

Can't Erase the Fact that Chalking Violates the Fourth Amendment

(April 22, 2019) Using a sophisticated GPS tracking device to track a car and chalking a tire to determine how long it has been parked are the same—unlawful searches under the Fourth Amendment, according to a federal appeals court.

The Sixth Circuit found that the practice of chalking tires to determine how long a car is parked on the street constitutes trespassing by the City of Saginaw. Because the trespass obtains information which “is then used by the City to issue citations,” the chalking violates the Fourth Amendment.

The plaintiff received parking citations 15 times between 2014 and 2017. Each citation included the date and time the chalk was placed on her vehicle’s tires to determine if the car overstayed the parking time limit. The citations started at \$15 and increase for each violation.

The Fourth Amendment protects against unreasonable searches and seizures. The appellate court notes that, before the case of *United States v. Jones*, a search occurred when a government official invaded an area in which “a person has a constitutionally protected reasonable expectation of privacy.” In *Jones*, the government attached a GPS device to a car to track the car’s movement. The Supreme Court said attaching the GPS device to the vehicle was a common law trespass to chattel that provided information to law enforcement, making it a search under the Fourth Amendment.

In the chalk case, the appellate court observed that the City used the chalk marks to identify vehicles to determine how long they were parked in the same location. If the time exceeded the limit, the City issued a citation. In essence, the court found, the “City commences its search on vehicles that are parked legally, without probable cause” and therefore violates the Fourth Amendment. “The City does not demonstrate, in law or logic, that the need to deter drivers from exceeding the time permitted for parking—before they have even done so—is sufficient to justify a warrantless search.”

Because the trial court had granted the City’s motion to dismiss, the appellate court remanded the case to determine whether refunds should be made.

Taylor v. City of Saginaw, Sixth Cir. No. 17-2126, filed April 22, 2019.

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