GPS and Privacy Rights

The police generally need a search warrant to enter a person’s home or to listen to phone calls. But courts have been divided on whether the police must obtain a warrant before placing a GPS device on a car. New York State’s highest court ruled this week that they do, an important victory for privacy rights.

A State Police investigator placed a GPS tracking device inside the bumper of Scott Weaver’s van without a search warrant. It was unclear based on the record of the case why the police were monitoring Mr. Weaver, but they tracked the van nonstop for 65 days. Mr. Weaver was eventually charged with burglary of a Kmart and convicted in part with evidence taken from the device.

The New York State Court of Appeals reversed his conviction by a 4-to-3 vote. Chief Judge Jonathan Lippman wrote for the majority, saying that tracking Mr. Weaver via the global positioning system without a warrant violated his right to privacy.

The Supreme Court has ruled, the majority noted, that police do not need a warrant to use technology to help them observe the sorts of things they could observe with their own senses. GPS tracking, the New York court said, goes further. It allows the police to monitor people in ways that would require “millions of additional police officers and cameras on every streetlamp.”

A planted GPS device, the majority said, allows the police to follow a person’s every move — including visits to psychiatrists, abortion clinics, AIDS treatment centers, gay bars and places of worship. To do that without a warrant, the court said, is not “compatible with any reasonable notion of personal privacy.”

The Supreme Court has not yet ruled on this issue and lower federal courts and state courts have reached different results. Just this month, a Wisconsin appellate court upheld the use of evidence obtained by placing a GPS device on a suspect’s car without a warrant.

Rather than wade into unclear federal law, the New York State Court of Appeals based its decision on the State Constitution’s privacy provision. The rule the court laid down will
apply in New York no matter how the Supreme Court interprets the Fourth Amendment.

There will no doubt be many more federal and state court rulings about the constitutionality of warrantless GPS monitoring. It is never easy to fit modern technology into the broad privacy principles that the drafters of the federal and state constitutions laid out. As judges look for guidance, this week’s decision from New York State’s highest court is the place to start.

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