

Supreme Court Set to Hear Two Major Privacy Cases This Term

October 3, 2011 – It is the first Monday in October and that means that a new session of the Supreme Court is underway. This term could be historic due to the wide variety of cases that the court is likely to hear. Two of those cases are centered on 4th Amendment issues regarding unreasonable government search and seizure, and could have significant ramifications for all Americans.

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The two privacy issues to be heard by the court are:

1. Do the police need a search warrant before they can place a GPS device on a car and then track every move that car makes, and;
2. Can the police subject someone to a strip search when they are arrested even if there is no probable cause to believe that the person being searched is carrying contraband?

The GPS case is an appeal by Yusuf Bey IV. Bey was convicted of murdering a journalist in Oakland, CA. One of the primary pieces of evidence in the case was a GPS trail of Bey's travels. That trail was created when the police attached GPS device to Bey's car without a search warrant.

GPS records showed that Bey had driven the car to the journalist's home prior to the murder. The records also placed the car at the murder scene. These records were introduced at Bey's trial and served as key pieces of evidence in his conviction.

In the past, the Supreme Court has held that when people are out and about in public, they have no reasonable expectation of privacy. But the appeals court had reversed Bey's conviction. It reasoned that new GPS technology had not been contemplated by the founders and that as a result of the records generated by that technology it would be much easier for the government to determine a wide variety of otherwise unnoticeable relationships between the subject of surveillance and other people. Because of this, the court said that a search warrant was required.

Regardless of what the court decides, Bey will not be getting out of prison. He has been convicted of two other murders not related to GPS technology.

In the second case, a New Jersey man was arrested and strip searched; an experience that he considered to be humiliating. It was later determined that the charges against him were unfounded and he was released. He then filed suit claiming that the police had no reason to strip search him because they had no reasonable cause to believe he was carrying any items that would be considered contraband in jail.

With regard to the second case, it is unlikely that the court will prevent jailers from strip searching new inmates. Such a change to the law would allow criminals in jail to make arrangements to easily have contraband items smuggled into jail. This could endanger both jailers and other inmates.

With regard to the first case though, there is no telling what the court will decide. In the past, the court has determined that the use of certain technologies require a warrant even when the technology does not require the police to trespass on private property. In this case, while the court has previously ruled that when in public people have no expectation of privacy, it has also issued rulings that require a warrant for the search of an automobile. Since the GPS device involved in this case was installed on a private automobile, it may very well determine that a search warrant was needed. We'll keep you posted as the session progresses.

by Jim Malmberg

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