

SEARCH

GO

[ADVANCED SEARCH](#)

Tuesday, March 31, 2009 (EST)

SECTIONS

- [News](#)
- [Politics](#)
- [Opinion](#)
- [Community](#)
- [Real Estate](#)
- [Entertainment](#)
- [Sports](#)
- [Newcomers & Community Guide](#)

- Editions -

GPS Evidence Allowed

Judge says that warrantless GPS tracking of a Falls Church man accused of abduction was not unconstitutional.

By [David Schultz/The Connection](#)

Tuesday, August 05, 2008

GPS TRACKING data that led to the arrest of a man suspected in a series of sexual assaults in Fairfax County and Alexandria is admissible in court, according to a ruling made by Arlington County Circuit Court Judge Joanne Alpert.

Despite the fact that that the GPS device was used without a warrant, Alpert said that the evidence it collected in the case against David Foltz, a convicted sex offender who is being accused of abduction, is admissible.

"It was neither unlimited nor unreasonable," she said. "The defendant has failed to show that there has been any actual invasion of his privacy."

Alpert's ruling came after a two-day hearing in which Foltz's lawyers, argued that the GPS tracking data, along with police eyewitness testimony that resulted from the data, should be dismissed because of fourth amendment rights violations.

"She gave us a fair hearing," said Chris Leibig, Foltz's lead attorney. "But we respectfully disagree with it."

Leibig also said that he would appeal Alpert's ruling on the GPS evidence issue if Foltz is convicted.

IN THE WINTER of 2008, a team of three Fairfax County Police detectives was trying to solve a series of nearly a dozen sexual assaults that occurred in the Springfield, Annandale and Falls Church areas.

Police believed that these attacks, as well as several that took place near the Van Dorn Metro Station in Alexandria, were committed by the same perpetrator.

"The attacks were unique," said Fairfax County Detective Erik Stallings, "because they were physical and sexual assaults but they never rose to the level of rape."

In nearly all of the attacks, a man wearing a mask approached from behind a woman walking alone on the street. The man would then proceed to attack the women and attempt to grope them.

However, the victims of these attacks offered widely varying descriptions of the heights, weights and ethnicity of their respective assailants.

IN JANUARY 2008, retired Fairfax County Police officer Jim Kraut heard about the series of sexual assaults in the media.

"It sounded amazingly like Foltz's M.O.," said Kraut. "It's effectively a knock down and grab."

Kraut, currently a security specialist with a local bank, had conducted surveillance on Foltz in 1990 in connection with another series of sexual assaults. Foltz eventually confessed in 1990 to committing six sexual assaults throughout eastern Fairfax County and also admitted to a 1986 rape. Foltz served several years in jail but was released in early 2007.

Kraut's wife encouraged him to contact Fairfax County Police, something he had never done since retiring in 1990, and notify them of his perceived connection.

"I don't recall any cases in my two careers where there was this activity and also this frequency," Kraut said.

AT THAT POINT, Fairfax County Police had already identified Foltz as a person of interest in the case. But after receiving the tip from Kraut, Foltz became the prime suspect.



Virginia State Police
David Foltz

[Email this Article](#)
[Print this Article](#)

"I wanted to surveil David Foltz," Stallings said. "I wanted to know what he was doing. The only way to stop him was to catch him in the act."

On Feb. 1, the detectives decided to place a GPS tracking device on a van that Foltz used for work.

Detective Jack Kirk of the Fairfax County Police Department's surveillance unit monitored the GPS device. When Kirk checked the device on the afternoon of Feb. 5, he noticed that the van was driving very slowly in and out of residential neighborhoods. Kirk described this driving as a "hunting" pattern.

Later that day, Kirk's GPS device showed that Foltz's van had been parked that evening for a long period of time in Falls Church only a few blocks away from the site of a sexual assault that fit the pattern of the others.

Based on this information, the detectives decided to have several officers physically follow Foltz around on the assumption that he would attempt to commit another sexual assault sometime very soon.

Their assumptions were affirmed the next day.

On Feb. 6, Foltz was arrested and charged with abduction after police officers said they witnessed him attack a woman near his Falls Church home.

ARGUING IN Arlington County Circuit Court, where Falls Church crimes are tried, Leibig said that all the information police officers obtained from the GPS device should be deemed inadmissible.

He said that the police violated Foltz's fourth amendment rights against illegal search and seizure when they placed the GPS device on his van without a warrant and without any predetermined limitations on what type of information they were looking for.

"They have zero standards [for GPS tracking]," Leibig said. "When you have a unit that believes that they can track anyone for any amount of time with no rules, that's police discretion."

Leibig also said that the eyewitness testimony of the police officers who allegedly saw Foltz commit the Feb. 6 assault should be inadmissible as well. "But for the GPS information, they would not have been doing the personal surveillance on Mr. Foltz," he said.

ALPERT disagreed with this interpretation. While acknowledging that there is very little precedent concerning the use of GPS devices in police investigations, she ruled that Fairfax County Police Officers acted within the law when conducting warrantless surveillance of Foltz.

"This court believes that the only thing necessary to put a device on a car is reasonable suspicion," Alpert said. "The police clearly did have reasonable suspicion."

Unlike with a wiretap of a telephone, Alpert said that a GPS device only enhances the sensory ability of a detective and does not allow a detective to perform an act that would otherwise be impossible. In this sense, she said, a GPS device is more akin to binoculars or night-vision goggles.

The GPS data was information "the police could've obtained through their own sensory perception by surveilling him."

Ultimately, Alpert ruled that the attaching of the GPS device to Foltz's van did not violate his fourth amendment rights because "He had no reasonable expectation of privacy on the exterior of his vehicle."

Foltz's jury trial is scheduled to begin later this fall.



©2009 Connection Newspapers. All Rights Reserved. [Privacy Policy](#)

7913 Westpark Dr. ♦ McLean, VA 22102 ♦ 703-821-5050
Site Design, Development and Hosting by [Timberlake Publishing](#)

