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County Court, Westchester County, People v. Gant

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COUNTY COURT OF NEW YORK
WESTCHESTER COUNTY

People v. Gant[1]
(decided June 27, 2005)

Charles Gant was indicted for two counts of criminal possession of a controlled substance and one count of conspiracy.[2] Gant moved "to suppress any and all evidence obtained as a result of the use of a Global Positioning System [GPS] . . . device" that law enforcement officials utilized without a warrant.[3] Gant claimed that failing to obtain a warrant was a violation of his protected right to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendments of the United States Constitution and article I, section 12 of the New York State Constitution.[4]

Gant argued that the federal and state protections against warrantless search and seizure extended to placement of a GPS

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[1] No. 05-0196, 2005 N.Y. Misc. LEXIS 1604, at *1 (N.Y. County Ct. June 27, 2005).

[2] *Id.* The *Gant* court did not seem to be concerned with details of this case as it did not provide the purpose of the investigation by law enforcement, name the law enforcement agency or department involved, state what was used to monitor the GPS device, or describe the circumstances surrounding the arrest of Charles Gant.

[3] *Id.*, at *5.

[4] *Id. See* U.S. CONST. amend. IV, which states in pertinent part: "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 . . . ."; N.Y. CONST. art. I, § 12, stating in pertinent part:

> 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 . . . [and] [t]he right of the people to be secure against unreasonable interception of telephone and telegraph communications shall not be violated . . . .

device upon a vehicle.[5] The court, however, disagreed and held there is no privacy expectation, either as owner or passenger, in a vehicle found on public thoroughfares.[6] Moreover, the court found that Gant had no standing to challenge the admissibility of evidence resulting from law enforcement's use of the GPS device.[7] Consequently, the court denied the defendant's motion to suppress evidence.[8]

During a drug investigation,[9] law enforcement shifted its focus from "persons originally identified in the initial [eavesdropping] warrants" to Charles Gant.[10] In doing so, law enforcement officials obtained "spin off" eavesdropping warrants from the original persons identified in the initial warrants and applied them to Charles Gant.[11] In addition, law enforcement officials placed a GPS device on a recreational vehicle (RV) where cocaine was found.[12] Gant alleged this was done "without a warrant in contravention of article I section 12 of the New York State Constitution . . . and the Fourth and Fourteenth Amendments of the United States Constitution."[13]

Gant claimed that "[n]otwithstanding the fact that [he] was the true owner of the vehicles, these vehicles were often registered in

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[5] *Gant*, 2005 N.Y. Misc. LEXIS 1604, at *5.

[6] *Id.*, at *6.

[7] *Id.*

[8] *Id.*, at *9. ("Defendant herein has failed to establish a reasonable expectation of privacy in the *vehicle*, or in the *vehicle's whereabouts*; particularly if the Defendant did not travel in the vehicle.") (emphasis in original).

[9] *Id.*, at *4.

[10] *Gant*, 2005 N.Y. Misc. LEXIS 1604, at *3, *5.

[11] *Id.*

[12] *Id.*, at *5. ("[T]he theory of the prosecution is constructive possession by Charles Gant of the cocaine secreted in the . . . RV."). *Id.*, at *6 n.1.

[13] *Id.*, at *5.

the name of other persons. Indeed, that was the case with the . . . [RV] . . . . Thus, Charles Gant as the true owner of the vehicle has standing."[14] The court noted that the defendant "failed to demonstrate that he is in fact the owner of the vehicle, or that he was a passenger in the vehicle with some reasonable expectation of privacy in the *vehicle itself*."[15] The *Gant* court held that the defendant "failed to establish a legitimate expectation of privacy in the place or property searched sufficient to satisfy the Fourth Amendment standing requirement for purposes of a motion to suppress."[16]

In *United States v. Knotts*, a beeper[17] was placed by Minnesota law enforcement agents in a five-gallon container of chloroform[18] purchased by Armstrong, Knotts' codefendant.[19] Armstrong then delivered the chloroform to codefendant Petschen who transported it to a cabin in Wisconsin occupied by Knotts.[20]

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[14] *Id.*, at *6 (quoting Affirmation of Edward D. Willford, Esq., at 78).

[15] *Gant*, 2005 N.Y. Misc. LEXIS 1604, at *6 (citing People v. Nunez, 651 N.Y.S.2d 192 (App. Div. 2d Dep't 1996); People v. Cacioppo, 479 N.Y.S.2d 264 (App. Div. 2d Dep't 1984); People v. Lucas, 704 N.Y.S.2d 779 (Sup. Ct. Monroe County 1999)) (emphasis in original).

[16] *Id.* (citing United States v. Knotts, 460 U.S. 276 (1983); United States v. Moran, 349 F. Supp. 2d 425 (N.D.N.Y 2005)). ("Accordingly, to the extent that Defendant may assert that he has standing because he is the owner of the vehicle, or he was a passenger in the vehicle with an expectation of privacy, such contention is without merit.").

[17] *Knotts*, 460 U.S. at 277. ("A beeper is a radio transmitter, usually battery operated, which emits periodic signals that can be picked up by a radio receiver.").

[18] *Id.* at 277, 278 (defining chloroform as "one of the so-called 'precursor' chemicals used to manufacture illicit drugs").

[19] Armstrong was a former employee of the 3M Co., who "had been stealing chemicals [from 3M] which could be used in manufacturing illicit drugs." *Id.* Armstrong also purchased containers of chloroform from the Hawkins Chemical Co. *Id.* Hawkins Chemical agreed to let officers install a beeper in a container of chloroform which would then be sold to Armstrong. *Id.* This allowed both visual surveillance of Armstrong's car and tracking of it by a monitor which received signals from the beeper. *Id.*

[20] *Id.* When Petschen started making evasive maneuvers on the way to the cabin, the

After securing a warrant to search the cabin, law enforcement agents "discovered a fully operable, clandestine drug laboratory in the cabin."[21] On appeal, the Eighth Circuit Court of Appeals reversed the conviction and held that the evidence obtained from the search of Knotts' cabin was inadmissible against Knotts because Knotts had "a legitimate expectation of privacy in the kind and location of objects out of public view on his land."[22]

The Supreme Court reversed, holding that "Knotts, as the owner of the cabin and surrounding premises to which Petschen drove, undoubtedly had the traditional expectation of privacy within a dwelling place insofar as the cabin was concerned."[23] "[N]o such expectation of privacy extended to the visual observation of Petschen's automobile arriving on his premises after leaving a public highway, nor to movements of objects such as the drum of chloroform outside the cabin in the 'open fields.' "[24] The Court reasoned that "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another."[25] There was "no indication that the beeper was used in any way to reveal information as to the

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pursuing agents ended their surveillance. The cabin, however, was located from a signal emitted by the beeper.

[21] *Id.* at 279.

[22] United States v. Knotts, 662 F.2d 515, 518 (8th Cir. 1981).

[23] *Knotts*, 460 U.S. at 282.

[24] *Id.* at 282 (quoting Hester v. United States, 265 U.S. 57, 59 (1927)).

[25] *Id.* at 281.

> One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view.

movement of the drum within the cabin, or in any way that would not have been visible to the naked eye from outside the cabin."[26] Because Petschen did not have a reasonable expectation of privacy in his vehicle's movements, Knotts did not have a reasonable expectation of privacy in Petschen's vehicle or in the chloroform container; therefore, "there was neither a 'search' nor a 'seizure' within the contemplation of the Fourth Amendment."[27] The *Gant* court followed this reasoning closely, holding that the defendant "has not established that he has a legitimate expectation of privacy in a vehicle traveling upon a [sic] public roadways."[28]

In *United States v. Moran*, a GPS device was attached to the defendant's vehicle without a warrant.[29] The defendant moved to suppress evidence obtained using the GPS tracking device, as well as "any evidence derived from information obtained from the GPS tracking device" itself.[30] Relying on *Knotts*, the district court held that the defendant "had no expectation of privacy in the whereabouts of his vehicle on a public roadway."[31] For that reason, "there was no search or seizure and no Fourth Amendment implications in the use of the GPS device."[32] Acknowledging these decisions, the *Gant* court also held that law enforcement is not required to obtain a search

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Id. (quoting Cardwell v. Lewis, 417 U.S. 583, 590 (1974) (plurality opinion)).

[26] *Id.* at 285.

[27] *Id.*

[28] *Gant*, 2005 N.Y. Misc. LEXIS 1604, at *7 (citing *Knotts*, 460 U.S. at 280; Moran, 349 F. Supp. 2d at 467-68).

[29] *Moran*, 349 F. Supp. 2d at 467.

[30] *Id.*

[31] *Id.*

[32] *Id.* Because there was no Fourth Amendment violation, "suppression of the GPS information is not warranted." *Id.* at 468.

warrant prior to installing a GPS device to track a vehicle's whereabouts when there is no legitimate expectation of privacy in a vehicle traveling upon a public roadway.[33]

The *Gant* court also held that the there is no conflict in the protections afforded to "a vehicle traveling upon a public roadway" under the New York State Constitution and the United States Constitution.[34] The New York Court of Appeals in *People v. Belton*[35] stated that "a separate exception to the warrant requirement [of the Fourth Amendment of the United States Constitution and article I, section 12 of the New York State Constitution] is that recognized with respect to automobiles."[36] There is a diminished "expectation of privacy associated with automobiles" due to their "inherent mobility."[37] This diminished expectation exists because, among other factors, automobiles "operate on public streets; they are serviced in public places; . . . their interiors are highly visible; and they are subject to extensive regulation and inspection."[38] The inherent "mobility of automobiles often makes it impracticable to obtain a warrant."[39] Based on this reasoning, the *Belton* court held

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[33] *Gant*, 2005 N.Y. Misc. LEXIS 1604, at *7 (citing *Knotts*, 460 U.S. at 280; *Moran*, 349 F. Supp. 2d at 467-68).

[34] *Id.*, at *7. ("In addition, this Court finds no greater privacy interest is afforded to a vehicle traveling upon a public roadway under the New York State Constitution, than that which is afforded under the United States Constitution.").

[35] 432 N.E.2d 745 (N.Y. 1982). After Belton was stopped for speeding by a state trooper, the trooper smelled marijuana, and, on the floor of the vehicle, saw an envelope frequently used for sale of the substance. He discovered it contained marijuana and arrested the occupants of the vehicle. The trooper then searched the vehicle and found cocaine in the pocket of a jacket lying on the back seat. *Id.* at 746.

[36] *Id.* at 747.

[37] *Id.* (citing Cady v. Dombrowski, 413 U.S. 433, 442 (1973)).

[38] *Id.* (quoting Rakas v. Illinois, 439 U.S. 128, 154 n.2 (1978) (Powell, J., concurring)).

[39] *Id.* (citing United States v. Chadwick, 433 U.S. 1, 12 (1977); Carroll v. United States,

that a search of a vehicle that followed the arrest of the defendants during a traffic stop "was permissible under the State Constitution under the automobile exception to the warrant requirement."[40]

The *Gant* court explored other New York court decisions and found that the *Belton* holding – that the diminished expectation of privacy inherent in automobiles permits a warrantless search – is the controlling authority in New York.[41] "For example, a police officer need not have a warrant to search a vehicle if, after a stop, such search is based upon reasonable cause to believe that an individual has committed, or may commit, a crime."[42] Roadblocks used as sobriety checkpoints are "constitutionally permissible when they are carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers."[43] Likewise, roving roadblocks are constitutionally permissible when "conducted in a uniform and nondiscriminatory manner to obtain information in connection with crime investigation."[44] Also, there is no "reasonable expectation of privacy in objects in a vehicle that are in 'plain view' for all to see, and thus, the warrantless seizure of an object that comes into an officer's plain view when one is lawfully stopped in his [or her] vehicle is constitutionally permissible."[45] Because of these examples of the "well-recognized diminished expectation of privacy inherent in

267 U.S. 132, 153 (1925)).

[40] *Belton*, 432 N.E.2d at 746.

[41] *Id.*

[42] *Id.* (citing People v. Williams, 570 N.Y.S.2d 237, 238 (App. Div. 2d Dep't 1991)).

[43] *Id.* (citing People v. Scott, 473 N.E.2d 1, 2-3, 6 (N.Y. 1984); People v. Richmond, 662 N.Y.S.2d 998, 1000 (N.Y. County Ct. 1997)).

[44] *Id.* (citing People v. BB, 438 N.E.2d 864, 867 (N.Y. 1982)).

[45] *Gant*, 2005 N.Y. Misc. LEXIS 1604, at *8-9 (citing People v. White, 752 N.Y.S.2d 771 (App. Div. 4th Dep't 2002)).

motor vehicles,"[46] the court concluded that "no search warrant is required where law enforcement seeks to install a GPS device to monitor a vehicle's location."[47] Following the reasoning in *Belton* and other New York decisional law, the *Gant* court held that there is "no reasonable expectation of privacy in the movements of a motor vehicle traveling upon public roadways such that law enforcement is required to obtain a warrant under New York State law prior to installing a GPS device when investigating crime."[48] The court therefore denied Gant's "motion to suppress evidence resulting from law enforcement's installation of the GPS device."[49]

The defendant in *Gant* relied on *People v. Lacey*,[50] "the only reported New York State decision pertaining to the issue of whether law enforcement must obtain a search warrant prior to installing a GPS device to track the movements of a vehicle on public roadways."[51] The *Lacey* court reasoned that the Fourth Amendment of the United States Constitution and article I, section 12 of the New York State Constitution extends the protection of a person from "a warrantless search of his effects" to the "attaching of a GPS device on a vehicle."[52] Barring the most "exigent circumstances," the *Lacey*

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[46] *Id.*, at *9.

[47] *Id.*

[48] *Id.*, at *8.

[49] *Id.*

[50] No. 2463N/02, 2004 N.Y. Misc. LEXIS 505, at *1 (N.Y. County Ct. May 6, 2004).

[51] *Gant*, 2005 N.Y. Misc. LEXIS 1604, at *5.

[52] *Lacey*, 2004 N.Y. Misc. LEXIS 505, at *8.

> Although it is acknowledged that persons have diminished expectations of privacy in automobiles on public roads and can be visually tracked by the police, it is clear that the mere act of parking a vehicle on a public street does not give law enforcement the unfettered right to tamper with the vehicle by surreptitiously attaching a tracking device without either

court was unwilling to allow GPS technology to "abrogate our constitutional protections" because a person "must feel secure that his or her every movement will not be tracked except upon a warrant based on probable cause establishing that such person has been or is about to commit a crime."[53] The Gant court criticized *Lacey*, because it did not "reconcile its reasoning with *Knotts*."[54] There, the Court held where there is no legitimate expectation of privacy, there is no search or seizure "within the contemplation of the Fourth Amendment."[55] In fact, "the *Lacey* court did not even mention *Knotts*."[56] The *Lacey* court, however, held that because the GPS device was not placed on a vehicle that the defendant owned, the defendant "failed to meet his burden of proving that he had a legitimate expectation of privacy" in the vehicle, and as such had "not suffer[ed] an 'injury in fact' " and was "at best, basing his claim for relief upon the rights of a third party."[57] Because Lacey lacked standing he therefore could not "contest the affixing of the GPS to that vehicle and its use in leading to his arrest."[58]

In conclusion, the *Gant* court found that both the federal and state constitutions are in harmony – the privacy interest in a vehicle on a public roadway is the same under both documents. A

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the owner's consent or without a warrant issued by a Court.

Id.

[53] *Id.*

[54] *Gant*, 2005 N.Y. Misc. LEXIS 1604, at *9 n.4.

[55] *Knotts*, 460 U.S. at 285.

[56] *Moran*, 349 F. Supp. 2d at 467.

[57] *Lacey*, 2004 N.Y. Misc. LEXIS 505, at *10. ("Defendant could not expect to have a reasonable expectation of privacy in a vehicle that he did not own and which was used for the sole purpose of furthering a criminal enterprise.").

[58] *Id.*, at *10.

warrantless placing of a GPS device on a suspect's vehicle is not a search or seizure because inherent absence of a reasonable expectation of privacy in the vehicle. In order for a defendant to overcome this exception, the defendant must show an injury in fact, not one based on a third party's injury, and establish a reasonable expectation of privacy in or around the vehicle. Unless the defendant can meet this burden, the protections against unwarranted searches and seizures with respect to GPS devices do not attach.

Albert V. Messina, Jr.

TAKINGS CLAUSE

United States Constitution Amendment V:

[N]or shall private property be taken for public use, without just compensation.

New York Constitution article I, section 7:

Private property shall not be taken for public use without just compensation.