Montana Code Annotated 2011

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Constitution of Montana -- Article II -- DECLARATION OF RIGHTS

Section 11. Searches and seizures. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Provided by Montana Legislative Services

Montana Code Annotated 2011

Constitution of Montana -- Article II -- DECLARATION OF RIGHTS

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

FOURTH AMENDMENT

Text Learn more

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Supreme Court hears cell-phone privacy case in Bozeman

By GAIL SCHONTZLER, Chronicle Staff Writer | Posted: Tuesday, May 4, 2010 12:15 am

Attorneys battled before the Montana Supreme Court, meeting Monday in Bozeman, over how much power police have to record cell phone conversations without a search warrant.

Attorney Koan Mercer, representing a Havre man convicted of a bloody pistol-whipping assault, argued that if the cell-phone recordings are allowed, "then the government can use this form of surveillance to gather and record intimate information about anyone, at any time, for as long as the government desires."

On the other side, Matthew Cochenour, assistant attorney general, argued that the state Supreme Court should uphold the legal rules that Montana courts and police have followed for the last 30 years. Those rules allow police recordings of phone calls to be used as evidence as long as one party to the conversation consents.

The argument over cell phones and Montanans' fundamental rights to privacy and against unreasonable searches was conducted at Montana State University during Law Day. About 250 students and community members took the chance to watch the seven black-robed Supreme Court justices in action.

The case started with the conviction of Brian Hayden Allen for beating Louis Escobedo owed Allen money for a drug deal. On Jan. 27, 2008, Allen drove with his girlfriend to Escobedo's home, got him into her car, demanded money and when Escobedo said he couldn't pay, pistol whipped him 15 to 20 times until he blacked out. Then Allen held a gun to the man's head and shot out the car's back window. With his blood all over the car, Escobedo was let go. He required seven staples in his head for his injuries.

A week later, the girlfriend, Kristen Golie, went to police. A drug task force had her secretly record her cell phone conversations with Allen.

A jury convicted Allen of two counts of assault with a weapon and one of criminal endangerment. Mercer challenged the conviction on three grounds and asked for a new trial.

Mercer's main challenge was the cell phone recordings. He asked the justices to overturn their previous decisions and declare the recordings illegal.

Before the Supreme Court hearing began, Andrew King-Ries, associate professor at the University of Montana Law School, explained to the audience that the Fourth Amendment to the U.S. Constitution protects all citizens against unreasonable searches. But Montana's Constitution also protects citizens' right to privacy, and the Montana high court has used that right to provide greater protections against searches.

"It means a cop in Montana is more likely to need a search warrant than a cop in the federal system," King-Ries said.

In 2008 the Montana Supreme Court ruled that people have a reasonable expectation of privacy in face-to-face conversations in their homes, King-Ries said. A key argument Monday was whether average Montanans also expect privacy when they conduct cell phone conversations in public.
Mercer argued that just because Montanans talk on the cell phone around other people, at a bank and a drive-up window, for example, it doesn't mean they expect the government to be recording their conversations. The drug task force had plenty of time to get a search warrant from a judge, he added.
Arguing for the state, Cochenour said that the key factor in whether a privacy expectation is reasonable is whether the person can exert control over the situation. He argued that when Allen conducted a cell-phone conversation, while doing errands around town, he couldn't tell if someone else was listening. The conversation could have been on speaker phone, or coming out through the Blue Tooth system in a car's speakers.
Mercer rebutted that just because there's a possibility of police listening in, that doesn't change the fact that Montanans expect their cell phone chats are private.
"You mean our expectations of privacy are defined by the technology?" asked Justice James Nelson. "That's a scary thought."
Cochenour also argued that there was plenty of evidence to convict Allen, even without the cell-phone recordings.
Two other issues were challenged by Allen's attorney. One was that one potential juror, apparently eager to get out of jury duty, said he had read news stories, was pro-law enforcement, and would have trouble being impartial, especially if the trial took longer than two days. The judge should have kicked the man off the jury, instead of making the defense use up one of its limited preemptory challenges, Mercer said. He also argued that the jury should have been instructed that because the girlfriend was an accomplice, her testimony should be viewed with mistrust.
After the hearing, high school seniors Josh Allen and Ray Jimenez from Bozeman's Mount Ellis Academy said they'd learned a lot.
Justice Mike Wheat of Bozeman, who joined the court in January, said he thinks it's "terrific" that the Supreme Court holds sessions around the state. "It lets the public see how we do our work," Wheat said.
Carson Taylor, a Bozeman city commissioner and attorney, said he'd asked his MSU business students taking introduction to law to observe the case, which had good arguments on both sides and good questioning from the justices.
"This is the most fun I've had since I was elected," Taylor said.
Gail Schontzler can be reached at gails@dailychronicle.com or 582-2633.

ACLU
AMERICAN CIVIL LIBERTIES UNION of MONTANA
FOUNDATION

Press Release
FOR IMMEDIATE RELEASE
August 3, 2011

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ACLU of Montana Seeks Details on Government Phone Tracking

Letters are part of a coordinated ACLU campaign that is one of the largest information requests in American history

HELENA – The American Civil Liberties Union of Montana sent letters today to the state of Montana and to local law enforcement in six counties requesting information about if and how they are using cell phone data to track Montanans.

Letters were sent to the Montana Division of Criminal Investigation and to sheriffs in Cascade, Yellowstone, Missoula, Gallatin, Flathead and Butte-Silver Bow counties.

"We want to assure that privacy protections keep pace with technological advances." said ACLU of Montana Legal Director Betsy Griffing. "Relying upon the express right of privacy in the Montana Constitution, the Montana Supreme Court has ruled that cell phone communications are private and cannot be monitored without a warrant. We believe that right of privacy also protects location information law enforcement can get from every person's cell phone."

Law enforcement agencies are being asked for information including:

- Policies and procedures for obtaining cell phone location records;
- Statistics on how frequently law enforcement agencies obtain cell phone location data;
- The use of cell phone location records to identify users at a particular location or within "communities of interest," and
- Other policies and procedures related to mobile phone location data.

The ACLU of Montana's requests are part of a massive coordinated information-seeking campaign, in which 34 ACLU affiliates in 31 states today are sending similar requests to more than 370 law enforcement agencies large and small. The campaign is one of the largest coordinated information act requests in American history. The requests, being filed under the states' freedom of information laws, are an effort to strip away the secrecy that has surrounded law enforcement use of cell phone tracking capabilities.

"The ability to access cell phone location data is an incredibly powerful tool and its use is shrouded in secrecy. The public has a right to know how and under what circumstances their location information is being accessed by the government," said Catherine Crump, staff attorney for the ACLU Speech, Privacy and Technology Project. "A detailed history of someone's movements is extremely personal and is the kind of information the Constitution protects."

Law enforcement's use of cell phone location data has been widespread for years, although it has become increasingly controversial recently. Just last week, the general counsel of the National Security Agency suggested to members of Congress that the NSA might have the authority to collect the location information of American citizens inside the U.S. Also, this spring, researchers revealed that iPhones were collecting and storing location information in unknown files on the phone.

The U.S. Supreme Court has agreed to decide whether police need a warrant to place a GPS tracking device on a person's vehicle. While that case does not involve cell phones, it could influence the rules police have to follow for cell phone tracking.

Congress is considering the Geolocation Privacy and Surveillance Act, a bill supported by the ACLU that would require police to get a warrant to obtain personal location information. The bill would protect both historical and real-time location data, and would also require customers' consent for telecommunications companies to collect location data.

Today's requests are part of the ACLU's Demand Your dotRights Campaign, the organization's campaign to make sure that as technology advances, privacy rights are not left behind.

Requests filed in Montana are available at www.aclumontana.org. More information about requests in other states can be found at www.aclu.org/locationtracking

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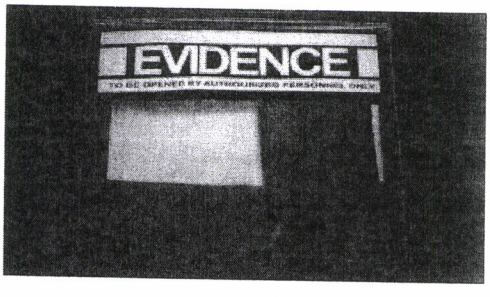
Forbes

Andy Greenberg, Forbes Staff
Covering the worlds of data security, privacy and hacker culture.

TECH | 3/01/2012 @ 2:12PM | 6,177 views

Court Ruling Opens Phones To Warrantless Searches



Cell phone users might think that their phones can't be searched without a warrant any more than their homes can be. But one judge just gave cops engaging in warrantless cell phone searches a foot in the door.

Judge Richard Posner of the seventh circuit court of appeals ruled Wednesday (PDF here) that the question of cell phone searches isn't whether law enforcement can open a phone and start snooping on its information without a warrant, but only how deep their warrantless search can go. In the appealed case, an Indiana man was arrested at a methamphetamine bust with one cell phone on his person and two more in his truck. Police turned on those phones and checked them for their numbers without obtaining a warrant, then used the numbers to file subpoenas to the carriers for the phones' call histories. The searches went only as deep as gathering the phones' numbers, but the defendant appealed his conviction based on what his lawyers argued was an unlawful search that generated evidence against him.

Posner disagreed. In his ruling, he cited another case United States vs. Robinson, which stated that a "container" on someone's body at the time of arrest could be searched for evidence relevant to the crime. He acknowledged that rule might not allow the thorough search of a container that included other personal information, like a diary. But he wrote that

> "...opening the diary found on the suspect whom the police have arrested, to verify his name and address and discover whether the diary contains information relevant to the crime for which he has been arrested, clearly is permissible; and what happened in this case was similar but even less intrusive, since a cell phone's phone number can be found without searching the phone's contents, unless the phone is password protected—and on some cell phones even if it is.

Posner acknowledged that a deeper search of a cellphone could be considered intrusive. He cited an iPhone app called iCam that allows a user to access surveillance cameras in his own home, essentially linking a deeper cellphone search to a home search.

But he argued that simply checking a phone for its number doesn't go far

enough to raise questions of intrusions of privacy. The ruling includes a description of the number of touches it takes to obtain the number of an iPhone (two) and a BlackBerry (one, according to Posner's count.) "We are quite a distance from the use of the iCam to view what is happening in the bedroom of the owner of the seized cell phone," he writes.

In a far stranger argument, he adds that by merely by subscribing to a telephone service, "the user is deemed to surrender any privacy interest he may have had in his phone number," given that the phone company knows it by default.

Posner intentionally leaves open the question of where the line can be drawn of an intrusive cellphone search. George Washington University Law professor Orin Kerr, writing at the Volokh Conspiracy, says that question may be complex enough to eventually reach the Supreme Court.

> The take-away, I think, is that this is a confusing opinion that helps set up eventual Supreme Court review. The opinion deepens the split by adding a new approach to the mix and will help justify the Supreme Court eventually intervening. Supreme Court review may be a few years away, to be sure. Cell phone technology is changing quickly, and a rule for cell phones today might not make much sense tomorrow. So I suspect the Court will want to wait until the technology stabilizes a bit more before granting cert. But opinions like this one certainly help deepen the split.

With years to go before the issue is settled, privacy-conscious cellphone users would be wise to try a strategy that's easier than fighting a Supreme Court battle: Password-protect your phone.

The full ruling is below.

In the
United States Court of Ap

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The Cellphone Records, Officer? You May Soon Need a Warrant

By MAURICE CHAMMAH
Published: March 7, 2013

Seeking to regulate the use of cellphone records in investigations by law enforcement, Texas lawmakers are considering a bill that would require police officers and prosecutors to have a warrant before obtaining such records.

Last month, Representative Bryan Hughes, Republican of Mineola, filed House Bill 1608, which would require law enforcement agencies throughout the state to obtain warrants and prove to a judge there was a probable cause of illegal activity before obtaining cellphone records in their investigations. It would also lift the seals on court orders for the data after 180 days. A companion bill has been filed in the Senate by Juan Hinojosa, Democrat of McAllen, and others have signed on.

Privacy advocates like the A.C.L.U. say the bill is necessary because cellphone companies are now able to determine and transmit customers' specific locations. But some police officers and prosecutors say that the higher standard of proof would make it harder to catch criminals in certain long-term investigations. In response to a Congressional request last year, wireless carriers reported that they received thousands of requests a day from law enforcement agencies for cellphone information, including text messages and caller locations. Privacy advocates in Texas said they were startled at how common the practice is.

"Right now we're just guessing on the numbers," said Matt Simpson, a policy strategist with the Texas branch of the American Civil Liberties Union, "but they seem very high."Current technology has eroded "traditional conceptions of privacy," said Scott Henson, the writer of the criminal justice blog Grits for Breakfast, who shopped the bill around to lawmakers. "This bill ensures that government can't track your daily movements without a good reason." In certain situations, said Mr. Simpson, the police might track an individual simply for going to an Islamic mosque. That would be a violation of the right to freedom of worship, he said, but under current laws no judge would need to consider the issue before the cellphone records were obtained.

Steve Baldassano, a Harris County prosecutor, said that although the policy change would affect only "historical" investigations — the police already need to establish probable cause in "real time" situations involving kidnappings and chases — it could make it harder to catch certain criminals. Mr. Baldassano said that cellphone data might be the only evidence supporting or disproving an alibi at an early stage of an investigation. With this new barrier, he said, "you'd just have to let it go."

Donald Baker, a commander with the Austin Police Department, took issue with Mr. Hughes's requirement that the court seal be lifted after 180 days, because many

investigations last longer than that.

"You don't want that information out there," he said.

Mr. Henson said prosecutors and the police could still keep records sealed under public information laws, which allow for information to be kept from public disclosure if "release of the information would interfere with the detection, investigation or prosecution of crime."

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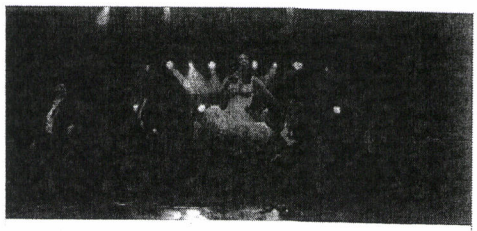
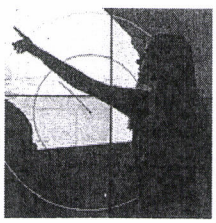
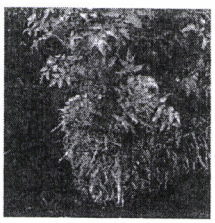
A version of this article appeared in print on March 8, 2013, on page A21A of the National edition with the headline: The Cellphone Records, Officer? You May Soon Need a Warrant.

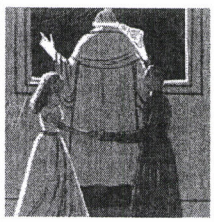
9. MUSEUMS SPECIAL SECTION
The Lens Rises in Stature

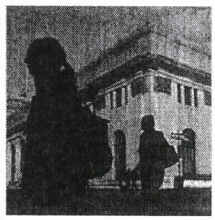
10. Study of Men's Falling Income Cites Single Parents









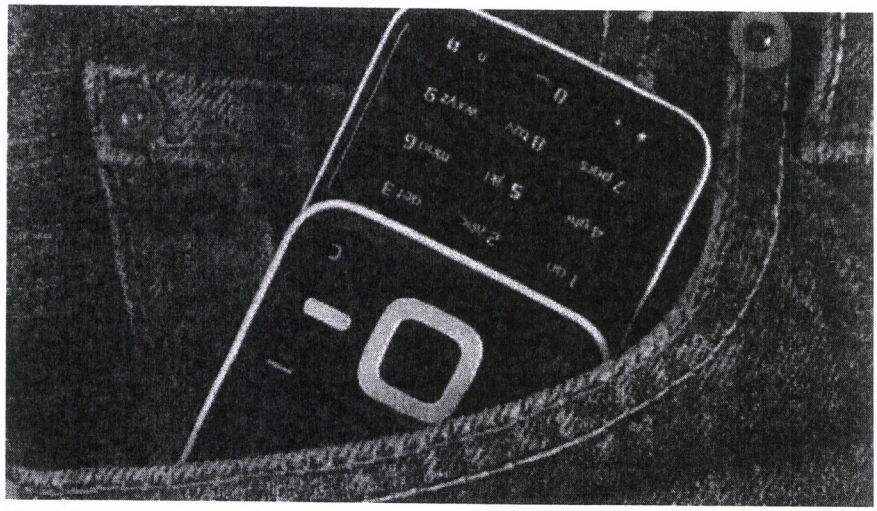


By

Chenda Ngak /

CBS News/ March 1, 2012, 5:47 PM

Police can now search cell phones without a warrant



iStockphoto

(CBS News) Cell phone users need to be mindful of what information is stored on their devices. U.S. Court of Appeal for the 7th Circuit ruled Wednesday that it is now legal for police to search cell phones without a warrant.

The case that put cell phone privacy at the center of the drama was rooted in Indiana.

According to court documents, Abel Flores-Lopez was busted for a methamphetamine deal. A witness in the case noted that a cell phone call had been made, discussing details of the drug deal.

The arresting police officer searched Flores-Lopez's phone without obtaining a warrant. The defendant argued that the police obtained evidence illegally, thus making all following evidence inadmissible in court.

Judge Richard Posner shot down the defendant and argued that the cell phone should be treated as a diary and referenced the case United States v. Jones.

> "So opening the diary found on the suspect whom the police have arrested, to verify his name and address and discover whether the diary contains information relevant to the crime for which he has been arrested, clearly is permissible; and what happened in this case was similar but even less intrusive, since a cell phone's phone number can be found without searching the phone's contents, unless the phone is password protected - and on some cell phones even if it is."

Posner went on to argue that it was a matter of urgency because it was possible for an accomplice of the defendant to remote wipe the phone before police could obtain a warrant.

In this case, the police searched the cell phone for a phone number and no other data on the device. Posner did acknowledge the complexity of the matter in regards to smartphones, which hold a gold mine of personal data.

Threat Level
Privacy, Crime and Security Online

- Surveillance
- privacy

After Car-Tracking Smackdown, Feds Turn to Warrantless Phone Tracking

- By David Kravets
- 03.31.12
- 5:13 PM

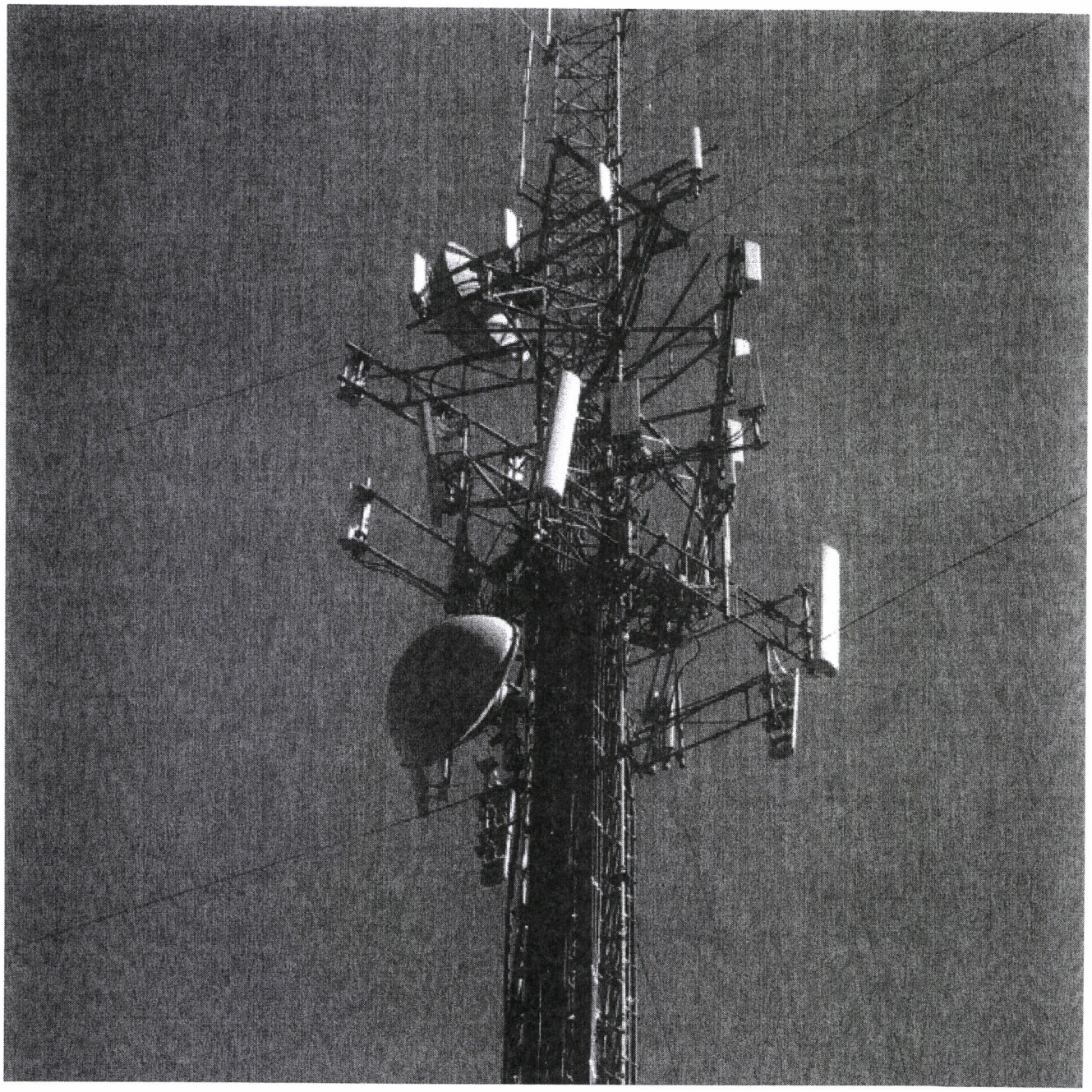


Photo: @jbtaylor/Flickr

Prosectors are shifting their focus to warrantless cell-tower locational tracking of suspects in the wake of a Supreme Court ruling that law enforcement should acquire probable-cause warrants from judges to affix GPS devices to vehicles and monitor their every move, according to court records.

The change of strategy comes in the case the justices decided in January, when it reversed the life sentence of a District of Columbia area drug dealer, Antoine Jones, who was the subject of 28 days of warrantless GPS surveillance via a device the FBI secretly attached to his vehicle. In the wake of Jones' decision, the FBI has pulled the plug on 3,000 GPS-tracking devices.

In a Friday filing in pre-trial proceedings of Jones retrial, Jones attorney' said the government has five months' worth of a different kind of locational tracking information on his client: So-called cell-site information, obtained without a warrant, chronicling where Jones was when he made and received mobile phone calls in 2005.

"In this case, the government seeks to do with cell site data what it cannot do with the suppressed GPS data," attorney Eduardo Balarezo wrote (.pdf) U.S. District Judge Ellen Huvelle.

Balarezo added:

The government has produced material obtained through court orders for the relevant cellular telephone numbers. Upon information and belief, now that the illegally obtained GPS data cannot be used as evidence in this case, the government will seek to introduce cell site data in its place in an attempt to demonstrate Mr. Jones' movements and whereabouts during relevant times. Mr. Jones submits that the government obtained the cell site data in violation of the Fourth Amendment to the United States Constitution and therefore it must be suppressed.

Just as the lower courts were mixed on whether the police could secretly affix a GPS device on a suspect's car without a warrant, the same is now true about whether a probable-cause warrant is required to obtain so-called cell-site data.

A lower court judge in the Jones case had authorized the five months of the cell-site data without probable cause, based on government assertions that the data was "relevant and material" to an investigation.

"Knowing the location of the trafficker when such telephone calls are made will assist law enforcement in discovering the location of the premises in which the trafficker maintains his supply narcotics, paraphernalia used in narcotics trafficking such as cutting and packaging materials, and other evident of illegal narcotics trafficking, including records and financial information," the government wrote in 2005, when requesting Jones' cell-site data.

That cell-site information was not introduced at trial, as the authorities used the GPS data for the same function.

The Supreme Court tossed that GPS data, along with Jones' conviction, on Jan. 23.

The justices agreed to decide Jones' case in a bid to settle conflicting lower-court decisions — some of which ruled a warrant was necessary, while others found the government had unchecked GPS surveillance powers.

"We hold that the government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search,'" Justice Antonin Scalia wrote for the five-justice majority.

The government has maintained in a different case on appeal that cell-site data is distinguishable from GPS-derived data. District of Columbia prosecutors are expected to lodge their papers on the issue by Apr. 6 in the Jones case.

Among other things, the government maintains Americans have no expectation of privacy of such cell-site records because they are "in the possession of a third party" (.pdf) — the mobile phone companies. What's more, the authorities maintain that the cell site data is not as precise as GPS tracking and, "there is no trespass or physical intrusion on a customer's cellphone when the government obtains historical cell-site records from a provider."

In the Jones case, the Supreme Court agreed with an appeals court that Jones' rights had been violated by the month-long warrantless attachment of a GPS device underneath his car. Scalia's majority opinion, which was joined by Chief Justice John Roberts, and Justices Anthony Kennedy, Clarence Thomas and Sonia Sotomayor, said placing the device on the suspect's car amounted to a search. (.pdf)

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4 Jan 2011 8:45pm, EST

Court: No warrant needed to search cell phone

By Bob Sullivan, Columnist, NBC News

The next time you're in California, you might not want to bring your cell phone with you. The California Supreme Court ruled Monday that police can search the cell phone of a person who's been arrested -- including text messages -- without obtaining a warrant, and use that data as evidence.

The ruling opens up disturbing possibilities, such as broad, warrantless searches of e-mails, documents and contacts on smart phones, tablet computers, and perhaps even laptop computers, according to legal expert Mark Rasch.

The ruling handed down by California's top court involves the 2007 arrest of Gregory Diaz, who purchased drugs from a police informant. Investigators later looked through Diaz's phone and found text messages that implicated him in a drug deal. Diaz appealed his conviction, saying the evidence was gathered in violation of the Fourth Amendment, which prohibits unreasonable searches and seizures. The court disagreed, comparing Diaz cell phone to personal effects like clothing, which can be searched by arresting officers.

"The cell phone was an item (of personal property) on (Diaz's) person at the time of his arrest and during the administrative processing at the police station," the justices wrote. "Because the cell phone was immediately associated with defendant's person, (police were) entitled to inspect its contents without a warrant."

In fact, the ruling goes further, saying essentially that the Diaz case didn't involve an exception -- such as a need to search the phone to stop a "crime in progress." In other words, this case was not an exception, but rather the rule.

Rasch, former head of the Justice Department's computer crime unit, pulled no punches in his reaction to the ruling.

"This ruling isn't just wrong, it's dangerous," said Rasch, now director of cybersecurity and privacy at computer security firm CSC in Virginia. "It's remarkable, because it simply misunderstands the nature of these devices."

The door is open for police to search the entire contents of iPhones or other smart phones that people routinely carry, he said.

"In fact, I would be shocked if police weren't getting instructions right now to do just that," he said.

By applying the "personal property on the defendant's person" standard, Rasch said, the ruling could logically extend to tablets or even laptop computers, he said.

It also flies in the face of established law, which prohibits the warrantless search of briefcases by police, other than a quick search for weapons, Rasch said.

In its ruling, the majority likened cell phone inspection to police inspection of a cigarette pack taken from a suspect, which was ruled a legal search in a prior case. A second ruling was cited involving the search of clothing removed from a suspect.

older

newer

Rasch said the analogies don't hold, however, as modern phones that can store years' worth of personal information are a far cry from drugs hidden in a cigarette case or clothes pockets.

"There is a process for looking at data inside devices," he said. "It's called a warrant."

Grants police 'carte blanche'

The California ruling was not unanimous. Dissenting Justice Kathryn Werdegar raised similar concerns in her opinion.

"The majority's holding ... (grants) police carte blanche, with no showing of exigency, to rummage at leisure through the wealth of personal and business information that can be carried on a mobile phone or handheld computer merely because the device was taken from an arrestee's person," she wrote. "The majority thus sanctions a highly intrusive and unjustified type of search, one meeting neither the warrant requirement nor the reasonableness requirement of the Fourth Amendment to the United States Constitution."

Jonathan Turley, a Constitutional law expert at George Washington University, took to his blog to raise his concerns about the ruling.

"The Court has left the Fourth Amendment in tatters and this ruling is the natural extension of that trend," he wrote. "While the Framers wanted to require warrants for searches and seizures, the Court now allows the vast majority of searches and seizures to occur without warrants. As a result, the

California Supreme Court would allow police to open cell phone files — the modern equivalent of letter and personal messages."

Diaz's lawyer, Lyn A. Woodward, has said she plans to appeal the decision to the U.S. Supreme Court. In the meantime, warrantless searches of cell phones are essentially the law of the land in California.

Password-protection of smart phones might be a useful tool to ward off a warrantless search -- it's not clear that an arrested suspect could be compelled to divulge his or her password to police -- but that legal argument has not yet been made.

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From smartphones to tablets, Wi-Fi to 3G/4G: I cover telecom & mobile.

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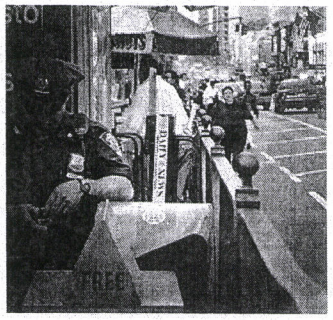
Debate Over Warrantless Cellphone Searches Heats Up

This is a guest post by Sonya Ziaja on how states are handling warrantless searches of cellphones. The California Legislature recently approved a bill on this issue and other jurisdictions are trying to sort out whether a warrant is required under the Fourth Amendment and various state laws.



Events in California are prompting debate about the necessity of warrants for cellphone searches.

Conflicting court decisions and law enforcement policies make it an uncertain time to drive with a cellphone in your car. In many jurisdictions if you're pulled over for a traffic violation and arrested, police officers can search the contents of your cellphone without first obtaining a warrant.

This is currently the law in California, after the California Supreme Court's decision in *People v. Diaz* (holding that a police officer can search the contents of a cellphone after a lawful arrest without a warrant). But, it likely won't remain the law for long.

In a surprising show of bipartisan support for privacy, the California Legislature voted overwhelmingly in favor of SB 914 on August 22. If Governor Jerry Brown signs the bill, it will prohibit warrantless searches of portable electronic devices incident to lawful custodial arrests.

The bill was aimed at reversing the California Supreme Court's decision in *People v. Diaz*, in which the court seemed to have misunderstood the nature of cellphones. Rather, it asserted that cellphones are analogous to other mundane inanimate objects, like cigarette boxes and clothes. The Court relied on two cases, *United States v. Robinson* and *United States v. Edwards*, to reach that conclusion.

The Court's use of these cases is not without logic. In *Robinson*, the defendant was arrested for a traffic violation. During the patdown, the arresting officer felt an object in Robinson's pocket. Taking out the object, the officer found it was a pack of cigarettes. He opened the pack to find drugs concealed inside. In *Edwards*, hours after the defendant was arrested, police took the defendant's clothing and examined it for evidence.

In either case, police officers did not need to obtain a warrant to search the objects. In *Diaz*, the court reasoned that the defendant's cellphone was similar to Robinson's cigarette package and Edwards' clothing, because the cellphone "was an item [of personal property] on [defendant's] person at the time of his arrest and during the administrative processing at the police station."

What this analogy misses, and what SB 914 recognizes, is the significant distinctions between cellphones and cigarette packs. Cellphones store massive amounts of personal information. This should be troublesome enough for privacy advocates. But because of modern professional practices, they can also hold information which would otherwise enjoy a heightened level of protection—i.e. attorneys' work product documents and journalists' notes. It's no surprise then that the California Newspaper Publishers' Association co-sponsored the bill along with the American Civil Liberties Union and the First Amendment Coalition.

SB 914 did run into some opposition, however, largely from the law enforcement community. But recent amendments to the bill assuaged some of their fears by creating an exception for emergency situations, for example, when there is an imminent threat to public safety or to stop the destruction of evidence.

Governor Brown has not commented on whether or not he will sign the bill. During the Diaz case, however, he argued in favor of warrantless searches. But, that was while he was state attorney general. Now as governor, one hopes that he will be more concerned with protecting privacy.

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