

## No Expectation of Privacy When Using Disposable Cell Phone – Sixth Circuit Rules

August 17, 2012 – Disposable cell phones have been the bane of law enforcement agencies since their inception several years ago. The phones are prepaid, have no names associated with them, and are largely thought of as untraceable. But in reality, they are only untraceable as long as nobody knows the number of your phone. Once you start giving the number out, then pretty much anyone can find out where you are, just as they can with a more traditional cell phone. Now, the US Sixth Circuit Court of Appeals has ruled that police can use GPS data from disposable cell phones to track the movements of suspects. And they can do it without a warrant.

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The case heard by the court involved a drug dealer who was caught and convicted using GPS data obtained from a disposable cell phone. The police in the case learned the cell phone number and what it was being used for. They then subpoenaed the telecommunications carrier to get data on the phone and began tracking its movements in real time.

When the crook involved went to trial, he argued that because a warrant hadn't been used, the police couldn't use the data they obtained. When he lost, he appealed. Now he's lost again.

The court was careful to draw a distinction between this case and one from two years ago in which the Supreme Court had ruled that police couldn't attach a GPS unit to a car and track the movements of the car without a warrant. In this case, the court found that the suspect voluntarily used a device that offered GPS as a feature, and which broadcast his location to pretty much anyone who knew his phone number. Because of this, the police didn't intrude his home, his car or his person. He did that on his own, so he had no expectation of privacy.

The ruling is likely to impact cases nationwide. And the moral of the story is that if you want to use a disposable cell phone for privacy purposes, you should only use it to make outbound calls. As soon as someone figures out your phone number, the police now have a right to track your movements if they have probable cause. No warrant required.

by Jim Malmberg

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