

# Is Your Phone's GPS Protected by the Fourth Amendment?

BY: The Free Press, Kinston, N.C. | September 21, 2015

(TNS) -- Should you be suspected of a crime, the state Court of Appeals – in an opinion released Tuesday – ruled law enforcement can discover where you are through your mobile phone location without needing to obtain a search warrant.

Indeed, according to the court, obtaining such information isn't construed as a search.

A Raleigh police detective submitted a request to AT&T in December 2012 for information relating to the phone of a cooperating suspect in order to gather evidence on a perceived heroin trafficker who was heading from Charlotte to Raleigh.

According to the opinion, "On (Dec. 11), 2012, at approximately 4 p.m., Detective (M.K.) Mitchell received a record of a 'hit' from one of AT&T's cell towers, which placed the phone within a few meters of the Red Roof Inn, located on South Saunders Street, near Interstate 40 in Raleigh. Detective Mitchell and other law enforcement officers from the Criminal Drug Enterprise Unit of the Raleigh Police Department began conducting surveillance from unmarked vehicles stationed around the Red Roof Inn.

"Detective Mitchell testified he received a record, which allowed him to further 'pinpoint' the phone's location 'down to a certain amount of rooms' in the hotel."

Raleigh police later arrested the defendant, Paul Gregory Perry, and a number of other suspects at the scene.

Perry attempted to have evidence found after discovery of his location suppressed by the argument it constituted a search under the 4th Amendment, and investigators needed a search warrant to gather the information provided by AT&T about his phone and its location. The motion was denied, he was convicted and then appealed the verdict.

The American Civil Liberties Union filed an amicus brief on Perry's behalf.

"The vast majority of courts to consider the issue have concluded that the (Stored Communications Act) does not permit the government to obtain this type of prospective cell phone location information, and that prospective location information may only be obtained pursuant to a warrant supported by probable cause," according to the brief. "These courts have identified numerous grounds for denying applications for prospective information under the SCA, most notably that the plain language of the statute does not allow it for at least four different reasons."

However, the appeals court, in a unanimous opinion, disagreed.

"The trial court properly denied Defendant's motion to suppress the cell tower site location information obtained by law enforcement," according to the opinion. "These stored historical records were provided by AT&T, a third party, pursuant to a valid court order. Defendant had no reasonable expectation of privacy in these third-party records. ... The procurement of this information was not a 'search,' and did not require the issuance of a warrant based upon probable cause.

"Neither the 4th Amendment of the Constitution of the United States nor Article I, Section 20 of the Constitution of North Carolina was implicated."

Perry's serving time in state prison on felony convictions for trafficking a Schedule I controlled substance, conspiracy to traffic a Schedule I controlled substance, selling a Schedule I controlled substance and maintaining a place for controlled substances.

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### Criminal Justice Amendment Article Assignment

Name: \_\_\_\_\_

Title of Article: \_\_\_\_\_

Hour: \_\_\_\_\_

Source: \_\_\_\_\_

Date: \_\_\_\_\_

Summary of the article (what was this story about? Give relevant details.):

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Impact (Is this story a local story, national, international?): \_\_\_\_\_

Why (What stood out to you about this story? Why did you pick it? Is it a major story? Is it funny?):

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Next (What do you think will happen next in this story? Where does it go from here?):

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What else (What additional information about this story would be useful or helpful to know?):

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Your Opinion (Explain)

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Other side (What would be the argument of the other side of your opinion?)

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