| | | |
|---|---|---|
| STATE OF NEW JERSEY, | ) | On Remand from the New Jersey Supreme Court |
| | ) | To The: |
| | | Superior Court of New Jersey |
| Respondent, | ) | Appellate Division – Part K |
| | | Docket No. A-003221-23T1 |
| | ) | |
| vs. | | From The: |
| | ) | Superior Court of New Jersey |
| MAURICE E. JOHNSON, | | Law Division (Criminal) |
| | ) | Indictment No. 23-12-00939-I |
| Defendant/Appellant. | | |
| | ) | Sat Below: |
| | | Honorable William Ziegler, J.S.C. |
| | ) | |
| | | ON MOTION FOR LEAVE TO |
| | ) | APPEAL TO AND REMAND BY NEW JERSEY SUPREME COURT TO |
| | ) | APPELLATE DIVISION |

---

# BRIEF ON BEHALF OF DEFENDANT/APPELLANT MAURICE JOHNSON

**(Resubmitted after corrections: December 13, 2024)**

---

**JOHN P. MORRIS, ESQUIRE**
**New Jersey Attorney ID #007261974**
142 West Broad Street
PO Box 299
Bridgeton, New Jersey 08302
Tel No. (856) 453-1000
Fax No. (856) 453-0200
Email: ohnonothim@comcast.net
Attorney for Appellant, Maurice Johnson

# TABLE OF JUDGMENTS, ORDERS & BENCH OPINIONS

# TABLE OF CONTENTS

# TABLE OF CITATIONS

## CASE LAW

## PRELIMINARY STATEMENT

Indictment and thereafter Superseding Indictment of Maurice Johnson was based on evidence obtained by the New Jersey State Police by virtue of: (1) installation of a GPS on just one of the two vehicles parked in the driveway at 12 Copin Drive and (2) the Knock and Announce Search Warrant. The Motion Judge, Honorable William Ziegler, J.S.C., conducted an evidentiary hearing on October 3, 2023 and November 1, 2023, with resulting bench opinion on that latter date: granting the Motion to Suppress the contents recovered from the home because of the State's violation of the Knock and Announce requirement in the Search Warrant, *State v. Caronna, 469 N.J. Super. 462 (App. Div. 2021)*; the court denied the separate Motion seeking suppression of the data obtained from the installation of a GPS device on one of the two vehicles parked in the defendant's driveway.

As to the installation of the GPS device, the Motion Judge differentiated *United States v. Jones, 565 U.S. 400 (2012)* and *Collins v. Virginia, 138 S. Ct. 1663 (2018)* both of which were warrantless as he noted that: "In this case, the police had a warrant", referencing the CDW which authorized installation of the GPS tracking device on both vehicles. That installation was accomplished by entry of the State Police onto the premises, i.e. the driveway of 12 Copin Drive. The Motion Judge also concluded that there was an "implied invitation" to utilize the driveway as the photographs of 12 Copin Drive showed fencing and a driveway

with a path leading at a right angle from the driveway to the front door. The Motion Judge did not appreciate that which *United States v. Jones* did, and *Collins v. Virginia* did not, involve: in *Jones*, attachment of the GPS device was in a public parking lot, and in *Collins,* entry was without a warrant onto the home's driveway. The Warrant upon which the Motion Judge relied was a Communications Data Warrant (CDW) which only authorized placement of the tracking device on a vehicle. The trespass in *Jones* was the warrantless attachment of the GPS to the vehicle; not a trespass on the curtilage of a home.

The Motion Judge's "implied invitation" conclusion obviated consideration of any *Jones* curtilage trespassing violation to invalidate that CDW. That Motion Judge's opinion was that the driveway was an "implicit invitation" to UPS and Amazon drivers, and also law enforcement, to approach the home via the driveway as there was no direct pathway leading from the street; there was only a pathway leading from the driveway to the front door.

The Motion Judge did not appreciate that the "warrant" which the police had "in this case" was only a CDW which did not authorize entry onto private property but only granted authority to install a GPS on a vehicle. Notably, in *United States v. Jones*, that tracking device was twice attached to that vehicle when the vehicle was in a public parking lot. Not so here. Review of the CDW [Confidential

Appendix at CDa3, CDa6] contains no authorization for entry onto private property.

In addition, the Motion Judge's "implied invitation" conclusion is countermanded by *Florida v. Jardines, 589 U.S. 1 (2013)* where that "implicit invitation" rationale was analyzed and rejected by the *Jardines* majority:

> This implicit license typically permits the visitor to approach the home by the footpath, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.
>
> *Jardines*, 133 S. Ct. at 1415

The Motion Judge, in denying Reconsideration, relied on the photographs of 12 Copin Drive showing the pathway leading from the driveway [R1, 2 at Da31, 32] and concluded that UPS, Amazon and the State Police could all utilize the driveway. What was not analyzed is that the "invitation" to use the driveway was simply to gain access to the front door. There is no authorization to allow any tinkering [by UPS, Amazon or next-door neighbor] with vehicles parked in the driveway. So also, as to law enforcement.

Our Supreme Court has recognized, in its analysis of the third-party intervention doctrine, that law enforcement conduct cannot exceed conduct accorded to the general public [the "plumber, dinner guest, or landlord" as described by Chief Justice Rabner] i.e., conduct to simply walk up the driveway, traverse the pathway to approach and then knock at the front door.

## PROCEDURAL HISTORY[1]

Maurice Johnson was initially indicted in a five Count Indictment [Da3] on June 8, 2022 charging various drug and gun offenses as well as a certain person offense. After the Motions to Suppress were granted and denied on November 1, 2023, the State sought and obtained a Superseding Indictment [23-12-00939-I] [Da5] which included an additional Count of unlawful possession of a weapon without having first obtained a permit to possess.

The March 8, 2024 defense Motion for Reconsideration [Da25], see *Lawson v. Dewar, 468 N.J. Super. 128 (App. Div. 2021)*, came on for hearing on May 30, 2024. The Motion Judge, after marking 2 of the defense photographs as R1 [Da31] and R2 [Da32], concluded:

> So if there's an implied invitation to come to the front path, knock on the front door and not linger longer unless invited, does that not also include the right of the police to go into the driveway area, where they had to be getting to the front door, install the GPS devices, for which they had a warrant and leave.
>
> ***
>
> That's my ruling. That was my ruling.
>
> 3T: 5/30/24 T10-8 to 16

[1] The proceedings below are found in the following transcripts:
1T: 10/3/23 Suppression Hearing
2T: 11/1/23 Suppression Hearing
3T: 5/30/24 Reconsideration Hearing and bench opinion

Order Denying Reconsideration was filed on May 30, 2024 [Da2] and Motion for Leave to Appeal to the Appellate Division was denied [Da33]. Leave to Appeal was granted by the Supreme Court on October 1, 2024 [Da34] which then remanded to the Superior Court, Appellate Division to consider the merits of this appeal.

## STATEMENT OF FACTS

There were 2 Suppression Motions: one as to the placement of the GPS device on a vehicle and the other as to the search and entry into the house by way of a "knock and announce" Search Warrant.

Detective Julius Wynn, NJSP, testified on October 3, 2023 [transcript at 1T] that he was the lead detective for securing both the "knock and announce" search warrant of the residence as well as the CDWs for attachment of GPS devices on each of the 2 vehicles in the driveway of the residence, 1T5-4 to 14. Detective Wynn had conducted physical surveillance which was not successful and then applied for and obtained a CDW [Communications Data Warrant] to attach a GPS device on both of the vehicles that the defendant had been operating, 1T6-17 to 7-6. Detective Wynn had been investigating this Defendant for the period December 20, 2021 through March 2022, 1T20-25.

Because of his physical surveillance difficulties, Detective Wynn applied for CDWs to place GPS devices on both vehicles, 1T21-7, as both vehicles were being

utilized by the defendant. Those vehicles were a Chevrolet Tahoe and Jeep Cherokee, 1T25-22 to 26-10. The Detective's application for a CDW for attachment of the GPS sought same as to both vehicles. The NJSP Electronic Surveillance Unit (ESU) [consisting of 3 individuals] were selected to place the GPS devices on the vehicles. At the time of the attempted placement of the GPS devices, Detective Wynn was nearby, 1T26-22 to 28-20. The Electronic Surveillance Unit entered the property and attached the device to the Tahoe. They were able to do so by going up the driveway to attach the device to just one vehicle, 1T28-21 to 24. The layout of the residence and the driveway are reflected in the 8 photos admitted into evidence [D1 to D8 at Da17-24]. Additionally, marked as Exhibits D9 & D10 [CDa 3, 6] were the 2 CDWs obtained by Detective Wynn for an initial 30 day period and then a subsequent 30 day period.

The previous physical surveillance of the Tahoe was conducted on 7 different occasions by observing the defendant operating the Tahoe to meet with an individual to presumably conduct a drug sale/purchase, 1T42-16 to 43-20.

It was the Detective's opinion that the CDWs authorized entry by the ESU onto private property as it was his understanding that the CDWs authorized installation anywhere in the United States of America. This Detective's understanding was that installation of the CDWs could allow entry onto private property to do so, 1T43-21 to 45-13. Detective Wynn acknowledged that entry onto

private property could only be by way of consent or legal authorization and cited the CDW as his legal authorization. When asked if he could not have cited probable cause in the CDW to allow entry onto 12 Copin Drive, his response was that anywhere in the United States of America was sufficient in his view of the CDW, 1T45-14 to 46-6. The debriefing by the Detective on the GPS placement with the Electronic Surveillance Unit was simply to identify the 2 vehicles that were parked in the driveway at 12 Copin Drive, 1T46-11 to 47-13. The 40 days that the GPS actually monitored the travel of the Tahoe provided the information so as to secure a Search Warrant for the storage unit, 1T47-14 to 49-17.

Sergeant Kevin Langefeld of the TEAMS Unit South testified on October 3, 2023 and his testimony was followed by Trooper Hahn on November 1, 2023, he also being a member of the TEAMS Unit. The testimony of those Troopers is not relevant to the issue under appeal, i.e. the installation of the GPS device on the Tahoe and the two months of tracking of that vehicle. Identification of the exhibits and their entry into evidence may be found at 2T49-17 to 51-13 of the November 1, 2023 transcript. The Court's Bench Opinion after the completion of testimony on November 1, 2023 may be found at 2T65-23 to 77-8.

## LEGAL ARGUMENT

### POINT I

**The Motion Judge erred in his restrictive reading of *United States v. Jones, 565 U.S. 400 (2012)* and its progeny [and related State constitutional principles] and the Federal Supreme Court's complementary common law trespassing prohibitions to justify the State Police entry onto the premises (driveway, i.e. curtlage) of 12 Copin Drive to install a GPS tracking device on one of the Defendant's vehicles:**

**(A) The Motion Judge confused and conflated the State and Federal warrant requirement by equating a Communications Data Warrant (CDW) authorizing installation of the GPS device on vehicles with a Search Warrant authorizing entry onto and into the premises of a residence;**

**(B) The Motion Judge also erred in characterizing the driveway, although encompassed within the concept of curtilage, as an implied invitation to "[t]he UPS guy, the Amazon guy" and law enforcement to "walk up that driveway". The Judge failed to appreciate the limits of the third-party intervention doctrine as a deviation during a "walk up that driveway" to then affix a GPS device on a vehicle by law enforcement exceeds any implicit invitation to the public to walk up and knock at one's door, see *State v. Wright, 221 N.J. 456 at 477 (2015)*, *Florida v. Jardines, 133 S. Ct. 1409 at 1415 (2013)*, *Collins v. Virginia, 138 S.Ct. 1603 (2018)*. [See 11/1/23 and 5/30/24 bench opinions at 2T and 3T, respectively]; and,**

**(C) The Motion Judge failed to address the additional "invasion of one's reasonable expectation of privacy" argument, based on *Jones* and *Katz v. United States, 88 S.Ct. 507 (1967)* [see Brief on Reconsideration Motion at Da26-30].**

The Communications Data Warrant (CDW) relied upon by the Motion Judge as being the "Warrant" authorizing entry onto the driveway and placement of the GPS device on 1 of the 2 vehicles parked in the driveway is, however, a warrant which does not authorize entry onto private property to install the GPS device [see Confidential Appendix at CDa 3, 6, 9, 12 & 15]]. Compare the CDWs issued for

the Tahoe with the Search Warrant for the residence [Confidential Appendix at CDa1 & 18] as the latter authorizes entry onto and into a private residence while the CDWs do not.

In addition, the Motion Judge's conclusion was that the driveway can be utilized to then go on the pathway to the front door and is an "implied invitation" not only to the UPS guy, the Amazon guy, but also authorization to law enforcement to walk up that driveway and also affix the GPS tracking device to the vehicles. A Fourth Amendment analysis in *Florida v. Jardines*, supra, refutes that conclusion. Our State's constitutional analysis under Article 1, Paragraph 7 should yield a similar result.

Our Supreme Court has recognized and recited Federal Fourth Amendment principles involving that Amendment as well as "unreasonable searches and seizures", see *State v. Earls, 214 N.J. 564 (2013)* with its explication of *United States v. Jones, 132 S.Ct. 945 (2012),* noting that that opinion "rests on principles of trespass [that] has altered the landscape somewhat", *Earls*, at 582 583. Our Supreme Court has also recognized and referenced the United States Supreme Court's Fourth Amendment analysis in *Florida v. Jardines, 133 S.Ct. 1409 (2013)*, see *State v. Wright, 221 N.J. 456 at 467, 476.* That Court remanded to this Court to consider the issues raised on this appeal as to *Jones* and its progeny as well as, presumably, an independent State constitutional analysis.

This Court, when confronted recently with the pertinent principles of constitutional law noted that "New Jersey courts must apply the principles and holdings set forth in *Jardines* and *Collins*, and to the extent that existing New Jersey precedent conflicts with those holdings, the United States Supreme Court cases govern.", *State v. Ingram, 474 N.J. Super. at 540*. Notably, the *Ingram* Court made no determination on a State constitutional analysis.

This remand from the New Jersey Supreme Court would appear to counsel an independent State constitutional inquiry rather than simply relying on a Federal supremacy Fourth Amendment analysis. *Ingram* noted that, "the *Collins* court held that the driveway was curtilage because it constituted an area adjacent to the home and to which the activity of the homelife extends", (id. 1671 quoting *Jardines*, 569 U.S. at 7). The Court in *Collins* concluded that:

> in physically intruding on the curtilage of defendant's home to search the motorcycle [the officer] not only invaded [defendant's] Fourth Amendment interest in the items searched, i.e. the motorcycle, but also invaded [defendant's] Fourth Amendment interest in the curtilage of his home., ibid.

*Jardines* and *Collins* clarify the Federal protections associated with curtilage. Those Federal cases explain that curtilage includes a front porch and a driveway running along the home, *Jardines, 569 U.S. at 6*; *Collins, 138 S.Ct. at 1671*. Those cases also clarify that no privacy expectation analysis needs to be applied to curtilage, *Jardines, 569 U.S. at 11*. Therefore, when a government

official steps onto curtilage of a home without permission or a warrant so permitting, the official has begun to conduct a search and the search will only be lawful if an exception to the warrant requirement applies, *State v. Ingram, 474 N.J. Super. at 537*.

This Court's analysis in *Ingram* applies to this appeal:

> The trial court correctly concluded that the driveway was part of the curtilage of the home. We part company with the trial court, however, in its additional legal conclusion that defendant has diminished privacy expectation on the driveway. The trial court's latter conclusion was inconsistent with the principles and holdings set forth by the United States Supreme Court in *Jardines* and *Collins*. Applying the principles of *Jardines* and *Collins*, [the officer] was not lawfully in the area when he looked
>
> ***
>
> In making this holding, we do not say that a home's driveway will always be considered part of the curtilage. We recognize that there may be instances where a driveway is far enough away from the home and its immediate surroundings to not qualify as curtilage. Whether a court should apply an expectation of privacy analysis in such scenarios is a question for another day. Here, however, the driveway [that the officer] entered immediately abuts [the private property]. This is exactly like the driveway addressed in *Collins*, and so our outcome is dictated by that case. See 138 S.Ct. at 1670-71.
>
> In making our holding, we also clarify that existing New Jersey precedent must be interpreted and applied in the framework established by the United States Supreme Court in *Jardines* and *Collins*. The trial court here relied on a New Jersey Supreme Court case, *State v. Johnson, 171 N.J. 192 (2002)* and [two Appellate Division cases *Ford* and *Wilson*; citations omitted]. The trial court used those cases to reason that defendant had a diminished

> privacy expectation in the driveway and the front porch of [the residence]. To the extent that *Johnson*, *Ford* or *Wilson* can be read to support an argument concerning diminished privacy expectations, those portions of the cases can no longer be applied under governing Fourth Amendment law. New Jersey courts are bound to follow United States Supreme Court decisions establishing constitutional protections afforded under the Fourth Amendment. See *State v. Adkins, 221 N.J. 300, 313 (2015)*. The United States Supreme Court has rejected the view that curtilage is subject to a diminished Fourth Amendment protection because the area is semi-private or because it carries a diminished privacy expectation. Consequently, in analyzing governmental searches and seizures, New Jersey courts must apply the principles and holdings set forth in *Jardines* and *Collins*, and to the extent that existing New Jersey precedent conflicts with those holdings, the United States Supreme Court cases govern.
>
> *State v. Ingram, 474 N.J. Super. at 539*, 540

In light of the *Ingram* Court's analysis of only the Federal Fourth Amendment aspect, our Supreme Court's remand to this Court suggests that this Court should analyze and determine whether the State Constitution provides greater protection than the Fourth Amendment, cf. *State v. Earls, 214 N.J. 564 at 584*.[2]

Additionally, unexamined by the Motion Judge was our Supreme Court's rejection of an extension of the third-party intervention doctrine to permit conduct

[2] The above analysis by our State accords "the respect due an enumerated constitutional right", here, the 4th Amendment; for a concern by certain Justices that Hawaii's Supreme Court failed to accord due respect to that Court's 2nd Amendment ruling, compare *State v. Wilson, 543 P.3d 440 (2024)* with *Wilson v. Hawaii, 604 U.S. __ (2024)* [statement of Thomas J. on denial of certiorari].

of law enforcement to exceed the sphere of that conduct accorded to the general public, or, in the words of Chief Justice Rabner, conduct ordinarily accorded to a "plumber, dinner guest or a landlord", *State v. Wright, 221 N.J. 456 at 477 (2015)*.

Finally, defense counsel again raised the unexamined reasonable expectation of privacy issue on the Motion for Reconsideration, see Da 25, 26-30 and 3T. Here, there was no testimony by Detective Wynn that an additional 30-day extension was required so as to continue the GPS intrusion on the defendant's one vehicle. In that regard as well, while not necessarily controlling from a legal perspective, the trial judge's finding that the location of the one vehicle was too close to the home to prevent installation of the GPS, likewise, factually confirms the applicable concept of a curtilage, contrary to the Motion Judge's assessment of a needed "enclosure" or a garage to justify a "curtilage" conclusion.

**POINT II**

**When, if ever, is a CDW sufficient to authorize entry onto private property [or into a home] to install a GPS tracking or recording device which does not invade one's reasonable expectation of privacy and,**

**When, if ever, under federal and State constitutional protections, does a driveway adjacent to one's home allow unauthorized and warrantless entry for government agents to engage in any conduct other than that accorded to a "plumber, dinner guest, or a landlord", *State v. Wright, 221 N.J. 456 at 477 (2015)*. [See Motion for Reconsideration, Brief and Oral Argument at Da25-30 and 3T]**

With advances in technology, utilization of CDWs for installation and particularization of GPS devices [as well as recording devices and extraction of the

entirety of a cell phone's data] requires clarification, lest there be any confusion by lower courts between a CDW which does not authorize entry onto private property with that of a Search Warrant which does authorize entry onto private property. A somewhat similar analysis was employed by the Court to quash a CDW on a constitutional "particularity" deficiency, see *State v. Missak, 476 N.J. Super. 302 (App. Div. 2023)*. That "particularity" constitutional command should also counsel for temporal and spatial limitations in a GPS Warrant.

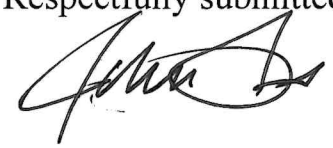
In addition, the "implied invitation" as construed by this Motion Judge is contradicted not only by Federal (and potentially State) constitutional principles but also our Supreme Court's rejection of any extension of the third-party intervention doctrine to sanction the broad trespassing conduct by the State Police here, see *State v. Wright, 221 N.J. 456 (2015), State v. Ingram, 474 N.J. Super. 522 (App. Div. 2023).*

## CONCLUSION

It is respectfully submitted that this Court should review and correct the Motion Judge's conclusions of law and interpretation of the Federal 4th Amendment's controlling authority in *United States v. Jones* and its progeny and also confirm, if necessary, New Jersey's separate State constitutional analysis to remedy any future trial level errors by confirming controlling Federal law and

establishing State constitutional principles as expressed herein, same at least equal to the federal standard in *Jones* with its clarification in *Jardines* and *Collins*.

Respectfully submitted



John P. Morris

Dated: December 13, 2024

**OFFICE OF THE COUNTY PROSECUTOR**
**JENNIFER WEBB-MCRAE**
**CUMBERLAND COUNTY PROSECUTOR**

**Harold B. Shapiro**
**First Assistant Prosecutor**

**Darrin Pulman**
**Chief of Investigators**

**115 Vine Street**
**Bridgeton, New Jersey 08302**
**Telephone (856)453-0486**
**Fax (856)451-1507**

January 23, 2025

| | |
|---|---|
| **STATE OF NEW JERSEY,**<br><br>Plaintiff-Respondent<br><br>v.<br><br>**MAURICE E. JOHNSON,**<br><br>Defendant-Appellant. | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION CUMBERLAND COUNTY<br>INDICTMENT NO. 22-06-387-I<br><br>CRIMINAL ACTION<br><br>On appeal from an interlocutory order of the Superior Court of New Jersey, Law Div., Cumberland County<br><br>Sat Below: Hon. Wiliam Ziegler, J.S.C. |

---

# BRIEF OF THE STATE OF NEW JERSEY IN OPPOSITION TO DEFENDANT'S INTERLOCUTORY APPEAL

---

Jennifer Webb-McRae
Cumberland County Prosecutor

Kimberly P. Will
Attorney No. 318932020
Assistant Prosecutor
Of Counsel and on the Brief
(kimberlywi@cumberlandcountynj.gov) DEFENDANT IS CONFINED

Your Honors:

Please accept this letter brief in lieu of a more formal brief in opposition to defendant's interlocutory appeal.

## TABLE OF CONTENTS



## TABLE OF APPENDIX



## PROCEDURAL HISTORY AND STATEMENT OF FACTS

On June 8, 2022, a grand jury returned a five-count indictment against defendant, charging him with various drug and gun offenses. (Da3).[1] On December 20, 2023, another grand jury returned a superseding indictment, charging defendant with (1) first-degree possession of CDS with intent to distribute, N.J.S.A. 2C:35-5(b)(1); (2) second-degree possession of a weapon while committing a CDS offense, N.J.S.A. 2C:35-5(b)(3) and N.J.S.A. 2C:39-4.1(a); (3) third-degree prohibited weapons and devices without serial number, N.J.S.A. 2C:9-3(n); (4) fourth-degree possession of weapons and devices, N.J.S.A. 2C:39-3(j); (5) second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b)(1); and (6) second-degree possession of a weapon by a convicted person, N.J.S.A. 2C:39-7(b)(1). (Da8-7).

On February 22, 2023, defendant moved to suppress certain evidence police had recovered in a search of his house. (Da8). Defendant argued that police had obtained a search warrant, but had failed to knock and announce. (Da9). On March 15, 2023, defendant moved to suppress information gathered by a GPS installed on his car, as well as evidence discovered as a result of that information. (Da13-14). Although the installation was warrant-authorized, defendant argued that it was illegal because it took place in his driveway, where he claimed police had no license to be. (Da29).

[1] "Da" refers to defendant's appendix.
"Db" refers to defendant's brief.
"Ca" refers to defendant's confidential appendix.
"Pa" refers to the State's appendix.

Following a testimonial hearing on October 3, 2023 and November 1, 2023, the Honorable William Ziegler, J.S.C. suppressed the evidence found in defendant's house, but not the information gathered by the GPS. (Da1-2). In his oral opinion, Judge Ziegler found that the cases relied upon by defendant, United States v. Jones, 565 U.S. 400 (2012) and Collins v. Virginia, 584 U.S. 586 (2018), pertained to situations in which police acted without a warrant, whereas in the matter at hand, the GPS was installed pursuant to a warrant. (Pa2-3). The judge additionally stated that if the car had been in a closed garage, suppression would have been appropriate. (Pa2).

In March 2024, defendant moved for reconsideration. (Da25). In addition to Jones and Collins, defendant cited Florida v. Jardines, 569 U.S. 1 (2013) for the proposition that "the property of everyman [is] sacred" and that "no man can set his foot upon his neighbor's close without his leave." (Da27). On May 30, 2024, Judge Ziegler found that there was "an implied invitation to enter one's driveway," and that "lots of people go up the driveways now," including "[t]he Amazon delivery guy, DoorDash, the pizza delivery guy, . . . UPS, the Postal Service." (Pa5). The Judge characterized defendant's motion as "a second bite at the apple" and denied reconsideration. (Pa8-9).

Defendant applied for leave to appeal, which was denied. (Da33). Thereafter, defendant appealed to the Supreme Court, and on October 1, 2024, the Supreme Court remanded the matter to the Appellate Division for consideration on the merits.

## LEGAL ARGUMENT

### I. Defendant's Position is Incompatible with Binding Precedents

Appellate courts reviewing a grant or denial of a motion to suppress must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record. State v. Lamb, 218 N.J. 300, 313 (2014). Legal conclusions, however, are reviewed de novo. Ibid.

Here, the relevant question is one of law. Defendant's sole argument in this motion is that the police trespassed upon his driveway to install the warrant-authorized GPS. (Db8-11). In support of that argument, defendant cites Jones, Jardines, Collins, and State v. Wright, 221 N.J. 456 (2015). (Db8-11). Unlike the present matter, all of these cases pertain to warrantless intrusions.

Jones stands for the principle that the government may not unreasonably intrude upon "persons, houses, papers, and effects." 565 U.S. at 405-11. The question of law was whether police could install a GPS on a car without a valid warrant for the installation. Id. at 402-04. The car at issue was parked in public when

the installation occurred. Id. at 403. The government argued that the defendant had no reasonable expectation of privacy in the movements of his car because people on the street could easily see where the car was. Id. at 406-07. However, the United States Supreme Court rejected the argument, finding that reasonably expectation of privacy was not the only interest protected by the Fourth Amendment. Id. at 409. Rather, the Court reasoned, the Amendment also protects against trespass, which the government committed when it installed the GPS on the defendant's car. Id. at 409-11.

In Jardines, law enforcement brought a dog to the defendant's porch to sniff for drug, without first having obtained a warrant. Florida v. Jardines, 569 U.S. 1, 3–5 (2013). The defendant sought to suppress the information discovered by the dog, and the matter eventually reached the United States Supreme Court. Ibid. The Court held that law enforcement had committed a trespass, reasoning that their conduct exceeded the implied invitation "to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." Id. at 8-9. Therefore, the Court found, they had unlawfully conducted a search without a warrant. Ibid.

In Collins, law enforcement invoked the automobile exception to enter a driveway and lift a tarp to investigate a car parked underneath. 584 U.S. at 591-92. The United States Supreme Court held that the automobile exception did not apply,

stating "[n]othing in our case law . . . suggests that the automobile exception gives an officer the right to enter a home or its curtilage to access a vehicle without a warrant." Id. at 595. The Court further found that the curtilage was part of the home itself for search and seizure purposes. Id. at 592. Relying on Payton v. New York, 445 U.S. 573, 587–590 (1980)), the Court pointed out that a warrantless arrest is legal outside the home, but not within the home. Id. at 595. So too, the Court held, a warrantless search of a car may occur in public, but not in the curtilage. Ibid.

In Wright, the defendant asked her landlord to investigate a leak in her home. 221 N.J. at 459. The landlord came, saw contraband, and reported it to the police. Ibid. A police officer then entered the home to see the contraband for himself, without first obtaining a warrant. Id. at 460. After he saw the contraband, the defendant granted him permission to conduct a full search, and he found additional contraband. Ibid. The State attempted to justify the officer's conduct with the third-party intervention doctrine, which holds that if a third-party has conducted a search, law enforcement does not need a warrant to conduct another search not exceeding the scope of the original search. Id. at 459. Our State Supreme Court held that the third-party intervention doctrine did not apply to homes, and that "an invitation to a plumber, a dinner guest, or a landlord does not open the door to one's home to a warrantless search by a police officer." Id. at 477.

Here, defendant contends that law enforcement acted wrongfully because they "trespassed" upon his property to install the warrant-authorized GPS. That proposition is incorrect as a matter of law. Jones, Jardines, and Collins all pertain to warrantless searches, and Collins, the latest of these cases, declares that officers may arrest an offender in the offender's home if they have a warrant. 584 U.S at 595. Because Collins cites Payton in that declaration, the warrant at issue is not the search warrant for the home, but the arrest warrant itself. Payton clearly states that a separate search warrant is not required, as "an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." 445 U.S. 602-03.

Our State Constitution does not afford broader protection. Under New Jersey law, "police officers are permitted to enter the subject of an arrest warrant's home when they have reason to believe the subject is inside." State v. Bookman, 251 N.J. 600, 619 (2022); see also State v. Brown, 205 N.J. 133, 145 (2011) ("An arrest warrant "implicitly carries with it the limited authority to enter a dwelling" where the suspect lives when there is reason to believe the suspect is inside." (internal quotation marks omitted)).

If an arrest warrant carries with it the implicit authority to enter a dwelling to effectuate the arrest, a GPS warrant carries with it the authority to enter the suspect's

driveway for installation purposes. No invitation from the suspect is necessary, implicit or otherwise. Therefore, Wright's statements on third-party intervention and invitees are of no consequence. It should also be noted that in this case, the intrusion on the driveway was minimal. Police did not damage defendant's property to get to the car, and in fact had every incentive to be inconspicuous so as to avoid revealing their investigation. Any inconvenience caused their presence was minimal and does not meaningfully add to the inconvenience of GPS monitoring. See Maryland v. King, 569 U.S. 435, 464 (2013) (stating, in permitting warrantless buccal swab of arrestees, that "swab of this nature does not increase the indignity already attendant to normal incidents of arrest.").

Defendant argues that even if federal law permits police access to the driveway for the purpose of installing a warrant-authorized GPS, New Jersey law does not. (Db10). However, that argument does not appear to have been raised below, and in any case, New Jersey law recognizes the concept of implicit authority. In light of the de minimis intrusion in this case, this court should not order suppression.

Defendant also argues that the use of GPS monitoring, in and of itself, was a violation of his reasonable expectation of privacy (Db13, Da26-30). In making this argument, he relies on concurrent opinions in Jones. But those opinions are not relevant. Jones involved a situation in which the installed GPS was not supported by

a warrant. 565 U.S. at 413. The central question was whether such an installation was a search. Id. at 402. All justices agreed that it was because it amounted to physical trespass, but some concurrent justices went further and held that it was an invasion of privacy in addition to trespass. Id. at 411-27. No one held that reasonable expectation of privacy may not be overcome with a warrant. And because a warrant was involved in this case, the concurrences do not avail defendant.

## CONCLUSION

For the reasons set forth above, the court should affirm the trial court's decision.

Respectfully submitted,

By: Kimberly P. Will

Kimberly P. Will [318932020]
Assistant Prosecutor

DATED: January 23, 2025

| | | |
|---|---|---|
| STATE OF NEW JERSEY, | ) | On Remand from the New Jersey Supreme Court |
| | ) | To The: |
| | | Superior Court of New Jersey |
| Respondent, | ) | Appellate Division – Part K |
| | | Docket No. A-003221-23T1 |
| | ) | |
| vs. | | From The: |
| | ) | Superior Court of New Jersey |
| MAURICE E. JOHNSON, | | Law Division (Criminal) |
| | ) | Indictment No. 23-12-00939-I |
| Defendant/Appellant. | | |
| | ) | Sat Below: |
| | | Honorable William Ziegler, J.S.C. |
| | ) | |
| | | ON MOTION FOR LEAVE TO |
| | ) | APPEAL TO AND REMAND BY NEW JERSEY SUPREME COURT TO |
| | ) | APPELLATE DIVISION |

---

**REPLY BRIEF ON BEHALF OF DEFENDANT/APPELLANT MAURICE JOHNSON (Defendant is Confined)**
**Submitted January 30, 2025**

---

**JOHN P. MORRIS, ESQUIRE**
**New Jersey Attorney ID #007261974**
142 West Broad Street
PO Box 299
Bridgeton, New Jersey 08302
Tel No. (856) 453-1000
Fax No. (856) 453-0200
Email: ohnonothim@comcast.net
Attorney for Appellant, Maurice Johnson

# TABLE OF JUDGMENTS, ORDERS & BENCH OPINIONS

See Defendant's Initial Brief and Appendix

# TABLE OF CONTENTS

# TABLE OF CITATIONS

## CASE LAW

## PRELIMINARY STATEMENT

This defendant's merits brief recited to and, in light of its clear explication, quoted extensively from *State v. Ingram, 474 N.J. Super. at 539, 540*. The State's brief, in arguing that the defendant's merits brief is incompatible with binding precedents, did not analyze or differentiate *State v. Ingram*.

## PROCEDURAL HISTORY

See defense Procedural History at Db 4, 5 and State's recitation of Procedural History and Statement of Facts at Pb 2-4.

## STATEMENT OF FACTS

See defense counsel's merits brief, Db 5-7.

## LEGAL ARGUMENT

### POINT I

**The State fails to appreciate this defendant's reliance on Federal supremacy (i.e. 4th Amendment) principles as well as New Jersey's acknowledgement of that Federal authority, see *State v. Ingram, 474 N.J. Super. 522 (App. Div. 2023)*.**

This defendant does not intend to assert broadened authority under New Jersey 's Constitution that law enforcement violated that State Constitutional protection of Article I, Paragraph 7. Rather, as reflected in the meris brief quoting extensively from *State v. Ingram, 474 N.J. Super. at 539, 540,* New Jersey must acknowledge and recognize the supremacy clause requirements as to 4th Amendment principles applicable to States. Defense counsel's initial brief did so.

The State's brief in opposition fails to acknowledge our State's obligation to adhere to Federal supremacy principles, see *State v. Ingram, 474 N.J. Super. 522, (App. Div. 2023) and State v. Adkins, 221 N.J. 300 at 313 (2015)* ("under Supremacy Clause principles, we are bound to follow [United States Supreme Court pronouncements] as the minimal amount of constitutional protection to be provided").

## POINT II

**This Court need not, should it so determine, decide the State Constitutional limits, expanded or same, as to the Federal curtilage prohibition or the GPS parameters, impacting an individual's expectation of privacy.**

The State's brief in opposition implicates at least two issues: any State Constitutional limits, either expanded or simply similar, to that reflected in the Federal Supreme Court's sphere may (or may not) be determined by this Court. That determination could very well coincide with any Federal curtilage prohibition. This State's constitutional GPS parameters, procedural or otherwise, which would supplement one's Federal expectation of privacy may well expand or replicate that Federal analysis or any expansive impact on New Jersey's expectation of privacy, *State v. Adkins, supra.*

## POINT III

**This Court should confirm that a CDW does not authorize entry onto private property, driveway, home or enclosed area, without a warrant specifically particularizing the basis for an entry upon a home or its curtilage as well as the parameters of a CDW.**

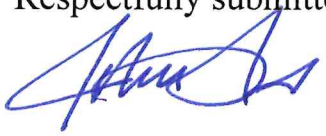
Irrespective of Point II above, this Court must confirm that a CDW does not authorize, implicitly or explicitly, entry onto private property, driveway, home or any encompassed area without a warrant specifically particularizing the basis for entry and the CDW.

A CDW for installation of a GPS device does not grant *carte blanche* to enter private property to effectuate application of a GPS device. As to entry onto private property, it would be expected that specific circumstances would need to be provided to the warrant authorizing court as to the necessity for entry onto private property as opposed to the State's unfettered ability to attach a GPS in public areas. More pertinently, the parameters for a CDW for data production via a GPS device must be, in light of the 4th Amendment's particularity requirement, as well as our State's similar requirement, detailed as to whether a 2 week intrusion of privacy on a GPS is excessive [as seems to be recited by at least 5 Justices in *United States v. Jones, 565 U.S. 400 (2012)].*

## CONCLUSION

The 4th Amendment controls, as reflected in *State v. Ingram*, should be affirmed here. This Court's decision as to our State's constitutional protections must abide this Court's determination to defer (or not) to another day.

Respectfully submitted



John P. Morris

Dated: January 30, 2025