



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. EMILIO JEAN
CR-16-0283-PR**

PARTIES:

Petitioner: Emilio Jean

Respondent: State of Arizona

FACTS:

In 2010, Arizona Department of Public Safety (DPS) officers placed a global positioning system (GPS) tracking device on a commercial truck because they suspected the truck and attached trailer were involved in criminal activity. The officers did not obtain a warrant before placing the device on the truck. After tracking the truck's movements for two days, a DPS officer stopped the truck on Interstate 40. The truck's owner was driving and Jean was in the sleeper berth. Jean claimed he was merely a driver in training. A search of the trailer revealed 95 bales of marijuana weighing a total of 2,140 pounds.

Jean was charged with money laundering, conspiracy to commit money laundering and transportation of marijuana, transportation of marijuana for sale, and illegally conducting an enterprise. Before trial, Jean filed a motion to suppress in which he argued that the use of the GPS device to monitor the truck constituted an illegal search and impinged on his reasonable expectation of privacy under the U.S. and Arizona constitutions, citing *United States v. Jones*, 132 S.Ct. 945 (2012) and *State v. Mitchell*, 234 Ariz. 410 (App. 2014). The trial court denied the motion to suppress. The trial court found that Jean did not own or have a possessory interest in the truck, therefore, he had no standing to challenge the placement of the device and had no "reasonable expectation of privacy in a vehicle that he was just a passenger in."

A jury found Jean guilty on all counts. The trial court sentenced Jean to concurrent terms of ten years' imprisonment for conspiracy and transportation of marijuana for sale and placed him on five years' probation for illegally conducting an enterprise and money laundering.

On appeal, Jean argued that the trial court erred in denying his motion to suppress. Jean maintained that as a co-driver, he had as much of a possessory interest in the truck as the defendants in *Jones* and *Mitchell*, neither of whom owned the vehicle they drove. The court of appeals found the facts in *Jones* and *Mitchell* distinguishable. The defendants in those cases had the rights of a bailee, which gave them standing to challenge the warrantless placement of GPS devices on the vehicles. In Jean's case, however, he was not a bailee. The court of appeals gave this description:

To constitute a bailment there must be a delivery by the bailor and acceptance by the bailee of the subject matter of the bailment. It must be placed in the bailee's

possession, actual or constructive. There must be such a full transfer, actual or constructive, of the property to the bailee as to exclude the possession of the owner and all other persons and [g]ive the bailee for the time being the sole custody and control thereof.

Blair v. Saguardo Lake Dev. Co., 17 Ariz. App. 72, 74 (1972) (internal citations omitted). The court stated that in Jean's case, there was neither evidence that the owner made a "full transfer" of the truck to him, nor any evidence of a delivery and acceptance. There was no evidence that Jean had exclusive use of the truck or drove it without the owner present. Even if Jean occasionally drove the truck as co-driver while in the owner's presence, there was no evidence the owner did not reserve his right to possess and control the truck. As a result, there was no evidence that Jean was a bailee of the truck. *State v. Orendain*, 185 Ariz. 348, 352 (App. 1996) *overruled on other grounds* (holding that a defendant driving codefendant's vehicle lacked standing to assert Fourth Amendment challenge to the search of the vehicle when he had neither a possessory nor property interest in it). Jean had no standing to challenge the placement of the GPS device on the truck.

The court of appeals also rejected Jean's claim that use of the GPS violated his reasonable expectation of privacy. Jean had no reasonable expectation of privacy in his movements as a passenger or driver of the truck. *United States v. Knotts*, 460 U.S. 276, 281 (1983). Further, there is no reasonable expectation of privacy that is infringed by GPS monitoring of a device placed on a vehicle when the monitoring is short-term. *State v. Estrella*, 230 Ariz. 401, 404 (App. 2012). The officials monitored the truck for only two days; the court of appeals concluded there was no Fourth Amendment violation.

The court of appeals affirmed the convictions and sentences.

ISSUES:

A. Did Appellant have standing to object to the warrantless GPS tracking device placement on the tractor of a commercial vehicle, and subsequent two-day monitoring of that commercial vehicle, which he did not own but which he drove as a co-driver across the country with the truck's owner?

B. Did law enforcement's two day, multi-state, GPS monitoring of the commercial vehicle Appellant co-drove infringe on Appellant's reasonable expectation of privacy?

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