GPS Devices and the Fourth Amendment

Contents

• Introduction
• Relevant U.S. Supreme Court case
• Courts requiring warrants for GPS tracking of vehicles
• Courts rejecting a warrant requirement for GPS vehicle tracking
• Conclusion
• Resources and References

Introduction

Courts have generally regarded persons as having a greatly diminished expectation when it comes to the surveillance and searching of their vehicles, as compared to the relatively sacrosanct refugee of the private home, the “castle” of the common man. While the Fourth Amendment to the U.S. Constitution generally mandates, subject to limited exceptions, the obtaining and use of judicial warrants to enter or search private homes and offices, courts have been far less eager to require the obtaining of warrants when it comes to vehicle searches.

Cars, by their very nature, are mobile. By necessity, they travel on public streets and roads, out in the open, where they can be observed by one and all. A variety of traffic and safety rules and regulations govern their operation, their drivers must be licensed, and the vehicles themselves must uniformly be registered and bear numbered license plates enabling both law enforcement officials and members of the public who encounter them to easily verify their identity by these unique designations.

The development of new space age and computer age technologies in the last few decades has made it possible to quickly, easily, efficiently, and cheaply attach Global Positioning
System (GPS) devices to vehicles, which now make it possible to track their exact location and speed 24-hours a day, every day of the year. These devices, linked to a government operated system of space satellites, can pinpoint the vehicle’s location, and store and then transmit data concerning the vehicle to remote locations.

This is much more comprehensive than the officer on the road being able to observe or follow a vehicle and use such observation for investigative purposes. Once placed, the devices track everywhere the vehicle goes. Placed on a car by law enforcement, a record is made of the minute by minute travels of the criminal suspect purchasing or distributing drugs or meeting with confederates, but it also records the travels related to the motorist’s illicit romance, visit to a psychiatrist, church attendance, or the frequenting of a gay bar, etc. And for vehicles shared by several drivers, it tracks the travels of grandma and the teenagers in the family as well as the targeted criminal suspect.

This article takes a brief look at some major court decisions on the issue to date, and concludes with a list of useful resources and references.

**Relevant U.S. Supreme Court case**

The U.S. Supreme Court has never heard a case in which it directly addressed the issue of placement of a GPS device on a vehicle. In United States v. Knotts, #81-1802, 460 U.S. 276 (1983), however, it ruled that attaching a less sophisticated tracking device to a container purchased by the target of a criminal investigation, and using it to monitor the location of the car which transported that container did not constitute a “search” for purposes of the Fourth Amendment.

This, the court reasoned, remained true while the vehicle in question stayed on a public way, since there it could be viewed by anyone. This less sophisticated tracking device was not equipped to transmit data, but merely emitted beeps or signals that could be heard via radio by officers following it.

The Court concluded that the officers were essentially obtaining no more information than they could have gotten by visual observation of the vehicle by using the beeper. And a person traveling in a car on public streets has no reasonable expectation of privacy in his movements.
“The fact that the officers in this case relied not only on visual surveillance, but also on the use of the beeper to signal the presence of [their target's] automobile to the police receiver, does not alter the situation.”

One could arguably apply the same principles to the use of a GPS device to track the movement of a criminal suspect’s car everywhere it goes on public roads.

**Courts requiring warrants for GPS tracking of vehicles**

Despite the ruling in *Knotts*, however, one federal appeals court and the highest courts of five states—Massachusetts, New York, Oregon, Washington, and Wisconsin have ruled or at least implied or assumed that the principles in that case are inapplicable to the use of today’s more sophisticated GPS tracking devices, and that attaching such devices to a vehicle is not only a Fourth Amendment search but a highly intrusive one at that, and therefore requires the obtaining of a judicial warrant based on probable cause.

In *U.S. v. Maynard*, #08-3030, 615 F.3d 544 (D.C. Cir. 2010), the court held that police must obtain a warrant before using Global Positioning (GPS) devices to monitor vehicles and their locations.

The court reasoned that the use of such devices constitutes a seizure under the Fourth Amendment because “prolonged GPS monitoring reveals an intimate picture of the subject's life that he expects no one to have.” Evidence obtained by the GPS device was the result of tracking the location and speed of a suspect's vehicle around the clock for 28 days, and the transmission of data to law enforcement agents who placed the device on the vehicle.

While the decision came in a criminal appeal, the reasoning would also apply in a federal civil rights case contending that the placement of such a device on a car without a warrant violates the Fourth Amendment.

In reaching this decision, the D.C. Circuit distinguished *Knotts*, focusing on the pervasiveness of the GPS surveillance and its 24-hour a day nature over an extended period of time, which is a bit different than officers following a beeper implanted car from one location to another for a limited period of time. The defendant in *Knotts* had expressly worried that approval of such beeper placement could lead to a situation in which
“twenty-four hour surveillance of any citizen of this country will be possible, without judicial knowledge or supervision.”

In **Knotts**, the D.C. court noted, the U.S. Supreme Court addressed this concern directly by stating that “if such dragnet-type law enforcement practices as respondent envisions should eventually occur, there will be time enough then to determine whether different constitutional principles may be applicable.”

The D.C. court seemed to believe that the scenario speculated about in this language from **Knotts** had now arrived, since in the absence of a device like the GPS, there was essentially no chance that any person would be able to observe a suspect and their movements at all times.

The court argued that “the whole reveals far more than the individual movements it comprises,” and that such pervasive observation “reveals types of information not revealed by short-term surveillance, such as what a person does repeatedly, what he does not do, and what he does ensemble….”

Similarly, in **People v. Weaver**, #53, 12 N.Y.3d 433, 909 N.E.2d 1195 (2009). the highest court in New York ruled that officers may not place a global positioning system (GPS) location tracking device on a private motor vehicle without obtaining a warrant to do so.

In this case, officers placed the tracking device on the defendant's car, and used it to track the vehicle's location for 65 days, including its speed and location readings approximately once a minute while the car was in motion. This was allegedly done without a clear justification.

The court stated that the 24-hour a day information about a vehicle's location provides disclosure of private trips that may lead to inferences about such things as amorous, religious, and political associations.

The court stated that the “potential for a similar capture of information or ‘seeing’ by law enforcement would require, at a minimum, millions of additional police officers and cameras on every street lamp,” so that the GPS tracking devices involve a higher level of privacy threat than simple tracking beepers the U.S. Supreme Court has previously allowed to be placed on cars without a warrant.
“Without judicial oversight, the use of these powerful devices presents a significant and, to our minds, unacceptable risk of abuse. Under our State Constitution, in the absence of exigent circumstances, the installation and use of a GPS device to monitor an individual's whereabouts requires a warrant supported by probable cause.”

The New York court’s reliance on the state constitutional provisions for its adoption of the warrant requirement for GPS vehicle monitoring is significant. Such reliance on state law shields the ruling from being overturned by the federal courts, as the states are free to adopt more stringent restrictions on search and seizure than are mandated by the U.S. Constitution, which represents the minimum that state law enforcement officers must comply with.

The Massachusetts Supreme Judicial Court, in Commonwealth, v. Connolly, #SJC-10355, 913 N.E.2d 368 (Mass 2009), also ruled that the use of a GPS tracking device for surveillance purposes requires a judicial warrant, supported by probable cause.

In that case, a motorist was convicted of trafficking in and distribution of cocaine after his motion to suppress evidence found in his minivan was denied. The warrant to search the vehicle was obtained on the basis of both information from confidential informants and information from a GPS device that had been placed on the van.

The court, while squarely holding that Massachusetts state law required a warrant for the placement of such a GPS device, also found that, in this case, the device had, indeed, been placed on the van pursuant to a validly issued search warrant supported by probable cause, so the defendant’s conviction was affirmed.

The Wisconsin Supreme Court, in State v. Sveum, #2008AP658-CR, 2010 WI 92, 787 N.W.2d 317 (2010), upheld the conviction of a man prosecuted for aggravated stalking and the denial of his motion to suppress evidence obtained from a GPS device installed on his vehicle while it was parked in the driveway of his home.

He had previously been imprisoned for stalking and harassing a woman, and upon his release from prison was suspected of following her again. Police received a court order authorizing them to install the GPS device on his vehicle, tracked his movements and gained evidence used to again convict him.
The court found that the case on appeal presented two questions: (1) whether the installation of a GPS tracking device to the defendant’s car while it was parked in the driveway of his home and the subsequent electronic monitoring of it using the GPS constituted a search or seizure within the meaning of the U.S. and Wisconsin Constitutions, and (2) whether the court order authorizing the installation and monitoring of a GPS tracking device on his vehicle constituted a valid warrant and, if so, whether the police reasonably executed the warrant.

The court stated that it was electing not to directly answer the first question, and assumed, without deciding, that a search or seizure occurred in the case that required authorization by a warrant.

It did decide, however, the second issue, concluding that the order authorizing law enforcement to install and monitor a GPS tracking device on the vehicle constituted a valid warrant and that the officers' execution of the warrant was reasonable.

In State v. Campbell, #S34651, 759 P.2d 1040 (Ore. 1988), the Oregon Supreme Court heard an appeal by the state from trial and intermediate appellate court rulings which granted a motion to suppress evidence filed by a man on trial for burglary. Police, suspecting the man of the crimes, had obtained a radio transmitter and attached it to his car without a warrant, subsequently monitoring it to develop evidence of his involvement in the burglaries.

The court upheld the suppression of the evidence, and held that, under Oregon law, a search or seizure to obtain evidence, in the absence of a warrant or exigent circumstances was unconstitutional.

In this case, there was no warrant and no exigent circumstances. As a matter of state law, the court rejected the focus on “reasonable expectation of privacy” as used by the U.S. Supreme Court in defining searches.

A defendant convicted of murder challenged his conviction in State v. Jackson, #72799-6, 76 P.3d 217 (Wash. 2003). He argued that a warrant was required under Washington state law before police could attach a GPS device to his vehicle for the purpose of tracking his movements.

The Washington Supreme Court accepted his argument, ruling that, absent some recognized exception to the warrant requirement, attaching the GPS without a warrant was unreasonable.
Doing so invaded citizens’ privacy interests. Requiring a warrant for GPS placement would help guarantee that the use of this technology would be limited to cases where probable cause to believe criminal activities had occurred or were ongoing. At the same time, the court found in this case that officers had, in fact, obtained the required warrant.

All these courts depart from the analysis and frame of reference set forth by the U.S. Supreme Court in Knotts, that was based on finding no reasonable expectation of privacy in the location and motion of a vehicle through public streets. They focus instead on the pervasiveness of the surveillance made possible by GPS tracking devices, concerned about the possible impact of the garnering of a very comprehensive portrait of suspect’s entire range of activities and associations.

**Courts rejecting a warrant requirement for GPS vehicle tracking**

Two federal appeals courts and the Supreme Court of Nevada have explicitly rejected any requirement of a warrant for law enforcement’s placement of a GPS tracking device on a vehicle for surveillance purposes.

The court in *United States v. Pineda-Moreno*, #08-30385, 591 F.3d 1212 (9th Cir.), rehearing denied, 617 F.3rd 1120 (9th Cir. 2010) denied a criminal defendant’s motion to suppress evidence obtained from a mobile tracking device placed on the underside of his vehicle on seven different occasions without a warrant. This took place after information was received that he had purchased lots of fertilizer often used to grow marijuana.

Attaching the device, the court reasoned, was not a search at all. The underside of the vehicle was part of the car’s exterior, so that there was no expectation of privacy, particularly when it was parked in the driveway, where it had been when the device was attached. The defendant had taken no steps to exclude persons passing by from his driveway, and the court further ruled that police, in monitoring the car’s location, had not engaged in an illegal search.

This, the court held, was not a seizure of his vehicle since the device in no way interfered with his driving or other uses of his vehicle. The court noted that the device did not draw power from the car’s battery or engine, and did not occupy any room that would otherwise be occupied by packages or passengers, and did not have any impact on the car’s appearance.

Additionally, the court noted, county police had not engaged in any “mass” surveillance of all of the defendant’s comings and goings, using GPS tracking only when they had a suspect in their sights.

The Nevada Supreme Court in Osburn v. State, #36650, 44 P.3rd 523 (Nev. 2002) concluded that attaching a GPS device to the bumper of the defendant’s car was not an unreasonable search requiring a warrant.

The defendant was convicted of possessing burglary tools and visual sexual images of minors. Police had attached an electronic monitoring device to the bumper of his vehicle to track his movements during an investigation of a series of rapes. The vehicle had been parked on the street outside his residence.

The court reasoned that the defendant had no reasonable expectation of privacy, either objectively or subjectively, as it pertained to the vehicle’s bumper. He took no measures to shield or hide that area of his vehicle from inspection by other people.

In short, the attachment of the device did not constitute an unreasonable search or seizure under Nevada state law.

These courts continue to focus on the framework of analysis set forth by the U.S. Supreme Court in Knotts, and appear to regard even the pervasive 24-hour and long term tracking made possible by GPS devices as simply an easier method of gathering information that could, with a greater expense of time and manpower, be observed by officers as suspects’ vehicles travel on public streets.

**Conclusion**

Courts are increasingly beginning to grapple with whether such devices are intrusive enough to personal privacy to require the enforcement of a Fourth Amendment warrant to justify their placement on vehicles. At this time, the courts are clearly split on the issue, and the question is undoubtedly one to ultimately be decided by the U.S. Supreme Court.
Additionally, GPS devices are increasingly everywhere, in cell phones and other devices in peoples’ pockets and in internet enabled laptop and notebook computers. The parameters of the actual reasonable expectation of privacy have been rapidly diminishing in a world of GPS tracking devices, cell phone video cameras, and widespread internet connectivity. Law, including the criminal law of search and seizure, as well as civil liability arising from violations of the requirements of that law, inevitably must change and adjust.

Law enforcement should learn to regard technology like GPS tracking as valuable tools to improve performance and achieve results while saving funds and conserving manpower. At the same time, it is no substitute for intelligent investigation, and, indeed, overuse of it could actually result in the investigator literally drowning in a sea of overabundant data in which the desired result gets lost.

**Resources**
The following are some useful resources related to the subject of this article.

- [Amicus Brief](#) of the National Association of Criminal Defense Lawyers, et. al. in the New York Court of Appeals GPS case of People v. Weaver.
- [Global positioning satellite monitoring report](#) by the National Workrights Institute, “On Your Tracks: GPS Tracking in the Workplace.”
- [Global Positioning System](#), Wikipedia article.
- [GPS.gov](#)—General public education website created by the U.S. Government
- [Introduction to the Global Positioning System](#), Wikipedia article intended as “an accessible, non-technical introduction to the subject.”
- [Search and Seizure: Vehicle](#), Summaries of cases reported in AELE publications.
- [Webcast](#) of the March 24, 2009, oral argument before the New York Court of Appeals in the GPS case People v. Weaver.

**Prior Relevant Monthly Law Journal Articles**

- [Civil Liability for Exceeding the Scope of a Search Warrant](#), 2010 (1) AELE Mo. L. J. 101.
References:

- Brian Glover, “Law Enforcement and Community Correction’s Use of GPS,” Corrections.com (Nov. 9, 2009).

AELE Monthly Law Journal
Bernard J. Farber
Civil Liability Law Editor
P.O. Box 75401
Chicago, IL 60675-5401 USA
E-mail: bernfarber@aele.org
Tel. 1-800-763-2802

© 2010, by the AELE Law Enforcement Legal Center
Readers may download, store, print, copy or share this article, but it may not be republished for commercial purposes. Other web sites are welcome to link to this article.

- The purpose of this publication is to provide short articles to acquaint the reader with selected case law on a topic. Articles are typically six to ten pages long. Because of the brevity, the discussion cannot cover every aspect of a subject.
- The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal articles should not
be considered as “legal advice.” Lawyers often disagree as to the meaning of a case or its application to a set of facts.