

## Police Turn to Secret Weapon: GPS Device

By Ben Hubbard  
Washington Post Staff Writer  
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Someone was attacking women in Fairfax County and Alexandria, grabbing them from behind and sometimes punching and molesting them before running away. After logging 11 cases in six months, police finally identified a suspect.

David Lee Foltz Jr., who had served 17 years in prison for rape, lived near the crime scenes. To figure out if Foltz was the assailant, police pulled out their secret weapon: They put a Global Positioning System device on Foltz's van, which allowed them to track his movements.

Police said they soon caught Foltz dragging a woman into a wooded area in Falls Church. After his arrest on Feb. 6, the string of assaults suddenly stopped. The break in the case relied largely on a crime-fighting tool they would rather not discuss.

"We don't really want to give any info on how we use it as an investigative tool to help the bad guys," said Officer Shelley Broderick, a Fairfax police spokeswoman. "It is an investigative tool for us, and it is a very new investigative tool."

Across the country, police are using GPS devices to snare thieves, drug dealers, sexual predators and killers, often without a warrant or court order. Privacy advocates said tracking suspects electronically constitutes illegal search and seizure, violating Fourth Amendment rights of protection against unreasonable searches and seizures, and is another step toward George Orwell's Big Brother society. Law enforcement officials, when they discuss the issue at all, said GPS is essentially the same as having an officer trail someone, just cheaper and more accurate. Most of the time, as was done in the Foltz case, judges have sided with police.

With the courts' blessing, and the ever-declining cost of the technology, many analysts believe that police will increasingly rely on GPS as an effective tool in investigations and that the public will hear little about it. Last year, FBI agents used a GPS device while investigating an embezzlement scheme to steal from District taxpayers, attaching one to a suspect's Jaguar.

"I've seen them in cases from New York City to small towns -- whoever can afford to get the equipment and plant it on a car," said John Wesley Hall, president of the National Association of Criminal Defense Lawyers. "And of course, it's easy to do. You can sneak up on a car and plant it at any time."

Most police departments in the Washington region resist disclosing whether they use GPS to track suspects. D.C. police spokeswoman Traci Hughes said D.C. police do not use the technique. Police departments in Arlington, Fairfax and Montgomery counties and Alexandria declined to discuss the issue.

Cpl. Clinton Copeland, a Prince George's County police spokesman, said his department does use the technique. "But I don't think that's something [detectives] would be too happy to put out there like that," Copeland said. "They do have different techniques they like to use on suspects, but they don't really want people to know."

Details on how police use GPS usually become public when the use of the device is challenged in court. Such cases have revealed how police in Washington state arrested a man for killing his 9-year-old daughter: the GPS device attached to his truck led them to where he had buried her.

Cases have shown how detectives in New York caught a drug-runner after monitoring his car as he bought and sold methamphetamine. In Wisconsin, police tracked two suspected burglars by attaching a GPS device to their car and apprehending them after burglarizing a house.

The Foltz case offers a rare glimpse into how a Washington area police department uses GPS. Foltz's attorney, Chris Leibig, challenged police in court last week and tried to have the GPS evidence thrown out. He argued at a hearing at Arlington County General District Court that police needed a warrant since the device tracked Foltz's vehicle on private and public land. The judge disagreed, and the evidence will be used at Foltz's trial, which will begin Oct. 6. Foltz was charged in the Feb. 6 attack, but not in the others.

Without obtaining a warrant, Jack Kirk, a detective from the Fairfax police department's electronic-surveillance section, placed a GPS device on Foltz's van while it was parked in front of his house, Kirk testified. He said it took three seconds. Another vehicle was not targeted because it was on private property, he said.

Detectives began actively monitoring the van four days later, when it appeared to be moving slowly through neighborhoods, Kirk said. Foltz was caught the next day.

In preparing to defend Foltz, Leibig filed Freedom of Information Act requests with every police department in Virginia, asking about their use of unwarranted GPS tracking. Most departments said they had never used the device. About two dozen refused to respond, including Loudoun and Prince William counties, Alexandria and the Virginia State Police.

Arlington police said they have used GPS devices 70 times in the last three years, mostly to catch car thieves, but also in homicide, robbery and narcotics investigations.

Fairfax police used the technology as early as 2003 and have used it many times since, according to year-end reports Leibig received. Police used GPS devices 61 times in 2005, 52 times in 2006 and 46 times in 2007.

Five other Virginia departments reported using GPS once for specific investigations.

GPS advocates said police do not need a warrant to track suspects electronically on public streets because the device provides the same information as physical tracking.

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"A police officer could do the same thing with his or her own eyes," said Arlington Commonwealth's Attorney Richard E. Hodden. "It helps to cut down on the number of police officers who would have to be out tracking particular cars."

Leibig said GPS should be held to a different standard because it provides greater detail. "While it may be true that police can conduct surveillance of people on a public street without violating their rights, tracking a person everywhere they go and keeping a computer record of it for days and days without that person knowing is a completely different type of intrusion," he said.

GPS devices receive signals from a network of satellites, then use the information to calculate their precise location. By taking readings at different times, they can also calculate speed and direction.

The Defense Department operates the system, which was made available for civilian use in 1996. The technology's price has dropped since then, with new dashboard models available for less than \$200. Some cellphone models are equipped with GPS, and many companies and local governments rely on GPS to track vehicle fleets.

Barry Steinhardt, director of the American Civil Liberties Union's technology and liberty program, considers GPS monitoring, along with license plate readers, toll transponders and video cameras with face-recognition technology, part of the same trend toward "an always-on, surveillance society."

"Things that would have seemed fantastic 15 years ago are now routine," he said. "We have to rethink what is a reasonable expectation of privacy."

So far, the U.S. Supreme Court has not weighed in on unwarranted GPS tracking, but supporters point to a 1983 case that said police do not need a warrant to track a car on a public street with a beeper, which relays the car's location to police.

Lower courts that have addressed the issue have not all agreed. The Washington state Supreme Court has ruled that police must obtain a warrant to use the device in that manner, but courts in New York, Wisconsin and Maryland, and the U.S. Court of Appeals for the 7th Circuit in Chicago, have held that a warrant is not necessary.

Craig Fraser, director of management services for the Police Executive Research Forum, said tracking technology's new capabilities might eventually require legal adjustments.

"The issue is whether the more sophisticated tools are doing the same things we used to do or are creating a different set of legal circumstances," he said.

Paul Marcus, a law professor at Marshall-Wythe School of Law at the College of William and Mary in Williamsburg, said the debate will only grow stronger as more departments substitute old-fashioned manpower for better and cheaper electronics.

"It is going to happen more and more," he said. "No question about it."

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