

High court troubled by warrantless GPS tracking (Update)

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The US Supreme Court delved Tuesday into the issue of privacy amid 21st century technology, hearing arguments on whether police can use a GPS device attached to a vehicle to track a suspect without a search warrant.

The Supreme Court invoked visions of an all-seeing Big Brother and satellites watching us from above. Then things got personal Tuesday when the justices were told police could slap GPS devices on their cars and track their movements, without asking a judge for advance approval.

The occasion for all the talk about intrusive police actions was a hearing in a case about whether the police must get a search warrant before using GPS technology to track criminal suspects. The outcome could have implications for other high-tech surveillance methods as well.

The justices expressed deep reservations about warrantless GPS

tracking. But there also was no clear view about how or whether to regulate police use of the devices.

The justices were taken aback when the lawyer representing the government said police officers could install GPS devices on the justices' cars and track their movements without a warrant. To get a warrant, investigators need to convince a judge that there is reason to believe a suspect is involved in criminal activity.

"So your answer is yes, you could tomorrow decide that you put a GPS device on every one of our cars, follow us for a month; no problem under the Constitution?" Chief Justice John Roberts said.

Not only that, government lawyer Michael Dreeben replied, but FBI agents wouldn't need a warrant either if they wanted to rummage through the justices' trash, use a low-tech beeper to track them or tail them around-the-clock with a team of agents. Dreeben said the court has previously ruled that people have no reasonable expectation of privacy in those circumstances.

Justice Samuel Alito captured the essence of the court's concern when he said, "With computers around, it's now so simple to amass an enormous amount of information. How do we deal with this? Just say nothing has changed?"

Justice Stephen Breyer alluded to George Orwell's novel "1984" when he said surveillance in the past depended on human beings and their sometimes flawed memories. But computers don't have that problem, he said.

"The question that I think people are driving at, at least as I understand it and certainly share the concern, is that if you win this case then there is nothing to prevent the police or the government from monitoring 24

hours a day the public movement of every citizen of the United States," Breyer said.

Roberts drew a comparison with artwork to explain his perception of the power of GPS surveillance. "You're talking about the difference between seeing a little tile and a mosaic," Roberts said.

But Dreeben said it would be better for lawmakers rather than judges to set limits. Dreeben said the concerns expressed Tuesday were similar to those in the earlier high court case. Thirty years ago, Dreeben said, "Beeper technology seemed extraordinarily advanced."

The court shouldn't make special rules for GPS devices just because they allow the police to be more efficient in capturing and analyzing data, Dreeben said.

GPS devices are especially useful in early stages of an investigation, when they can eliminate the use of time-consuming stakeouts as officers seek to gather evidence, he said.

The issue arose after the federal appeals court in Washington threw out the drug conspiracy conviction of nightclub owner Antoine Jones. FBI agents and local police did not have a valid search warrant when they installed a GPS device on Jones' car and collected travel information for a month.

The GPS device helped authorities link Jones to a suburban house used to stash money and drugs. He was sentenced to life in prison before the appeals court overturned the conviction. The appellate judges said the authorities should have had a warrant and pointed to the length of the surveillance as a factor in their decision.

For all the unease the justices voiced in questions to Dreeben, they

seemed equally torn in questions to Stephen Leckar, Jones' lawyer, about how to impose limits on the police.

Justice Ruth Bader Ginsburg asked whether the use of video surveillance cameras is so different from getting information from a GPS device on a car. In London, Justice Elena Kagan noted, cameras are everywhere.

"It's pretty scary," Leckar said.

Justice Antonin Scalia responded with evident sarcasm. "Well, it must be unconstitutional if it's scary," Scalia said.

More gently, Breyer pointed out that English authorities have used video footage to prevent terrorist attacks.

The point of the questioning was to get Leckar to offer a principled way to draw a line that would still allow police to do their jobs without compromising people's rights.

Leckar said perhaps police could use the GPS device to follow someone for one day or one trip, without first getting a warrant. But that didn't appear to satisfy much of the court, either.

An unusual array of interest groups backs Jones, including the Gun Owners of America, the Council on American-Islamic Relations, the American Civil Liberties Union and an association of truck drivers. The groups say GPS technology is much more powerful than the beeper technology police once employed in surveillance.

Other appeals courts have ruled that search warrants aren't necessary for GPS tracking.

The justices are considering two related issues, whether a warrant is

needed before installing the device or using the GPS technology to track a vehicle. They could determine that the installation requires a warrant, leaving the knottier issues relating to tracking to another day.

A decision should come by spring.

The case is U.S. v. Jones, 10-1259.

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