



## SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

# *LEGAL AFFAIRS*

# *UPDATE*

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TOPIC: CONSTITUTIONAL LAW

### **The placement of a GPS tracker on a known parolee's car, and subsequent search of his trunk without a warrant does not violate the Fourth Amendment.**

Kyle Korte was paroled in August 2016, after serving time in state prison for bank robbery. The Los Angeles Sheriff's Department and the FBI began investigating Korte for a series of bank robberies. Without a warrant or Korte's consent, officers placed a GPS tracking device on Korte's car and monitored his movements for six days. They then obtained an arrest warrant and followed Korte from his home to a bank. Officers watched as Korte opened the trunk and placed something inside. They then arrested him and searched his car. During the search, they found a toy gun used during the three armed robberies, and the shirt Korte was wearing near the bank prior to his arrest.

Korte was indicted and found guilty on one count of attempted bank robbery, and three counts of bank robbery. During trial, the district court denied Korte's motions to suppress the evidence found in his car's trunk, and the information derived from the GPS tracker.

On appeal, the Ninth Circuit Court of Appeal affirmed the district court's denial of the motions to suppress. The Court's rulings provide guidance for encounters with parolees.

#### **Search of the Trunk**

"[P]arolees have severely diminished expectations of privacy by virtue of their status alone," even less than probationers. Additionally, the State has a substantial interest in supervising parolees and reducing recidivism. An officer conducting a parolee search must know at the time that the

individual is on parole, and the search cannot be arbitrary, capricious, or harassing. As a parolee, Korte was "subject to search or seizure... at any time of the day or night, with or without a search warrant or with or without cause."

On appeal, the Ninth Circuit rejected Korte's argument that the parole search condition does not extend to the trunk, and noted that the California Supreme Court also rejected a similar argument made by a probationer.

In California, "[p]roperty is subject to search when a parolee exhibits a sufficiently strong connection to the property in question to demonstrate control over it." A parolee controls property based on the nexus between the parolee and the area or items searched, including the nature of that area or item and how close and accessible it is to the parolee. Here, Korte rented the car, referred to it as "my car," and placed items inside the trunk. As such, the search of Korte's trunk was a lawful parole search.

#### **Placement and Use of the GPS Tracker**

Installing a GPS tracker on a car constitutes a Fourth Amendment search that generally requires a warrant. However, the State's strong interest in supervising parolees to reduce recidivism, promote reintegration, and deter future criminal conduct, outweighs a parolee's privacy issues. As a result, the Court held that the warrantless placement of a GPS tracker on Korte's car was not a Fourth Amendment violation.

#### **WHAT THIS MEANS:**

**Parolees have a reduced expectation of privacy while on parole. Peace officers with knowledge that a person is on parole may conduct a search of property that belongs to or is under the control of the parolee at any time of the day or night, with or without a search warrant or with or without cause.**