

OUR VIEW: Court defends us against GPS spies

By FREEDOM COMMUNICATIONS

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The Fourth Amendment right to protection against “unreasonable searches and seizures” has won an important battle. The U.S. Supreme Court ruled this week that police cannot attach a GPS tracking system to a vehicle without first getting a warrant from a judge.

The decision was unanimous but produced multiple written opinions, guaranteeing litigation and appeals in related cases.

The big victory was on the specific issue of actually invading someone’s property by attaching a tracking device to it. The main opinion was written by Justice Antonin Scalia and was joined by Chief Justice John G. Roberts Jr. and Justices Anthony M. Kennedy, Clarence Thomas and Sonia Sotomayor.

Scalia wrote, “It is important to be clear about what occurred in this case: The government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a ‘search’ within the meaning of the Fourth Amendment when it was adopted.”

Police installed a GPS device on Washington, D.C., nightclub owner Antoine Jones’ Jeep and tracked it for four weeks. Jones was linked to a suburban house used to stash money and drugs. He was sentenced to life in prison before an appeals court overturned his conviction. The government argued Jones had no expectation of privacy since his Jeep was on public roads.

The decision was “narrow,” Julian Sanchez told us; he’s a technology research fellow at the libertarian Cato Institute. “The decision doesn’t solve the problem we have with geolocation tracking such as through aerial drones or following a cell-phone signal.”

He pointed to the separate opinion written by Justice Samuel Alito and joined by Justices Ruth Bader Ginsburg, Stephen G. Breyer and Elena Kagan. That opinion included the broader searches in the Fourth Amendment protection. It pointed out that the problem really isn’t attaching something to a car. For example, attaching a piece of gum to a car is not a big deal. The real problem is the tracking without a warrant, whatever method is used.

“This case requires us to apply the Fourth Amendment’s prohibition of unreasonable searches and seizures to a 21st-century surveillance technique, the use of a Global Positioning System (GPS) device to monitor a vehicle’s

movements for an extended period of time,” Alito wrote. “Ironically, the Court has chosen to decide this case based on 18th-century tort law.”

**Should police be allowed to attach a GPS tracking device to a car, without a warrant?
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Sotomayor, while joining in the Scalia opinion, filed her own opinion, which also backed the Alito opinion.

“I would ask whether people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on...” Sotomayor wrote.

Sanchez said that this effectively gives the court a five-member majority supporting broader protection of Fourth Amendment rights. Moreover, he said, even the Scalia faction didn’t outright reject the broader interpretation. “Scalia wants the court not to have to figure out [whether] a week or month is too much” for a surveillance to fall under Fourth Amendment protection, Sanchez said. As technologies and the law develop further, the court then can decide those questions in future decisions.

We wish the court had taken the broader decision indicated in the Alito opinion. But in recent years, government has become so intrusive that even a partial victory should be cheered. — **Freedom Communications, Inc.**