Motion to SUPPRESS?

AN IPHONE CAMERA SEES THROUGH TINTED CAR WINDOWS WITHOUT OFFENDING THE FOURTH AMENDMENT.

WRITTEN BY **PIERRE GROSDIDIER**

DEFENDANT CHRISTOPHER POLLER LEARNED THE HARD WAY that the Fourth Amendment's prohibition against unreasonable searches did not protect him when authorities used an iPhone to see through his car's heavily tinted windows.[1] A detective looked inside Poller's publicly parked car with an iPhone held up against its otherwise opaque windows and, using the device's viewfinder app, spotted guns inside. The detective then cupped his hands around his eyes to peer inside the car (without touching the windshield) and saw what looked like a bag of heroin on the passenger seat. These observations supported a search warrant that led to federal charges based on the seized contraband. The district court denied Poller's motion to suppress the evidence on Fourth Amendment grounds.[2] Poller argued both that the police invaded his reasonable subjective expectation of privacy and that the use of the iPhone against his car's windows was a physical trespass on his property.

Both sides agreed that peering inside a stopped vehicle without touching it to see if it contains contraband, even with the help of a flashlight, does not offend the Fourth Amendment.[3] Instead, Poller analogized his situation to that in *Kyllo v. United States,* where the U.S. Supreme Court held that authorities violated the Fourth Amendment when they used thermal imaging cameras to survey a home and detect the heat signature of lamps used to grow marijuana.[4] But, *Kyllo* turned on the fact that authorities used "a device that [wa]s not in general public use," i.e., the thermal imaging devices, to probe "details of the home" that would have been otherwise inscrutable without a physical entry.[5]

Here, Poller did not argue that iPhone and their cameras are not in general public use. Nor could he do so given the ubiquitousness of these devices, which the U.S. Supreme Court has casually compared to "an important feature of human anatomy."[6] It did not

help Poller that the internet is rife with stories that report that thieves can see through tinted car windows with cellphone cameras, which confirmed their general use for snooping.[7] Thus, the detective's iPhone use to peer inside Poller's car did not infringe the latter's subjective expectation of privacy.

The court also rejected Poller's physical intrusion argument. It is well established that the Fourth Amendment does not protect things that are exposed to public view. Thus, police officers need not avert looking into protected spaces visible from the thoroughfare. But it does not take much to physically intrude into a protected space, as when officers insert a key into a car lock to check its ownership, or when they step onto a driveway to touch a car's hood to check its temperature.[8]

Poller alleged that the detective intruded into his private sphere when his iPhone touched the car's tinted windows to see inside. But such contact was not necessary for the initial search. Body-cam videos of the incident showed that the iPhone still revealed what was inside the car even after the detective lifted the device away from the window. Moreover, the detective could also see inside the car with his cupped hands around his eyes without touching the windshield. Other courts have denied motions to suppress when police engaged in "minor physical contact with a car" that was "incidental and not necessary" to acquire the challenged evidence.[9] The court concluded that even though the police conducted a Fourth Amendment search to the extent they made physical contact with the car to determine what it contained, the court denied Poller's motion to suppress because the record did not show that this contact was necessary to achieve this end. **TBJ**

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NOTES

1. *United States v. Poller,* No. 3:22-cr-165 (JAM), 2023 WL 4535338, at *1 (D. Conn. July 14, 2023).
2. *Id.* at **1–2. Poller subsequently entered into a conditional plea agreement reserving the right to appeal the court's order. Pacer ECF 51.
3. *Poller,* 2023 WL 4535338, at *2 (citing *Texas v. Brown,* 460 U.S. 730, 739–40 (1983)).
4. *Id.* (citing *Kyllo v. United States,* 533 U.S. 27 (2001)).
5. *Id.* at *3 (citing *Kyllo,* 533 U.S. at 40).
6. *Id.* (citing *Riley v. California,* 573 U.S. 373, 385 (2014)).
7. *Id.*
8. *Id.* at *4 (citing cases).
9. *Id.* (citing cases).

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