



Written by [Jack Kenny](#) on August 9, 2010

Court Says No GPS Tracking Without Warrant

When you are driving down a public highway, the police may not track your progress with an electronic device without a warrant, a U.S Appeals Court ruled on August 6. The U.S. Court of Appeals for the the District of Columbia said the use of Global Positioning System evidence to convict two defendants of drug dealing violated the Fourth Amendment right of persons to be secure in their "persons, houses, papers and effects against unreasonable searches and seizures."



The issue involved the use of GPS units on a car, long a contentious issue, with defenders of the practice arguing that similar observations can be made without the electronic surveillance, simply by driving around and noting that the owner's car is at home, at the grocery store or wherever. But opponents, including the American Civil Liberties Union and the Electronic Frontier Foundation, argue that the electronic surveillance allows the police to keep tabs on a person's coming and going at every stop on a minute-by-minute or hourly basis for days or even months on end without having to convince a judge of probable cause for suspecting criminal activity by the target or targets of the surveillance.

The appeals court found that Antoine Jones and Lawrence Maynard, co-owners of a nightclub, had been convicted on narcotics charges based on evidence the police obtained by attaching a GPS unit to a car parked on private property. The police tracked the car's whereabouts for a month to gain evidence of the men's alleged narcotics activity. The government argued that the men had no reasonable expectation of privacy since the car's movements took place on public roads.

"Society recognizes Jones' expectation of privacy in his movements over the course of a month as reasonable, and the use of the GPS device to monitor those movements defeated that reasonable expectation," the appeals court ruled.

Both the ACLU and EFF applauded the decision because the Supreme Court has not yet considered location tracking when it's used in such depth and for such a long period of time.

"GPS tracking enables the police to know when you visit your doctor, your lawyer, your church, or your lover," ACLU-NCA legal director Arthur Spitzer said in a statement. "And if many people are tracked, GPS data will show when and where they cross paths. Judicial supervision of this powerful technology is essential if we are to preserve individual liberty. Today's decision helps brings the Fourth Amendment into the 21st Century."

The decision does indeed help set a precedent for future cases, though similar decisions vary by state. In 2009, the Wisconsin Court of Appeals ruled that warrantless GPS tracking did not violate an individual's Fourth Amendment rights, while the New York Court of Appeals said that it did.



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In Jones' case, his conviction was heavily dependent upon the GPS data collected by police; as a result, the court reversed his conviction. Maynard was not so lucky, as there was other convincing evidence against him.

Should the government appeal the case to the U.S. Supreme Court, it will be interesting to see how the division of the justices breaks down. Conservative judges, generally hostile to extension of federal power, nonetheless tend to side with law enforcement on close calls. Perhaps a key question will be what authority the law-enforcement/investigating officials called upon to attach their device to a privately owned car, parked on private property without a warrant.

Many law-abiding citizens believe they have nothing to fear from such surveillance since they are not involved in the shadowy underworld that police are apt to spy on. But there are cases of mistaken identity and the average American citizens could easily find himself under surveillance as though a member of organized crime.

Privacy rights will likely become increasingly an area of litigation as more sophisticated forms of surveillance and eavesdropping become more readily available and electronic cameras overlook public thoroughfares, photographing license plates and motorists' images. Sophisticated electronic monitoring can be also used to investigate a home, as when heat-monitoring devices are used to detect the presence of heat lamps often used for indoor growing marijuana plants. Improved technology and determined efforts at prosecuting the "war on drugs" have put ever-increasing pressure on shrinking zones of privacy.



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