

Warrant needed for GPS tracking, high court says (Update)

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This Jan. 5, 2011 file photo shows Yasir Afifi at his home in San Jose, Calif., where a GPS tracking device was placed on his car. The Supreme Court ruled unanimously Monday, Jan. 23, 2012, that police must get a search warrant before using GPS technology to track criminal suspects.(AP Photo/Paul Sakuma, File)

(AP) -- In a rare defeat for law enforcement, the Supreme Court unanimously agreed on Monday to bar police from installing GPS technology to track suspects without first getting a judge's approval. The justices made clear it wouldn't be their final word on increasingly advanced high-tech surveillance of Americans.

Indicating they will be monitoring the growing use of such technology, five justices said they could see constitutional and privacy problems with police using many kinds of electronic surveillance for long-term tracking

of citizens' movements without warrants.

While the justices differed on legal rationales, their unanimous outcome was an unusual setback for government and police agencies grown accustomed to being given leeway in investigations in post-Sept. 11 America, including by the Supreme Court. The views of at least the five justices raised the possibility of new hurdles down the road for police who want to use high-tech surveillance of suspects, including various types of GPS technology.

"The Supreme Court's decision is an important one because it sends a message that technological advances cannot outpace the American Constitution," said Donald Tibbs, a professor at the Earle Mack School of Law at Drexel University. "The people will retain certain rights even when technology changes how the police are able to conduct their investigations."

A GPS device installed by police on Washington, D.C., nightclub owner Antoine Jones' Jeep and tracked for four weeks helped link him to a suburban house used to stash money and drugs. He was sentenced to life in prison before an appeals court overturned his conviction.

It's not clear how much difficulty police agencies would have with warrant requirements in this area; historically they are rarely denied warrants they request. But the Obama administration argued that getting one could be cumbersome, perhaps impossible in the early stages of an investigation. In the Jones case, police got a warrant but did not install the GPS device until after the warrant had expired and then in a jurisdiction that wasn't covered by the document.

Justice Antonin Scalia said the government's installation of the device, and its use of the GPS to monitor the vehicle's movements, constituted a search, meaning a warrant was required. "Officers encroached on a

protected area," Scalia wrote.

Relying on a centuries-old legal principle, he concluded that the police action without a warrant was a trespass and therefore an illegal search. He was joined in his opinion by Chief Justice John Roberts and Justices Anthony Kennedy, Clarence Thomas and Sonia Sotomayor.

All nine justices agreed that the GPS monitoring on the Jeep violated the Fourth Amendment's protection against unreasonable search and seizure, a decision the American Civil Liberties Union said was an "important victory for privacy."

But there was a major division between Scalia, the court's conservative leader, and Justice Samuel Alito, a former federal prosecutor and usually a Scalia ally, over how much further the court should go beyond just saying that police can't put a GPS device on something used by a suspect without a warrant.

Alito wrote, in a concurring opinion, that the trespass was not as important as the suspect's expectation of privacy and the duration of the surveillance.

"The use of longer-term GPS monitoring in investigations of most offenses impinges on expectations of privacy," Alito wrote in an opinion joined by Justices Ruth Bader Ginsburg, Stephen Breyer and Elena Kagan. Sotomayor in her concurring opinion specifically said she agreed with Alito on this conclusion.

No justice embraced the government's argument that the surveillance of Jones was acceptable because he had no expectation of privacy for the Jeep's location on public roads.

Alito added, "We need not identify with precision the point at which the

tracking of this vehicle became a search, for the line was surely crossed before the four-week mark."

Regarding the issue of duration, Scalia wrote that "we may have to grapple" with those issues in the future, "but there is no reason for rushing forward to resolve them here."

Sotomayor, in her separate opinion, wrote that it may be time to rethink all police use of tracking technology, not just long-term GPS.

"GPS monitoring generates a precise, comprehensive record of a person's public movement that reflects a wealth of detail about her familial, political, religious and sexual associations," Sotomayor said. "The government can store such records and efficiently mine them for information for years to come."

Alito also said the court and Congress should address how expectations of privacy affect whether warrants are required for remote surveillance using electronic methods that do not require the police to install equipment, such as GPS tracking of mobile telephones. Alito noted, for example, that more than 322 million cellphones have installed equipment that allows wireless carriers to track the phones' locations.

"If long-term monitoring can be accomplished without committing a technical trespass - suppose for example, that the federal government required or persuaded auto manufacturers to include a GPS tracking device in every car - the court's theory would provide no protection," Alito said.

Sotomayor agreed. "It may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to their parties," she said.

Washington lawyer Andy Pincus called the decision "a landmark ruling in applying the Fourth Amendment's protections to advances in surveillance technology." Pincus has argued 22 cases before the Supreme Court and filed a brief in the current case on behalf of the Center for Democracy and Technology, a civil liberties group with expertise in law, technology and policy.

Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., said the court's decision was "a victory for privacy rights and for civil liberties in the digital age." He said the ruling highlighted many new privacy threats posed by new technologies. Leahy has introduced legislation to update the Electronic Communications Privacy Act, a 1986 law that specifies standards for government monitoring of cellphone conversations and Internet communications.

The lower appellate court that threw out Jones' conviction also objected to the duration of the surveillance.

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

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