

**WISCONSIN SUPREME COURT**  
**THURSDAY, SEPTEMBER 6, 2012**  
**1:30 p.m.**

*This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a Walworth County Circuit Court decision, Judge Michael S. Gibbs, presiding.*

2010AP1366-CR

[State v. Brereton](#)

This case examines whether a defendant's constitutional right to be free from unreasonable searches and seizures was violated when police seized his vehicle and covertly installed a sophisticated real-time GPS tracking device.

Some background: There were a string of burglaries in the border areas of Rock and Walworth counties in the fall of 2007. On Oct. 5, 2007, the police stopped a Pontiac that had reportedly been seen in the area around the time of some of the burglaries. The police later admitted that the reason for the stop was a pretext because police had decided to place a GPS monitoring device on the vehicle.

During the stop the police discovered that the two individuals in the car (one of whom was James G. Brereton) both had revoked drivers' licenses and that the license plates on the car had been issued for a different vehicle. The police transported Brereton and the other occupant away from the vehicle for a time, and surreptitiously towed the vehicle to a police impound lot.

After the vehicle had been moved, the police applied for a warrant to place a GPS unit in the vehicle. Based on an affidavit signed by a detective, Walworth County Circuit Court Judge James L. Carlson granted the application and issued a warrant/order authorizing the Walworth County Sheriff's Department "to place an electronic tracking device" on the Pontiac and to enter and re-enter the vehicle or any building containing the vehicle to install, use, or maintain the device or to monitor the location and movement of the target vehicle.

The warrant/order further authorized the sheriff's department "to obtain and use keys to operate and move the vehicle for the required time to a concealed location and . . . to open the engine compartments and trunk areas of the vehicles to install the devices."

The police entered the interior of the vehicle in order to activate the hood release lever and placed the advanced GPS-tracking device inside the engine compartment. After the vehicle was returned to its original location, the police brought back the two occupants, who were not advised that the vehicle had ever been moved or the tracking device installed.

Four days after the device had been attached to the Pontiac, the police determined that the Pontiac had been near the site of a reported burglary. They later stopped the vehicle and arrested the occupants, including Brereton, on suspicion of engaging in burglary and found evidence from a home that had been burgled.

Brereton moved to suppress the evidence obtained as a result of the use of the GPS tracking device. The circuit court denied the motion. Brereton subsequently pled guilty to five counts of burglary and later appealed.

The Court of Appeals concluded that the warrant had been validly issued, and that the police had probable cause to believe that the Pontiac was evidence of a crime or contained evidence of a crime when police seized and "searched" it.

Brereton asserts that the police acted unreasonably in executing the warrant because the device they used exceeded the scope of the warrant application and the warrant itself. Brereton emphasizes that the court's order stated in several places that it was based upon the detective's affidavit, which described a GPS device that did not provide real-time data.