



Is a GPS Device Covered Under the Fourth Amendment?

October 13, 2010

Can prosecutors attach a Global Positioning System device to a criminal suspect's car without a warrant in order to track his movements for weeks or even months?

The D.C. Circuit answered this very 21st-century criminal procedure question last August with a resounding "no." An ideologically diverse panel composed of Judges Douglas Ginsburg, David Tatel, and Thomas Griffith unanimously ruled that this kind of round-the-clock surveillance requires prosecutors first to go to a judge and get a warrant based on probable cause.

The court found that the act of attaching the GPS device to a suspect's vehicle is a "search" that requires a warrant under the Fourth Amendment because this type of surveillance is so pervasive and invasive that no one would have a reasonable expectation that it would occur.

"It is one thing for a passerby to observe or even to follow someone during a single journey as he goes to the market or returns home from work," Ginsburg wrote for the unanimous panel in the case of *United States v. Maynard*. "It is another thing entirely for that stranger to pick up the scent again the next day and the day after that, week in and week out, dogging his prey until he has identified all the places, people, amusements, and chores that make up that person's hitherto private routine."

In this case, federal agents put a GPS device on Antoine Jones' Jeep Cherokee, following his every move for 24 hours a day. Jones was convicted of conspiracy



to distribute cocaine and was sentenced to a life term, but the D.C. Circuit threw out the conviction.

Now, the Justice Department is asking for rehearing by the full court. State and federal courts have expressed divergent views on the issue, and the case may eventually go up to the U.S. Supreme Court.

We agree with the unanimous D.C. Circuit. All that it said was that this practice is illegal if it's done without a warrant. If prosecutors think it will be helpful to put a GPS device on someone's car, all they need to do is to go before a judge, show their evidence, and obtain a warrant.

Jones's lawyer was recently quoted as saying, "If agents want to use one of these devices to track and record the whole of one's movements for prolonged periods of time, then surely it should be no undue burden to demand that they first satisfy a neutral and detached federal court that probable cause exists to do so."

That makes sense to us.

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

The commentary and cases included in this blog are contributed by Jeff Ifrah and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrah and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!