

Gallagher Sharp Municipal Liability Newsflash: Tire Chalking Violates the Fourth Amendment

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On April 22, 2019, the Sixth Circuit Court of Appeals found that tire-chalking for parking enforcement violated the Fourth Amendment. In *Taylor v. City of Saginaw*, 6th Cir. No. 17-2126, 2019 WL 1757953 (Apr. 22, 2019), Plaintiff Alison Taylor sued the City of Saginaw and Parking Enforcement Officer Tabitha Hoskins alleging that chalking her tires violated the Fourth Amendment right to be free from unreasonable searches. The City of Saginaw moved to dismiss the action and the District Court granted the City's motion finding that the search was reasonable because there is a lesser expectation of privacy in automobiles. The Sixth Circuit Court of Appeals reversed. First, the Sixth Circuit found that chalking tires constitutes a search. Furthermore, the Court found that the search was unreasonable under *United States v. Jones*, 565 U.S. 400 (2012). Under *Jones*, when "governmental intrusions are accompanied by physical intrusions, then a search occurs when the government (1) trespasses upon a constitutionally protected area and (2) to obtain information." In *Jones*, the government attached a GPS device to Jones's car to track the car's movements. The United States Supreme Court held that the government's trespass upon the vehicle to obtain information about the car's movement constituted a search.

The Sixth Circuit applied the analysis in *Jones* regarding the chalking of tires for parking enforcement. The Court found that placing the chalk constituted a physical intrusion and, thus, a trespass even though there was no damage to the vehicle. The Court also found that placing chalk was an attempt to find something or obtain information. Here, the City attempted to obtain information to issue citations. Therefore, placing the chalk constituted a search under the Fourth Amendment.

Next, the Sixth Circuit analyzed whether placing chalk was a reasonable search because there is a reduced expectation of privacy regarding automobiles. The Court found that the City failed to meet its burden of proving an exception to the warrant requirement. The City failed to prove chalking the tire mitigated a public hazard. Instead, the sole purpose of chalking tires is to generate revenue. Therefore, tire-chalking for parking enforcement is an unconstitutional search unless a valid exception to the Fourth Amendment applies.

The full opinion can be found at <http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0076p-06.pdf>.

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