio from Indiana. Hackney drove toward Cincinnati, and after coming upon Johnson's van, began to follow him. Hackney advised law enforcement officers to stop the van and Ford "if they were able to find probable cause to make a stop." Deputy Daren Rhoads, a canine handler with the Butler County Sheriff's Office, initiated a stop after Johnson made a marked lane violation.

{¶9} According to Rhoads' testimony, he spotted Kelly's Ford and Johnson's van and pulled out behind Johnson after another officer began following Kelly's Ford. Rhoads then observed Johnson's van cross over "the fault line before approaching the traffic light" at an intersection. At that point, Johnson's van was in the lane to travel straight through the intersection when instead of going straight, he made an "abrupt right turn," crossing over two lanes of traffic in the process.

{¶10} By the time Rhoads initiated the traffic stop, other officers were also in the position to offer back-up. Officers directed Johnson to exit his vehicle, and then escorted him onto the sidewalk so that Rhoads could deploy his canine partner. The canine made a passive response on the driver's side door and on the passenger's side sliding door. After

the canine walk-around, Johnson gave his consent to have the van searched.

{¶11} Rhoads and other officers performed a preliminary sweep of Johnson's van for narcotics, but did not find any drugs or related paraphernalia in the vehicle. During this time, police vehicles and Johnson's van were situated on the road. After the initial search, officers moved Johnson's van approximately one-tenth of a mile to the location where police had pulled over the Ford driven by Otis Kelly. Officers there had also deployed two canine units around Kelly's Ford, and the canines detected the presence of narcotics. The officers ultimately located seven kilos of cocaine within a hidden compartment in the Ford's trunk, and arrested Kelly for possession of cocaine.[1]

{¶12} Once the van was situated at the second location, Rhoads continued his search with the help of an interdiction officer for the Ohio State Highway Patrol. The two concentrated on the undercarriage of the van, and looked for any hidden compartments that Rhoads may have missed during his preliminary search. No drugs were recovered from the van.

{¶13} During the search, Johnson was placed in the back of a police cruiser, and Agent Gregory Barber spoke to Johnson after he received his *Miranda* warning. According to Barber's testimony at the motion to suppress hearing, Johnson told Barber, "you guys got me." Officers later seized Johnson's keys and discovered that one of the keys on Johnson's key ring opened the hidden compartment in the Ford that contained the seven kilos of cocaine seized from Kelly's vehicle.

{¶14} Johnson was later transported to jail where he was Mirandized a second time before he continued his conversation with Barber. Johnson told Barber that he picked up the cocaine in Chicago and was going to sell it in Middletown in order to pay back money he

1. This court affirmed Kelly's conviction and sentence in *State v. Kelly*, Butler App. No. CA2009-10-252, 2010-Ohio-3560.

owed the original sellers in Chicago. Johnson also told Barber that he spent the rest of the money on televisions, shoes, clothing, and "a lot of shopping," and that all of the merchandise was located at his home. Barber applied for and was granted warrants to search Johnson's home and a storage unit. Officers executed the warrants and seized over 50 pairs of Nike Air Jordan shoes, all-terrain vehicles, four flat-screen televisions, clothing, a gun, and multiple vehicles.

{¶15} Johnson was indicted on single counts of trafficking in cocaine, possession of cocaine, and having weapons while under disability. Johnson filed multiple motions to suppress, arguing that law enforcement was required to seek a warrant before attaching the GPS device to his van, that the traffic stop was unlawfully initiated, that Johnson was detained beyond the time frame necessary to issue a ticket or warning, that the search warrants were not supported by probable cause, and that Johnson was denied his right against self-incrimination. After a hearing on the motions, the trial court denied each in turn.

{¶16} Johnson pled not guilty to the having weapons while under disability charge and was acquitted by the trial court. Johnson pled no contest to the remaining charges and specifications, and was found guilty by the trial court. After the counts were merged for sentencing, the trial court sentenced Johnson to a 15-year prison term and also found that the seized vehicles, televisions, shoes, clothing, and firearm were subject to forfeiture. Johnson now appeals the decision of the trial court, raising the following assignments of error.

{¶17} Assignment of Error No. 1:

{¶18} "THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRES [SIC] WHEN IT RULED POLICE DID NOT NEED A SEARCH WARRANT TO PLACE A GPS TRACKING DEVICE ON MR. JOHNSON'S CAR."

{¶19} In Johnson's first assignment of error, he asserts that the trial court erred by not

granting his motion to suppress regarding the placement of the GPS device without first obtaining a warrant. This argument lacks merit.

{¶20} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Cochran*, Preble App. No. CA2006-10-023, 2007-Ohio-3353. Acting as the trier of fact, the trial court is in the best position to resolve factual questions and evaluate witness credibility. Id. Therefore, when reviewing the denial of a motion to suppress, a reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Oatis*, Butler App. No. CA2005-03-074, 2005-Ohio-6038. "An appellate court, however, independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *Cochran* at ¶12.

{¶21} The Fourth Amendment to the United States Constitution guarantees that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ***." In order to employ the Fourth Amendment protections, a defendant must have a "constitutionally protected reasonable expectation of privacy." *Katz v. United States* (1967), 389 U.S. 347, 360, 88 S.Ct. 507. The Supreme Court directs reviewing courts to consider a two-part test in order to determine whether the Fourth Amendment is implicated. "First, has the individual manifested a subjective expectation of privacy in the object of the challenged search? Second, is society willing to recognize that expectation as reasonable?" *California v. Ciraolo* (1986), 476 U.S. 207, 211, 106 S.Ct. 1809, citing *Katz* at 360.

{¶22} Johnson asserts that he had a reasonable expectation of privacy in his van so that law enforcement should have obtained a search warrant before placing the GPS device on the undercarriage of his van. However, we find that placing the GPS on the van and

monitoring its movement did not constitute a search or seizure under either the Federal or Ohio constitution.

{¶23} The Supreme Court has long held that there is no reasonable expectation of privacy in the exterior of a car because "the exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a 'search.'" *New York v. Class* (1986), 475 U.S. 106, 114, 106 S.Ct. 960. See, also, *United States v. Rascon-Ortiz* (C.A. 10, 1993), 994 F.2d 749, 754 (holding that "the undercarriage is part of the car's exterior, and as such, is not afforded a reasonable expectation of privacy").

{¶24} Rather than merely looking under Johnson's undercarriage, Detective Hackney placed a magnetized GPS device on the van. Therefore, in order to determine whether Hackney placing the device constituted a search or seizure, we must first consider whether Johnson has demonstrated that he intended to preserve the undercarriage of his van as private.

{¶25} Johnson did not produce any evidence that demonstrated his intention to guard the undercarriage of his van from inspection or manipulation by others. During the motion to suppress hearing, Detective Hackney testified that while the other agents pulled Johnson's trash from the curb, he approached Johnson's van, laid down on the sidewalk, and placed the device under the passenger's side portion of the undercarriage. At the time Hackney approached the van and attached the device, Johnson's van was parked on the public street, opposite the residences.

{¶26} During cross-examination, Johnson did not challenge Hackney's statement regarding the public way in which Johnson's van was situated, or offer any evidence that Johnson attempted to keep the van private from public scrutiny. See *United States v. Pineda-Moreno* (C.A. 9, 2010), 591 F.3d 1212, 1215 (upholding the warrantless placement of a GPS device after finding appellant had no reasonable expectation of privacy in a vehicle

parked in his driveway where the appellant "did not take steps to exclude passerby [sic]" from the area); and *United States v. Marquez* (C.A. 8, 2010), 605 F.3d 604, 610, (holding that a "warrant is not required when, while the vehicle is parked in a public place, [law enforcement] install a non-invasive GPS tracking device on it for a reasonable period of time").

{¶27} According to Johnson's argument, a search and seizure also occurred because law enforcement was able to track the van's movement and collect information regarding where Johnson traveled and where his van was located on any given occasion. However, like other courts, we find this argument meritless.

{¶28} Supreme Court precedent has established not only that a vehicle's exterior lacks a reasonable expectation of privacy, but also that one's travel on public roads does not implicate Fourth Amendment protection against searches and seizures. In *United States v. Knotts* (1983), 460 U.S 276, 103 S.Ct. 1081, the Court reversed the decision of the Eighth Circuit to suppress evidence that was gathered as a result of a warrantless installation of a beeper within a drum of chloroform. The suspect loaded the drum into his car, and law enforcement tracked the beeper to determine the driver's final destination.

{¶29} After citing *Katz's* test for determining the applicability of the Fourth Amendment, the Court determined that "one has a lesser expectation of privacy in a motor vehicle because its function is transportation ***. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view." Id. at 1085. The Court went on to hold that "a person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." Id.

{¶30} In an attempt to combat this long-held precedence, Johnson now argues that the GPS device Hackney installed is different than the beeper discussed in *Knotts* because of technological advances and the ability of law enforcement to track suspects with

unparalleled accuracy. Johnson asks this court to depart from *Knotts*, and instead, apply principles set forth by the Supreme Court regarding private telephone calls or the use of hyper-technical instrumentalities to gather information on a suspect.

{¶31} In *Katz*, the Court addressed what rights are implicated by talking on the phone in a public phone booth, and held that, "the Government's activities in electronically listening to and recording the [suspect's] words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment." 389 U.S. 354.

{¶32} In *Kyllo v. United States* (2001), 533 U.S. 27, 121 S.Ct. 2038, the court was asked to decide whether law enforcement is required to obtain a warrant before using thermal imaging devices to detect drug-related paraphernalia and equipment within a suspect's home. The Court held that where "the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant." Id. at 40.

{¶33} However, the use of a GPS device is dissimilar to the government tapping a phone booth to record private phone calls or using thermal imaging to discover details hidden in one's home. Unlike the defendants in *Katz* and *Kyllo*, Johnson made no attempt to make his activities private, nor did he assert any expectation of privacy. Instead, Johnson parked his van on a public street, did not take any precaution to exert a privacy interest over it, and then openly traveled on the road where any onlooker could see his movement and arrival. We also note that unlike the thermal imaging equipment used in *Kyllo*, GPS devices are readily available for purchase and use by the general public. See *United States. v. Garcia* (C.A. 7, 2007), 474 F.3d 994, 995, certiorari denied, 552 U.S. 883, 128 S.Ct. 291, (noting that GPS devices are "commercially available for a couple of hundred dollars" and listing a

website on which the general public can purchase GPS devices).

{¶34} More importantly, the information gathered from the GPS device shows no more information than what detectives could have obtained by visual surveillance. Detective Hackney testified that he would sporadically log onto a secure website and view the position of Johnson's van, but could tell nothing more from the GPS report than the approximate location of the van or how long it had been at a location. This same information could have been ascertained had a member of law enforcement tracked Johnson or employed surveillance techniques that require no technology. There is no question that following a suspect on a public road is not a search that implicates the Fourth Amendment and, "scientific enhancement of this sort raises no constitutional issues which visual surveillance would not also raise." *Knotts* at 285. See *Garcia*, 474 F.3d 997, certiorari denied, 552 U.S. 883, 128 S.Ct. 291, (finding GPS installation did not require a warrant where tracking substituted "an activity, namely following a car on a public street, [which] is unequivocally *not* a search within the meaning of the amendment"). (Emphasis in original.)

{¶35} Johnson essentially argues that the GPS device is more than a substitute for surveillance. According to his argument before this court, "GPS is not a mere enhancement of human senses, it facilitates a new perception of the world in which any object may be followed and exhaustively recorded over an unlimited period of time." However, neither the Fourth Amendment nor the Supreme Court's interpretation of it, requires police to forego technology simply because it makes police work more efficient or acts as a substitute for countless man hours.[2]

2. See Judge Smith's dissent in *N.Y. v. Weaver* (2009), 909 N.E.2d 1195, 1204 (noting that "it bears remembering that criminals can, and will, use the most modern and efficient tools available to them, and will not get warrants before doing so. To limit police use of the same tools is to guarantee that the efficiency of law enforcement will increase more slowly than the efficiency of law breakers").

{¶36} The Court released *Knotts* in 1983, at which time, the beeper used to track the suspect was an emerging technological advance in detective work. Even then, the Court dismissed the argument that police cannot employ technological advances without a warrant simply because such advances permit law enforcement to work more efficiently. "The fact that the officers in this case relied not only on visual surveillance, but on the use of the beeper to signal the presence of [the suspect's] automobile to the police receiver, does not alter the situation. Nothing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology afforded them in this case." 460 U.S. 282. "We have never equated police efficiency with unconstitutionality ***." Id. at 284.

{¶37} Hackney's testimony reveals that he employed the GPS device to estimate the location of Johnson's van at the shopping center near Chicago, something that could have easily been done had a Butler County officer followed Johnson on his day-trip to Chicago. "The fact that the GPS device allowed [law enforcement] to overcome the impracticality of 24-hour visual surveillance is irrelevant. It has long been established that sense enhancement devices, to the extent that they do not reveal more than could have been observed by the naked eye, are permissible." *United States v. Jesus-Nunez* (July 27, 2010), M.D.Pa. No. 1:10-CR-00017-01, 2010 WL 2991229, *3.

{¶38} Hackney's use of the GPS did not reveal any more information that could have been observed by his, or another officer's, naked eye. Just as in *Knotts*, Hackney relied in part on the GPS, but also sought the help of Rudy Medellin in order to verify the van's location and to offer important information regarding the suspects in the van. In fact, the information obtained from Medellin far outweighed in particularity and effect, the data collected by the GPS device. Medellin was able to directly place Johnson's van in the shopping center, verify the license plate, and report information regarding the two men who

sat in the van. Medellin then followed these men to a residence and reported that Johnson carried a box to his van, while the other man departed from the garage in a Ford. Medellin then followed the van and the Ford, which did not have any GPS device attached, until the vehicles reached Butler County. The information provided by Medellin's "old-fashion" or "low-tech" tracking and surveillance eventually led to the discovery of seven kilos of cocaine, and was far more damaging than the mere indication that Johnson's van was near Chicago.

{¶39} Johnson further submits that the GPS device in some way violated his reasonable expectation of privacy in his right to free association. Essentially, Johnson argues that should law enforcement be permitted to install and monitor GPS devices without first obtaining a warrant, the government has unfettered and instantaneous access to a person's whereabouts. In his brief to this court, Johnson warns that through GPS, the government can track "trips to a minister, a psychiatrist, abortion clinic, union meeting, home of a police critic, divorce attorney office, gay bar, AIDS treatment clinic and on and on."

{¶40} We do not disagree with Johnson that GPS surveillance could report a person's location at these or any location. However, Johnson fails to recognize that when a person chooses to drive their vehicle to the minister, psychiatrist, abortion clinic, etc, they are voluntarily letting that fact be known to anyone on the roads, or anyone choosing to follow them, of their intended destination. Law enforcement need not obtain a warrant to observe where a driver chooses to drive on public roads, nor do they need to obtain a warrant to observe via a GPS device where a driver chooses to drive.

{¶41} Johnson relies heavily on three cases in which state courts have found GPS installation to be a search that requires a warrant. However, we find these cases unpersuasive because the courts applied their own respective state constitutions in reaching their decision. New York's highest court premised its holding on its "State Constitution alone" and found that the installation of a GPS constitutes a search. *N.Y. v. Weaver* (N.Y.2009),

909 N.E.2d 1195, 1202. There, the court noted that it had "on many occasions interpreted [its] own Constitution to provide greater protections when circumstances warrant," and further stated that it had "adopted separate standards when doing so best promotes predictability and precision in judicial review of search and seizure cases and the protection of the individual rights of our citizens." Id.

{¶42} Similarly, Washington's Supreme Court held that installation of a GPS requires a warrant under its state constitution. *State v. Jackson* (Wash.2003), 76 P.3d 217. The court specifically stated that Jackson did not challenge his conviction on Fourth Amendment grounds, but instead, relied on the article and section of the "Washington State Constitution" specific to search and seizure. The court began its analysis by quoting from its constitution that "no person shall be disturbed in his private affairs, or his home invaded, without authority of law." Id. at 222. The court noted that its constitution is broader than the Fourth Amendment because it focuses on privacy interests that its citizens are "entitled to hold" and that consequently, "it is now settled that article I, section 7 is more protective than the Fourth Amendment." Id.

{¶43} The Oregon Supreme Court also held that installation of a GPS and tracking associated data requires a warrant. *State v. Campbell* (Ore.1988), 759 P.2d 1040. However, the court spent a considerable amount of its analysis on comparing its state constitutional provisions regarding search and seizure with that of the federal constitution. The court expressed its "doubts about the wisdom of defining [its constitution] in terms of 'reasonable expectations of privacy," and instead, "expressly reject[ed]" the reasonable expectation of privacy standard for defining searches under its constitution. Id. at 1044. According to *Campbell*, the Oregon constitution protects its citizens' privacy because they have a "*right*" to it, not because that privacy expectation is reasonable. Id. (Emphasis in original.)

{¶44} Although these three courts have ruled contrary to the analysis we now assert,

each relied on a state constitution that differed from or offered greater protections that those guaranteed by the Fourth Amendment. Ohio's constitution, however, does neither.

{¶45} The Ohio Supreme Court found that Ohio's constitution does not impose greater restrictions or broader guarantees than the Fourth Amendment regarding the legality of searches and seizures. *State v. Robinette*, 80 Ohio St.3d 234, 1997-Ohio-343. Before deciding as such, the court analyzed whether the "provisions are similar and no persuasive reason for a differing interpretation is presented." Id. at 238. The court noted that the language within Section 14, Article I of Ohio's constitution is virtually identical to that of the Fourth Amendment.[3] Beyond the language, the court noted that there was no persuasive reason for broadening the Fourth Amendment where there was an "absence of explicit state constitutional guarantees protecting against invasions of privacy that clearly transcend the Fourth Amendment." Id. at 239.

{¶46} Unlike the states mentioned above that interpret their constitutions to provide different protections than those guaranteed by the Fourth Amendment, we are guided by the Ohio's Supreme Court holding that Ohio's constitutional provisions regarding search and seizure afford "the same protection as the Fourth Amendment," and that "the reach of Section 14, Article I, of the Ohio Constitution is coextensive with that of the Fourth Amendment." Id. at 238-239.

{¶47} Because Johnson did not have a reasonable expectation of privacy in the undercarriage of his vehicle, and because placing a GPS device on a vehicle to track the vehicle's whereabouts does not constitute a search or seizure according to the Fourth Amendment and Ohio's constitution, Johnson's argument fails and his first assignment of

3. Section 14, Article I of the Ohio Constitution provides, "the right of the people to be secure in their persons, houses, papers, and *possessions*, against unreasonable searches and seizures shall not be violated ***," whereas the Fourth Amendment states "the right of the people to be secure in their persons, houses, papers, and *effects*, against unreasonable searches and seizures, shall not be violated ***." (Emphasis added.)

error is overruled.

{¶48} Assignment of Error No. 2:

{¶49} "THE STOP AND DETENTION OF JOHNSON VIOLATED HIS RIGHT TO BE FREE OF UNREASONABLE SEARCH AND SEIZURES AS GUARANTEED BY THE UNITED STATES AND OHIO CONSTITUTIONS."

{¶50} In his second assignment of error, Johnson asserts that the trial court erred in denying his motion to suppress because law enforcement was not authorized to perform a traffic stop on the night he was arrested. This argument lacks merit.

{¶51} Regarding the legality of an initial traffic stop, "where a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop, such as a suspicion that the violator was engaging in more nefarious criminal activity." *Dayton v. Erickson*, 76 Ohio St.3d 3, 1996-Ohio-431, syllabus. An officer's observation that a driver has committed a marked lane violation establishes probable cause that a traffic violation has occurred. *State v. Calori*, Portage App No. 2006-P-007, 2007-Ohio-214, ¶22.

{¶52} According to R.C. 4511.33, "(A) Whenever any roadway has been divided into two or more clearly marked lanes for traffic, or whenever within municipal corporations traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply: (1) A vehicle or trackless trolley shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety."

{¶53} According to Deputy Daren Rhoads' testimony at the motion to suppress hearing, he observed Johnson's van cross over "the fault line before approaching the traffic

light" at an intersection. At that point, Johnson's van was in the lane to travel straight through the intersection when instead of going straight, Johnson made an "abrupt right turn," and in the process, crossed over two lanes of traffic.

{¶54} Johnson now asserts that the traffic stop was unlawful because he made the turn in a safe manner and in accordance with the statute. On cross-examination, Johnson asked Rhoads whether the deputy thought the turn across two lanes of traffic was done in a safe manner. Rhoads recalled that Johnson did not cut off any other driver, and otherwise performed the maneuver in a safe manner.

{¶55} However, the Ohio Supreme Court has held that "a traffic stop is constitutionally valid when a law-enforcement officer witnesses a motorist drift over the lane markings in violation of R.C. 4511.33, even without further evidence of erratic or unsafe driving." *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, ¶25. Deputy Rhoads observed Johnson's van drift over the fault line and then saw Johnson make an abrupt right turn over two lanes of traffic from a lane designated for going straight through the light. Regardless of a lack of erratic or unsafe driving, Johnson's marked lane violations provided probable cause so that Rhoads was justified in initiating the traffic stop.

{¶56} The trial court viewed a recording of the moments prior to Johnson's traffic stop captured by video equipment in Rhoads' police cruiser. After viewing the tape, the court stated, "I am just telling you that I observed the video and I saw [Johnson] cross a solid white line, across another lane, from a straight driving lane across a turn lane and then make that right turn. And in my view, there is reasonable articulable suspicion if I had viewed that to believe that there was a traffic violation that occurred." We find no error in the trial court's conclusion regarding the initial legality of the traffic stop.

{¶57} Johnson next challenges the length of his detention after the traffic stop, and asserts that even if the stop was legal at its inception, the subsequent detention and search

violated his constitutional rights. However, a review of the record indicates otherwise.

{¶58} "In conducting a stop of a motor vehicle for a traffic violation, an 'officer may detain an automobile for a time sufficient to investigate the reasonable, articulable suspicion for which the vehicle was initially stopped.' However, an investigative stop may last no longer than is necessary to effectuate the purpose of the stop. Thus, when detaining a motorist for a traffic violation, an officer may delay the motorist for a time period sufficient to issue a ticket or a warning. This time period also includes the period of time sufficient to run a computer check on the driver's license, registration, and vehicle plates." *State v. Howard*, Preble App. Nos. CA2006-02-002, CA2006-02-003, 2006-Ohio-5656, ¶14-¶15. (Internal citations omitted). Furthermore, a canine sniff of a vehicle may be conducted during the time period necessary to effectuate the original purpose of the stop, and an alert by a trained narcotics dog provides law enforcement with probable cause to search the vehicle for contraband. Id. at ¶17.

{¶59} Deputy Rhoads testified that immediately after the traffic stop, he deployed his canine partner around the van, and that the dog indicated the presence of drugs at two different locations on Johnson's van within minutes of the stop. Rhoads also testified that Johnson gave his consent for the officers to perform a more detailed search of the van once the dog indicated the presence of drugs. Officers then moved the van from blocking the public street to a more secure location one tenth of mile away.

{¶60} These events occurred well within the time necessary for Deputy Rhoads to effectuate the purpose of the traffic stop. It is irrelevant that Rhoads did not issue a traffic citation for Johnson's violation of R.C. 4511.33 because he had probable cause to initiate the lawful traffic stop. See *State v. Kelly*, Butler App. No. CA2009-10-252, 2010-Ohio-3560 (upholding legality of traffic stop and subsequent search even though officers did not issue a citation after Kelly followed the vehicle in front of him too closely).

{¶61} Having found that the traffic stop was lawful at its inception and that the dog sniff and subsequent search were conducted in the time sufficient to investigate the reason for the stop, Johnson's second assignment of error is overruled.

{¶62} Judgment affirmed.

YOUNG, P.J., and RINGLAND, J., concur.

AMENDMENT
TO THE CONSTITUTION OF THE UNITED STATES
AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

CONSTITUTION OF THE STATE OF OHIO
ARTICLE I: BILL OF RIGHTS

§ 14 SEARCH AND SEIZURE

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized.

Wm. Gallagher

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO Plaintiff vs. SUDINIA JOHNSON Defendant	CASE NO. CR2008-11-1919 NASTOFF, J. ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

This matter came before the Court, on March 03, 2009, upon Defendant's Motion to Suppress. After due consideration thereof, the Court finds that said motion is not well taken as to the issues of placement of the GPS and the stop and search of defendant's vehicle.

It is, **THEREFORE, ORDERED, ADJUDGED AND DECREED** that Defendant's Motion to Suppress as to the issues of placement of the GPS and the stop and search of defendant's vehicle. is hereby denied.

Nastoff, J.

APPROVED AS TO FORM:

ROBIN PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

LAO/pj 0330

A-21