

Recent Case Report

Date posted: May 2, 2011

U.S. v. Cuevas-Perez

(7th Cir. 2011) __ F.3d __ [2011 WL 1585072]

Issue

Must officers obtain a search warrant to conduct GPS surveillance of a vehicle if the surveillance will be protracted?

Facts

Having become aware that Cuevas-Perez might be trafficking in heroin, ICE agents and city police installed a pole camera outside his home in Phoenix. Their suspicions were heightened when the camera recorded Cuevas-Perez “manipulating” the hatch and rear door panels on his Jeep Laredo. Because this indicated that Cuevas-Perez was utilizing secret compartments in his Jeep to transport heroin, officers decided to conduct intensive surveillance of the vehicle. So they attached a GPS tracking unit to the vehicle while it was parked in a public place, and they programmed the unit to transmit text messages of the Jeep’s whereabouts every four minutes.

A day or so later, Cuevas-Perez drove his Jeep from Phoenix to Illinois. The GPS unit tracked him through New Mexico, Texas, Oklahoma, and Missouri. But before he arrived in Illinois the batteries on the tracker started running low, so ICE agents in Missouri began conducting visual surveillance until he entered Illinois, at which point the surveillance was conducted by Illinois State Police. At this point, GPS surveillance—which had lasted for about 60 hours—was terminated.

As Cuevas-Perez drove through Illinois, ICE agents asked the state police to try to “find a reason” to stop the Jeep. A state police officer pulled it over for a minor traffic infraction and, during the course of the stop, a drug detecting dog alerted to the vehicle. Officers then searched it and found nine packages of heroin secreted in the doors and the lining of the ceiling.

Cuevas-Perez was arrested and charged with possessing heroin with intent to distribute. When his motion to suppress the heroin was denied, he pled guilty.

Discussion

On appeal to the Seventh Circuit, Cuevas-Perez argued that his motion to suppress should have been granted on grounds that the GPS surveillance constituted a “search,” and that it was an unlawful search because the officers failed to obtain a warrant. At first glance, the argument would seem to have been foreclosed by the United States Supreme Court’s 1983 decision in *United States v. Knotts*.¹ In *Knotts*, the Court ruled that the tracking of a drum of methamphetamine precursor by means of an electronic beeper did not constitute a search because the beeper merely permitted officers to follow the drum as it was transported on public streets. Said the Court, “A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.”

¹ (1983) 460 U.S. 276.

Last year, however, a panel of the District of Columbia Circuit made news when it ruled in *U.S. v. Maynard*² that, despite the plain wording of *Knotts*, a “search” results if the electronic surveillance was too lengthy. In *Maynard*, it lasted 28 days, and the court ruled that surveillance of such a duration constituted a “virtually limitless intrusion into the affairs of private citizens,” and was therefore a “search.”

Citing *Maynard*, Cuevas-Perez argued that the GPS surveillance of his Jeep also constituted a search because it lasted for 60 hours. But the court ruled that, even if it were to agree with *Maynard*'s reasoning, “the surveillance here was not lengthy and did not expose, or risk exposing, the twists and turns of Cuevas-Perez’s life, including possible criminal activities, for a long period.” Consequently, the court ruled that Cuevas-Perez’s motion to suppress was properly denied, and it affirmed his conviction.

Comment

Three other things should be noted. First, on April 15, 2011, the U.S. Department of Justice filed a petition for certiorari, asking the United States Supreme Court to review the D.C. Circuit’s decision in *Maynard*. Second, there will be continued uncertainty in this area of the law if the Supreme Court decides not to resolve this issue. As the court observed in *Cuevas-Perez*, “The use of GPS by law enforcement is a Fourth Amendment frontier. Undoubtedly, future cases in the tradition of *Maynard* will attempt to delineate the boundaries of the permissible use of this technology—a technology surely capable of abuses fit for a dystopian novel.” Third, the court in *Cuevas-Perez* suggested that because the courts have, to date, provided only “piecemeal guidance” in this area of the law, officers may wish to obtain a warrant if they anticipate lengthy surveillance. POV

² (D.C. Cir. 2010) 615 F.3d 544.