

the Jasuta / Schulman report

Volume 33, Number 13 ~ Monday, April 7, 2025 (Report No. 1,558)

TIBA's Case of the Week Court of Criminal Appeals

Case Name: [Aaron Rayshan Wells v. The State of Texas](#)

- **OFFENSE:** Capital Murder
- **COUNTY:** Dallas
- **COURT OF APPEALS:** Dallas 2023
- **C/A CITATION:** 675 S.W.3d 814
- **C/A RESULT:** Conviction Affirmed
- **CCA. CASE No.** PD-0669-23 **DATE OF OPINION:** April 2, 2025
- **DISPOSITION:** Court of Appeals Affirmed
- **OPINION:** [Judge Kevin Yeary](#) **VOTE:** 4-2-2
- **TRIAL COURT:** Cr D/C 4; Hon. Dominique Collins
- **LAWYERS:** [Christi Dean](#) (Defense); [Joshua Vanderslice](#) (State)

(Background Facts): Jimmy Giddings was a drug dealer. He lived with his girlfriend, Nikita Dickerson, at a house at 4923 Veterans Drive in Dallas, across the street from Carver Heights Baptist Church. Dickerson and Giddings had a routine. When he returned home in the early morning hours, she would unlock the gate at their front door and greet him in the driveway. She would carry a .40 caliber Glock pistol because, while they lived in a nice house, she felt the neighborhood was unsafe. At around 3 a.m. on the morning of the offense, June 24, 2018, Dickerson exited the gate outside the front door, as captured on the home's front-door security camera, pursuant to her and Giddings' routine. Security cameras from the church across the street recorded four men who had been loitering in the parking lot on the far side of the church from Veteran's Drive "for some hours" before the offense. When Giddings arrived home, the four men, wearing masks over their lower faces, rushed across the street toward Giddings and Dickerson brandishing pistols and a rifle. In the melee that followed, Dickerson sustained five non-life threatening gunshot wounds. She also dropped her pistol, and it was retrieved by one of the masked men. At the same time, Giddings fled into the house. Two of the assailants rushed in after him, and a third assailant marched the wounded Dickerson into the house at gunpoint. The fourth man, who turned out to be Appellant, quickly followed them. All the men except for Appellant had visibly distinctive tattoos. Once inside, during the robbery, one of the assailants -- the record does

not definitively establish which one -- shot Giddings in the neck, severing his spine. As a result of this gunshot wound, Giddings died. Afterwards, the assailants fled back across the street to their vehicle in the church parking lot and drove off. Based on the security camera recording timestamp and footage showing that the men were in the area of the church immediately before and after the offense, [police] obtained a warrant to search Google's records for information on devices located within a rectangular geofence encompassing [Giddings and Dickerson's] house and the portion of the church directly across the street between 2:45 a.m. and 3:10 a.m. on June 24. Ultimately, a cellular phone associated with Appellant was identified as being at the scene. Through Appellant's phone records and a search of social media, police were able to identify Milton Prentice, Brian Groom, and Kiante Watkins as the other three men involved in the offense. Watkins testified as an accomplice witness against Appellant at trial, describing the robbery in some detail.

[§] 32.01 Search & Seizure / Reasonable Expectation of Privacy: The warrant at issue in this case was directed to "Google LLC[.]" It ordered Google to turn over to the police "GPS, WiFi or Bluetooth sourced location history data" corresponding to "Initial Search Parameters" generated from devices that Google's electronic records showed to have been within certain, particularly circumscribed time and location specifications. Appellant filed a pretrial motion to suppress evidence obtained pursuant to the geofence warrant. He argued that it constituted an unconstitutional general warrant in that it failed to identify a particular suspect and would thus only serve to invade the privacy of any number of individuals who had nothing to do with the capital murder in this case. He also argued that the warrant affidavit lacked probable cause to believe any of the assailants were carrying a cell phone with a Google account. The trial court ultimately ruled that the warrant affidavit and the warrant itself presented "sufficient particularity to be valid." The Court of Appeals found the warrant to have been valid and affirmed the conviction. After canvassing the limited authorities (mostly federal cases) that have addressed geofence warrants, the Court of Appeals concluded: "*The geofence warrant cases to date can generally be divided into two categories -- those in which the geofence search warrant was found constitutionally infirm because it was not sufficiently limited as to time and place so as to restrict the executing officer's discretion and minimize the danger of searching uninvolved persons, and those in which the warrant satisfied the Fourth Amendment because it established probable cause to search every person found within the geofence area.*" Thus, because "the geofence warrant [in this case] was as narrowly tailored as possible to capture only location data for suspects and potential witnesses[.]" the Court of Appeals concluded that "the warrant here falls into the second category" as identified in the cases. Addressing Appellant's argument that the warrant affidavit failed to establish probable cause to believe that any of the suspects were carrying a device with enabled Google location services, the Court of Appeals invoked the well-known ubiquity of cell phones in modern society (see [§](#), [Vol. 31, No. 29](#); 08/28/2023).

Holding: The Court of Appeals observed that, "[a]lthough it is possible the suspects were not carrying cell phones with enabled Google location services during the offense, probable cause is about 'fair probabilities,' not near certainties." *** We agree. *** Geofence warrants are a

relatively new phenomenon, having only come into use “since 2016.” *** The few cases so far that have addressed their legitimacy have tended to emanate from lower federal courts and intermediate state Appellate courts. And, as the Court of Appeals observed, those cases “can generally be divided into two categories.” *** Which category a given case falls into depends upon the size of the area covered by the requested geofence, the length of time specified, and the circumstances of the offense under investigation. Geofence warrants that are confined, covering a relatively small space over a relatively short time, in a remote or rural area, or at a time of day when only the perpetrators of the offense or witnesses would be likely to be present, have generally been found to pass constitutional muster. But warrants that cover larger or more congested urban areas over a longer span of time generally have not, since they are much more likely to infringe upon a greater number of innocent, uninvolved bystanders. *** In this case, the geofence warrant affidavit supplied ample probable cause to believe both that an offense had occurred and that evidence of the identity of one or more of the perpetrators could be discovered by searching the Google database. Moreover, the warrant itself was framed narrowly enough that almost any device found to have been present within its parameters would have belonged to one of the perpetrators, or potentially to a witness who might identify the perpetrators or testify about the offense, but not merely an innocent bystander. *** **(Probable Cause)** In this case, the warrant-issuing magistrate had a “substantial basis” to conclude that there was a “fair probability” (or “substantial chance”) that at least one of the four assailants possessed a device that Google could locate within the geofenced area. This constitutes probable cause to believe that Google’s location history database would contain evidence relevant to the identity of the person who killed Giddings. **(Particularity)** We also agree that the geofence warrant in this case provided sufficient particularity with respect to both the “place to be searched” and the “things to be seized.” The warrant then identified the specific latitudinal and longitudinal coordinates, narrowly drawn to include no more than a part of the church, the appurtenant church grounds where the assailants waited, the street they rushed across, the front yard of the house where Dickerson was shot, and the house itself, in which Giddings was killed. It also gave a specific date -- the date of the murder -- as well as the 25 minute window of time during which the offense took place. This degree of specificity appropriately circumscribed police discretion, limiting the information they could obtain from the location history database to that which was relevant to identifying whoever was present at the specific time and place of the offense itself. *** Assuming that the Fourth Amendment generally requires police to obtain a search warrant for corporate-held location history data, we conclude that the “geofence” warrant in this case was supported by probable cause and satisfied the particularity requirement of the Fourth Amendment.

Concurring / Dissenting Opinions: [Judge Lee Finley](#) filed a concurring opinion in which Judge Gina Parker joined. He argued that law enforcement personnel did not conduct an unreasonable search under the Fourth Amendment because Appellant did not have a reasonable expectation of privacy in the information he voluntarily turned over to a third party. [Judge David Newell](#) filed a concurring and dissenting opinion. He was joined by Judge Bert Richardson and Judge Scott Walker and would

hold that the geofence warrant in this case was not adequately supported by probable cause, but that Appellant did not have a legitimate expectation of privacy in the “temporally and spatially limited location history data.” He would also hold that Appellant did have a reasonable expectation of privacy in the information sought by the warrant’s third step, which included six months of prior IP history. Presiding Judge David Schenck did not participate in the decision.

Sidebars

[\(Rob Daniel\)](#) “I have read and agree to the terms and conditions” is the most frequently told lie in America. Most Americans don’t understand that to use Google Maps, you must authorize the collection and sale of your user data. The same is true of many other smartphone apps. Unless you want your expensive Samsung Galaxy to be a device that only makes and receives phone calls, you must agree to use location services. When the police ask for limited data in executing a geofence warrant (i.e. data showing who was at a specific public location at a specific time), there’s probably not a Fourth Amendment issue. But the police didn’t need six months of IP address history to identify anyone who was at the murder scene. By casting an overly wide net, the State risks the application of [Carpenter v. United States](#), 585 U.S. 296 (2018). Most Americans would not find it reasonable if they understood the tradeoff for asking their phone for directions to Chili’s was giving the government six months’ worth of their browser history. By the way, the precise location data collected by Apple Maps is not sold, is not tied to a user’s Apple ID, and is converted to “general location” data after 24 hours. That’s why the cops didn’t ask Apple for location data, even though there are more iPhone users than Android users in America.

[\(John G. Jasuta\)](#) With a tip of the hat to Johnny Cash, “Don’t take your phone to town, son. Leave your phone at home.” All kidding aside, I wonder if there would have been a different outcome if the offense had occurred at 11:00 on a Sunday morning. Probably not.

[\(David A. Schulman\)](#) I expect that I am in the minority here, but [Carpenter](#) notwithstanding, I have never believed that one has any expectation of privacy as to observations by others (human and/or corporate) as to their location in a public area. If someone has that information, they should be permitted to testify about it. Reliability, however, is and will always be another question.