CASE NO. 19-001
MINNESOTA COURT OF APPEALS

STATE v. WOLFF

Parties: Appellant – State of Minnesota
Respondent – Peter Wolff

Issues:

(1) Whether Peter Wolff's expectation of privacy in his cell site location data was "reasonable," making it protected by the Fourth Amendment against unreasonable search or seizure by the police.

(2) Even if Peter Wolff's cell site location data is protected by the Fourth Amendment, whether the State may use it in court because the police would have "inevitably discovered" the location of the marijuana at issue in this case.

Background:

On December 17, 2015, the Minneapolis Police received an anonymous tip from a woman about drug activity in and around a motel room. The tipper did not know much about what was going on, but reported seeing "sketchy" people coming in and out of the room, some of them carrying packages wrapped in paper. The tipper also stated that she overheard one of the individuals talking about a "drop" and mentioning an IHOP in Maple Grove. She also thought they said "January 2nd," but wasn't sure. The tipper refused to identify herself, and claimed she knew nothing else about the operation. After investigating, the police discovered that the room that the tipper identified was occupied by Peter Wolff, who had been staying in the room for several weeks.

The MPD assigned Detective Mario Sanchez to the case. Detective Sanchez investigated Wolff's background and criminal history, finding only that Wolff had two minor marijuana possession charges in the past five years.

Knowing that he only had 15 days to gather enough evidence to corroborate the tipper's story, Detective Sanchez placed Wolff under surveillance. Beginning on December 18 and for the next fourteen days, Detective Sanchez continuously visually monitored Wolff's movements. Twelve hours a day, Detective Sanchez waited outside Wolff's motel, making notes of anything suspicious that occurred. Detective Sanchez observed Wolff personally on several occasions, many times using a wireless cell phone. Based on a public records search, Detective Sanchez found a cell phone number registered to Peter Wolff's name.

Detective Sanchez also observed Wolff each time he left the motel. On one occasion, Detective Sanchez followed Wolff when he went to the grocery store, and saw him purchase a copy of the day's newspaper, scissors, and packaging tape. Detective Sanchez also noticed that Wolff paid in cash, and that he had a large amount of cash in his wallet. Further, on approximately three occasions since beginning surveillance, Detective Sanchez observed two men enter Wolff's motel room that he recognized from previous drug busts.

While Detective Sanchez was sure that Wolff was up to something, he didn't feel that he had enough hard evidence to apply for a search warrant of Wolff's motel room. So, on December 31, Detective Sanchez contacted the electronic service provider associated with Wolff's cell phone account. Detective Sanchez knew from prior experience that this company had recently built new cell site towers which would "ping" each time a call from a customer was placed within their range. The "pings" allowed the company to create a "map" of a customer's whereabouts that would be accurate

within approximately 15 feet. Detective Sanchez spoke with a company employee, Ms. Bailey, who informed him that providing Peter Wolff's cell site location data would violate the company's privacy policy that they maintained with all of their customers. When Detective Sanchez informed Ms. Bailey that his request was in connection with a criminal investigation and that it was lawful for her to share the information with law enforcement, she reluctantly sent him the data.

The "map" produced by Peter Wolff's data matched with Detective Sanchez's recent observations of Wolff. It also showed that Wolff had driven to the IHOP in Maple Grove 20 specific times over the previous month. Based on this information, Detective Sanchez went to the IHOP and questioned several employees, who confirmed that a man matching Wolff's description frequently stood outside, meeting others briefly and then leaving. Detective Sanchez also showed the employees pictures of the two men he had previously investigated, and the employees confirmed they had seen these men also.

Detective Sanchez quickly applied for a search warrant for Wolff's motel room based on his observations, interviews, and the cell site location data. A judge granted the warrant at 7:45am on January 2. At 8:00am that day, Detective Sanchez along with several other Minneapolis police officers entered Wolff's motel room and searched it. At the same time, a separate group of officers stationed themselves at the IHOP, where they later arrested Wolff and five others. In the motel room, the officers discovered 150 pounds of marijuana, and the officers who arrested Wolff discovered less than five ounces of marijuana on his person.

The State of Minnesota charged Wolff with a Controlled Substance Crime in the Second Degree which is punishable by not more than 25 years in prison or payment of a fine of not more than $500,000 or both.

Prior to trial, Wolff moved to suppress evidence of the marijuana in his motel room, arguing that it had been obtained in violation of his Fourth Amendment rights against unreasonable search and seizure. Wolff argued that when Detective Sanchez accessed his cell site location data, he violated his Fourth Amendment protection because he had a "reasonable expectation of privacy" in the data. Wolff also argued that without the data, Detective Wolff would not have been granted a search warrant because he didn't have enough evidence without it, so the only way he could have found the marijuana would have been to violate Wolff's Fourth Amendment rights. The State argued that it was not reasonable for Wolff to expect that his cell site location data was private because he shared that information with his cell phone provider, and the company could track him at any time. Further, the State argued that, even if the data was protected by the Fourth Amendment, the State should still be able to introduce evidence of the marijuana at trial because Detective Sanchez's team would have inevitably discovered it, either because Detective Sanchez could have gotten a search warrant later, or because they would have gotten enough information after busting Wolff at the IHOP.

The trial court judge agreed with Peter Wolff. The judge found that Wolff did have a reasonable expectation of privacy in his cell site location data, and therefore it was illegal for the police to access it. He also found that Detective Sanchez did not have enough evidence to apply for a search warrant without the data, so he would not have "inevitably discovered" the marijuana in Wolff's motel room.

If the trial judge's ruling stands, the State will have to dismiss its charges against Wolff because they will not be able to introduce evidence of his guilt in court. The State appealed the judge's ruling to the Minnesota Court of Appeals, seeking to have the judge's ruling overturned.

Summary of the Issues and Legal Background:

Issue #1—Wolff's Fourth Amendment rights

Under the Fourth Amendment to the United States Constitution, American citizens have a right to be free from unreasonable searches or seizures by the government:

"The right of the people to be secure in their **persons, houses, papers, and effects**, against **unreasonable** searches and seizures, shall not be violated, and no warrants shall issue, but upon **probable cause**, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." – U.S. Const. amend. IV (emphasis added)

A citizen's Fourth Amendment protection extends to their "houses, papers, and effects." Spaces and things that are protected by the Fourth Amendment are called "constitutionally protected areas." The police cannot access a constitutionally protected area without a valid search warrant. In order to get a search warrant, law enforcement must have enough evidence to support "probable cause" that the targeted person or place is involved in illegal activity. "Probable cause" means that the officer applying for the warrant has enough evidence to show that it is more likely than not that the individual or place is involved in criminal activity.

Typically, if a space is visible to the public, it cannot be protected by the Fourth Amendment. For example, you do not have Fourth Amendment protection while you are walking around in public where everyone can see you. In order to preserve Fourth Amendment protection, a person has to take certain steps to keep something private from others.

A person can only claim that their expectations of privacy are strong enough to get Fourth Amendment protection if those expectations are "**reasonable**." That is the reason why you cannot claim Fourth Amendment protection over something anyone can see in public—it would be unreasonable to expect something public to be private.

But what about spaces or things that are only visible or open to a couple of people? Or what if you asked someone to keep something private for you? Is it OK to expect those things to be private?

Here are some other questions to think about:

- Can cell phone records be a constitutionally protected "area?" In what ways are electronic records like a house or another physical space that you expect to be private?
- Why is it important for some spaces, things, or information to be private? What would be the effect of allowing the government to access those spaces any time they want?
- Given that so much of our world now exists on our phones, if all data is held private, can law enforcement reasonably be expected to solve crimes?
- Could Detective Sanchez reasonably have gained the same information about Paul Wolff from his observations without? If so, why does it matter that he had access to Wolff's location data?

Issue #2—Inevitable Discovery

The Fourth Amendment prohibits law enforcement from accessing constitutionally protected areas without a valid search warrant. To enforce this rule, courts have developed a rule called the "**exclusionary rule**." The exclusionary rule holds that, if law enforcement gathers evidence in a way that violates a person's constitutional rights, the State cannot use that evidence in court.

When the exclusionary rule is applied, the State often has to dismiss charges because it doesn't have enough evidence to prosecute the defendant. Because society places a high value on criminal justice, courts have developed some "exceptions" to the rule. If an exception applies, then the State can still use the evidence, even though it got the evidence by violating a person's constitutional rights.

One of those exceptions is called **the "inevitable discovery" exception**. The inevitable discovery exception holds that, if law enforcement would have "inevitably discovered" the same evidence, or

other evidence that would have lead to the same result, then evidence discovered as a result of a constitutional violation can be used in court. This rule exists because the legal system does not want to "punish" law enforcement when they arguably would have found the same evidence via legal means (i.e., without violating someone's constitutional rights).

In order to take advantage of the inevitable discovery exception, the State must be able to show through "**demonstrated historical facts**" that the incriminating evidence (in this case, the marijuana in Wolff's hotel room), would have been discovered without a constitutional violation. That is, the State needs to be able to show that it is more likely than not, based on the facts available to the police, that the officers would have been able to obtain a search warrant for Wolff's hotel room or would have eventually obtained enough evidence to locate the marijuana.

Here are some other questions to think about:

- Why is the exclusionary rule important? Why is it important to have exceptions?
- How "demonstrated" or "historical" should the facts used by the State have to be? Is it ok for the State to rely on assumptions, guesses, or expectations?
- If courts enforce the exclusionary rule (i.e. don't let the State use evidence of criminal activity if it was obtained in an unconstitutional manner), some crimes will go unpunished. Is that OK?
- If courts apply exceptions to the exclusionary rule (i.e. allow the state to use evidence of criminal activity even if it was obtained in violation of a person's constitutional rights), police may feel like they don't need to respect the boundaries of constitutional rights. Is that OK?

Prior Case Law (Legal Precedent) for <u>Issue 1</u>:

Prior Case 1 – *Katz v. United States*, United States Supreme Court (1967)	
Facts	Charles Katz was a "bookie." Bookies make money by taking and placing (usually illegal) bets on behalf of other people and charging a transaction fee. Katz was doing just that when he entered a public telephone booth, the interior of which was visible to people outside the booth. The government "tapped" the phone booth so that they could listen to Katz's call. Based on the evidence gathered by listening in on Katz's call, the government charged and convicted Katz with illegal gambling.
Issue	Whether the government violated Katz's Fourth Amendment rights by listening in on his phone call.
Holding	YES. The government may not invade people's **reasonable expectations of privacy**. Because Katz had a reasonable expectation of privacy in the content of his phone call, the government violated his Fourth Amendment rights when they tapped it without a warrant.
Reasoning	Because Katz expected that his phone call would be private, he took steps to ensure the privacy of his phone call (he closed the door to the phone booth), and society expects that their phone calls are private, Katz had a reasonable expectation of privacy in his phone call. Even though the phone booth was in public and people could see Katz inside the booth, that's not what he expected to be private. Rather, it was the content of his discussion on the phone that he expected to be private.

Prior Case 2 – *United States v. Jones*, United States Supreme Court (2012)	
Facts	While investigating Jones, whom the government suspected of being involved in illegal drug activity, law enforcement installed a global positioning system (GPS) device to his car and tracked his movements on public streets for 28 days without a warrant.
Issue	Whether the government violated Jones's Fourth Amendment rights by installing a tracking device on his car and tracking him for 28 days without a warrant.
Holding	YES. The Fourth Amendment does not allow the government to **trespass** on people's property, or **constitutionally protected areas**. Because Jones's car is his property, it is a constitutionally protected area.
Reasoning	It doesn't matter that Jones was on public streets when the government tracked him because this case is not about Jones's expectations of privacy. It is about his property, which the government physically trespassed on when it attached a tracker to it.
Notes	The court in *Jones* <u>did not</u> address whether tracking information or data is protected by the Fourth Amendment. The court only said that the government had invaded a constitutionally protected area, therefore they violated Jones's Fourth Amendment rights. The opinion described above is the **majority opinion** which means that five out of nine justices agreed with it, and it represents the **judgment of the court** (the law). One justice (Justice Sotomayor) wrote a separate opinion which said that, in addition to the majority's opinion that the government trespassed upon

	Jones's property, she believed the government *also* violated Jones's reasonable expectation of privacy by obtaining tracking data on him without a warrant. Another justice (Justice Alito) also wrote a separate opinion, but he did not agree that the government had committed a trespass. He believed that the government violated Jones's reasonable expectation of privacy because they tracked him constantly for over a month, which is too long to be reasonable. Three other justices agreed with his opinion. These separate opinions are <u>not</u> the opinions of the court, but they demonstrate that five out of nine justices believed that the government violated Jones's reasonable expectation of privacy by tracking him.

Prior Case 3 – *State v. Griffin*, Supreme Court of Minnesota (2013)	
Facts	Derrick Griffin was convicted of first-degree murder in Minnesota state court. Law enforcement suspected Griffin of shooting a man whom he believed was romantically involved with his wife. The night of the murder, Griffin's wife, Kim, believed that Griffin had seen her and the victim out together. She also told police that she had exchanged phone calls with Griffin throughout the evening. Because police were not able to find the murder weapon or any other evidence incriminating Griffin, they requested his cell phone records from Sprint/Nextel. Sprint provided the records, which revealed that Griffin's cell phone account was not in his name. The name on the records was that of Griffin's girlfriend. The records provided Griffin's girlfriend's address, and showed that Griffin's phone was turned on, being used, and was pinging cell phone towers in the vicinity of where the murder occurred at the time that it occurred. Police followed Griffin as he left his girlfriend's house in Columbia Heights and arrested him at a nearby gas station. After arresting Griffin, police searched his girlfriend's house where they found several handguns and located a car in Griffin's name, matching the description provided by eyewitnesses of the murder.
Issue	Whether the police violated Griffin's Fourth Amendment rights when they accessed his cell phone records without a warrant.
Holding	NO. Griffin did not have a reasonable expectation of privacy in the cell phone records associated with his cell phone number.
Reasoning	Because Griffin did not have a contract with the phone company and he didn't take any steps to keep the cell phone records private, he did not have a reasonable expectation of privacy in the phone records. Further, Griffin's wife voluntarily gave police Griffin's phone number, and what is voluntarily shared with others cannot reasonably be expected to be private.

Prior Case Law (Legal Precedent) for <u>Issue 2</u>:

Prior Case 1 – *Nix v. Williams*, United States Supreme Court (1984)	
Facts	Roger Williams was a suspect in a murder case. While Williams was in custody, a large search was underway for the victim's body. The search was supposed to cover a large area, but the officers leading the search had a very specific plan for which areas would be searched. Meanwhile, the officer who was holding Williams in custody began to interrogate him and talk about giving the victim a

	"Christian burial." Williams had a history of mental illness, and despite his Fifth Amendment right to remain silent, Williams confessed to the murder and told the officer where the victim's body was located. The location of the victim's body was within the area that law enforcement had specifically planned to search. The trial court excluded the evidence of the victims body because it had been located in violation of the defendant's Fifth Amendment rights.
Issue	Whether the trial court should have excluded the evidence because the police would have inevitably discovered the victim's body.
Holding	NO. Because the search party would have inevitably discovered the victim's body, the trial court shouldn't have excluded it even though the police actually found it by violating William's Fifth Amendment rights.
Reasoning	The Supreme Court relied on the fact that the search party specifically planned to search the same area that the defendant identified. Because, based on **demonstrated historical facts**, the search party would have almost certainly discovered the body without violating the defendant's constitutional rights, excluding the evidence would inappropriately "punish" law enforcement and make it more difficult to convict guilty defendants.

Prior Case 2 – *State v. Licari*, Supreme Court of Minnesota (2003)	
Facts	Isanti police charged Craig Robert Licari with one count of second-degree intentional murder following the disappearance of his wife, Nancy. Nancy's family reported her missing in April of 1999, and detectives began searching for her by investigating places where she was last seen and obtaining her credit card records. Nancy's family also reported that Nancy and the defendant shared a storage unit. Detectives went to the storage unit and directed the manager of the facility to unlock the unit. The detectives did not have a warrant to search the unit. Inside, they found Nancy's body. Meanwhile, other investigators were using Nancy's credit card information to search for her, and they apprehended the defendant at a Target in Minneapolis. The defendant was carrying Nancy's credit cards. Officers took the defendant into custody. The trial court excluded the evidence inside the storage unit because the warrantless search of the unit was illegal and there were not sufficient historical facts to show that officers would have been able to obtain a warrant for the unit.
Issue	Whether the police would have inevitably searched the storage unit under a lawful warrant.
Holding	YES. There were sufficient demonstrated historical facts on the record to show that the police would have inevitably obtained a lawful search warrant for the unit.
Reasoning	Even though there was no direct evidence connecting the storage unit to Nancy's disappearance, the fact that Nancy's family told law enforcement of the unit and that the police arrested the defendant indicated that law enforcement would inevitably sought a search warrant for the unit. The court disagreed (there was one dissenting opinion) about whether the police possessed enough facts to support a warrant application. The majority opinion stated that police would almost certainly question the defendant about the storage unit and that his

	response would provide probable cause to search the unit. The dissent disagreed, arguing that relying on these assumptions was too "speculative" and that the simple fact that the defendant and Nancy shared a storage unit was not enough evidence to connect the storage unit to criminal activity.

Prior Case 3 – *State v. Barajas*, Minnesota Court of Appeals (2012)	
Facts	A landlord in Moorhead reported to police that he believed a trespasser was living in an unrented apartment on one of his rental properties. The landlord opened the apartment for law enforcement and no one was inside, but there were items in the apartment which suggested that a person was living there. One of the officers located a flip phone and he opened it to see if he could identify the owner. While looking through the phone, he found a photo of Marco Barajas lying on a bed with what appeared to be several thousand dollars in cash. At that moment, Barajas entered the apartment and officers arrested him. At the police station, officers provided Barajas with a "consent form" and directed him to sign it so they could search his phone. Barajas signed the form. The phone contained several more pictures of money and one photo of a large amount of methamphetamine in the trunk of a red sedan. One officer remembered seeing a similar red sedan parked outside the apartment building. Officers obtained a search warrant for the vehicle and found five plastic bags of containing a white crystal substance, a digital scale, powdered milk, salt, and an empty sugar container. The crystal substance was methamphetamine. The trial court suppressed this evidence. The trial court determined that Barajas had a reasonable expectation of privacy in the contents of his cell phone and that the police had illegally accessed the contents of the phone. The trial court further stated that police would not have inevitably discovered the drugs in the car without illegally searching the phone.
Issue	Whether the police would have inevitably obtained a search warrant for the sedan without illegally searching the defendant's cell phone.
Holding	NO. The only reason the police located the sedan was the officer's illegal search of Barajas's phone.
Reasoning	There are no facts to suggest that police would have suspected Barajas of drug trafficking if the officer had not illegally accessed Barajas's phone. Even though police eventually got Barajas to sign a consent form to search the phone, this was after the illegal search had already occurred, and it is unlikely that officers would have asked to search the phone if they did not already expect it to contain incriminating evidence.