

GPS Tracking: Will PHL courts follow *US vs. Jones*?

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The United States Supreme Court held in *United States vs. Jones*¹ that the law enforcers' act of putting a Global Positioning System (GPS) tracking device to a vehicle without the knowledge of the owner and using that device to monitor the vehicle's movements constitute an unreasonable search under the Fourth Amendment.²

The Philippine Constitution has a similar provision under Article III, Section 2 of the Bill of Rights.³ With the prevalence of GPS-enabled smartphones and tablet computers in the Philippines, how will the Philippine Court rule on the use of GPS tracking information obtained by law enforcement agencies as evidence against the subscribers?

Trailing the Jeep

In *Jones*, the US Court deemed inadmissible the 2,000-page worth of tracking data secured by law enforcers to prove that the accused conspired in the distribution of 5 kilograms of cocaine and 50 grams of cocaine base. Government agents were able to secure a 10-day warrant from a judge to put a GPS device onto the Jeep of the accused but they installed the tracker on the 11th day after the lapse of the effectivity of the warrant.

The US Court said that Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The US Court found that the act of the government in attaching the GPS device on the vehicle was a physical intrusion on an "effect"⁴ which is the Jeep, and that its purpose of obtaining information from the device constituted a "search."

¹ 565 U. S. ____, 23 January 2012.

² *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

³ *The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.*

⁴ Common-law trespassory test.

The US Court also said that the government cannot use the excuse that there was no “reasonable expectation of privacy” in the search of a moving vehicle following the doctrine laid down in *Katz vs. United States*,⁵ which said that the Fourth Amendment protects the person and not the place thereby voiding the practice of putting eavesdropping devices inside public telephone booths. The US Court held that it must “assur[e] the preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.” In other words, the standard provided by the *Katz* case is merely an expansion of the doctrines on the right to privacy.

Driving in the Philippines

Will the Philippine Court follow the ruling in *Jones* if a similar issue was raised before it?

Apparently so.

The Philippine Court, in the case of *Morfe vs. Mutuc*⁶ involving the submission of statements of assets and liabilities by public officials, adopted the “zones of privacy” doctrine in dealing with issues of intrusions into personal space, following the pronouncements of the US Court in *Griswold v. Connecticut*.⁷ At the turn of the new millennium, the Court continued this doctrine with *Marquez vs. Desierto*,⁸ which concerned secrecy of bank deposits.

In 2006, the Philippine Tribunal denied the plea of privacy of corporate officers invited to testify at a Senate hearing and held that, while zones of privacy are recognized and protected by law, still courts “must determine whether a person has exhibited a reasonable expectation of privacy and, if so, whether that expectation has been violated by unreasonable government intrusion.”⁹

Last October 2011, in deciding the case of a public employee’s right to privacy to his personal files in a government-issued computer, the Philippine Court held that there is no reasonable expectation of privacy because of the existence of a computer-use policy by the government agency where he worked.¹⁰

While the Philippine Court upheld the conviction of a “drug mule” in *People vs. Mariacos*,¹¹ a warrantless search of a moving vehicle is still an exception to the Bill of Rights protection against

⁵ 389 U.S. 347.

⁶ G.R. No. L-20387, January 31, 1968.

⁷ 381 U. S. 479, 484 (1965).

⁸ G.R. No. 135882, June 27, 2001.

⁹ PCGG vs. Richard Gordon, G.R. No. 174318, October 17, 2006.

¹⁰ Pollo vs. Constantino-David, G.R. No. 181881, October 18, 2011.

¹¹ G.R. No. 188611, June 16, 2010.

unreasonable searches, even though the inherent mobility reduces expectation of privacy especially when using public roads.

Considering that Article III, Section 2 of the Bill of Rights was taken from the 1935 Philippine Constitution, which in turn was derived from the Fourth Amendment of the United States Constitution, the Philippine Court has always looked into the jurisprudential doctrines laid down by the US Court for guidance.

Following the Blue Dot

However, will the Philippine Court still resolve the case in the same way if the GPS device was embedded in the person's smartphone or tablet and the police used the telephone company's data on the GPS to track the whereabouts of the subscriber?

It is arguable that the restriction in *Jones* case will no longer apply as there is no "physical intrusion on an effect." The police do not have to place the GPS in the smartphone or tablet as the telephone company had already included that feature in the mobile device. When the subscriber bought the smartphone or tablet and turned on the GPS feature, he or she knows that the location of the mobile device is now being tracked by the telephone company.

But this begs the question whether the subscriber expected the government to find out his or her location the moment the mobile device is switched on.

GPS devices can give more information to the police than ordinary tracking devices like beepers. Certain GPS units can calculate the route to a particular destination, as well as the speed and distance to the destination. Most units allow for storage of information, which users can retrieve at a later time. Also, GPS units do not require constant monitoring as beepers do. As such, the use of GPS-generated data by the police poses a greater threat to privacy.

Clearly, the rapid development of technology is stretching the Constitutional protection against unreasonable searches to its limits. Until the Philippine Court is able to examine and address the issue in full detail, it is best to strictly apply the warrant requirement.

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