

DOJ Arguing Against Cell Phone Privacy

September 6, 2012 - Early this year, the Supreme Court ruled that police needed to obtain a warrant prior to planning a GPS tracking device on the automobile of a suspect. As a result of the ruling, the life sentence of a convicted drug dealer was vacated. But instead of letting the man out of jail, the Department of Justice decided to retry him. That leaves just one problem. They need a replacement for the GPS data that they can no longer use. So they have decided that cell-tower data may be the answer. And they want the courts to allow its use without a warrant too.

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The GPS data that the government used in its original prosecution for dealing drugs was problematic from the start. The FBI had installed a GPS device on the car of the alleged dealer. This allowed agents to track him remotely and to build an accurate time line of his movements. But the evidence was gathered by completely ignoring the 4th Amendment's protections against unreasonable search and seizure. The Supreme Court decisions pretty well stated that implanting a GPS device on a private vehicle was no different than if the FBI showed up at your front door, kicked it in, and then witnessed a crime that they couldn't have seen by standing in the street in front of your house.

Unfortunately for the DOJ, its entire case had been built around that illegally obtained GPS data. Now, the only way that they can revive their case is to come up with another way to track the movements of the alleged perpetrator. Their best option may be cell tower data.

Cell tower data is nowhere near as accurate as GPS. When you use a cell phone, each call you make is really nothing more than a radio signal. That signal is connected to the telephone network by cell towers.

If you are stationary when you make your call, the call will likely be transmitted via the closest cell tower to you. If you are moving, then when you start your call, you will start with the tower that is nearest to your location. As you move from one location to another, the call will be handed off from one cell tower to another. This allows someone looking at cell tower data for the calls that you make to construct a rough picture of your movements.

Cell tower data is gathered by all cellular phone companies. The data has been used routinely by law enforcement and, prior to the inclusion of GPS in cell phones, was commonly used in prosecutions. To the best of our knowledge, the data has always been made available to law enforcement with a. But there are growing calls to change that.

There is good reason to believe that the DOJ will win the case; at least in the lower courts. The US Sixth Circuit Court of

Appeals recently ruled that consumers using disposable cell phones had no expectation of privacy for the GPS data gathered by those phones. And even the Supreme Court has given federal and state law enforcement agencies broad powers by limiting individual "expectations of privacy".

There is also good reason to believe that this case could eventually wind its way back to the Supreme Court again. In the meantime, if you use a cell phone you should always assume that the phone can be used to track your movements. If you don't want to be tracked but you still want to use a cell phone, then your best bet would be to buy a disposable phone. Only use that phone for outbound calls. And remove the battery from the phone when it isn't in use. These are the only ways that we know of to ensure that nobody can monitor your location 100% of the time.

by Jim Malmberg

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