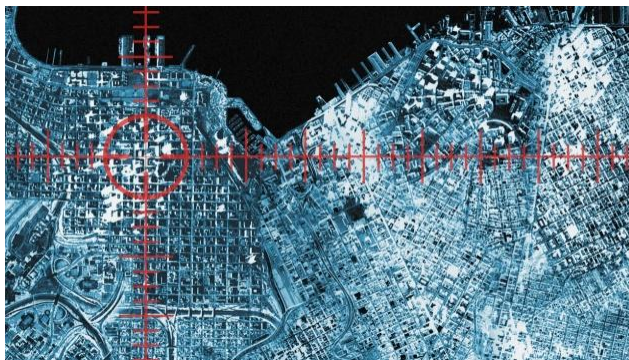


GPS Tracking: Is it Legal to Covertly Track Vehicles in North Carolina?

It is fairly inexpensive to purchase a Global Positioning System (GPS) to covertly track and monitor the location of a vehicle "real time" via the internet from the comfort of your home, office or car. You can monitor live the location, speed of the vehicle and direction of travel and if hard-wired into the vehicle's computer system, some systems will even send diagnostic information about the vehicle such as fuel levels. These devices will update their position data as often as every few seconds and create a log viewable on a map of exactly where the vehicle has been.

The GPS companies often market these devices for those who are concerned their



spouse is cheating on them. No special training is required to install or use one of these devices. To install the device, you must have access to the vehicle. The quality, however, is dependent upon the type of device and its specifications. Private investigators usually have the highest quality GPS units and are well trained in their use.

The 64 thousand dollar question is whether use of these devices without the driver's and/or car owner's knowledge and consent is legal. Recently, the United States Supreme Court in the case of [U.S. v. Jones, 565 U.S. ____ \(2012\)](#) considered whether police could use a GPS tracking device without a warrant to track an individual suspected of trafficking drugs. In that case, the Court determined that the use of a GPS device to track a suspect without a search warrant was a violation of the Fourth Amendment protection against unreasonable search and seizure. The Court found that by placing the GPS device on the suspect's vehicle, "[t]he Government physically occupied private property..." and therefore committed an unlawful trespass. Until this case, proponents of the legality of GPS tracking argued that there was no reasonable expectation of privacy since what the GPS tracks could also be tracked with the naked eye when the vehicle travels on public roads.

But even this argument was suspect because the vehicle is often on private property when the device is attached (a trespass) and the vehicle may travel on private property in places that could not be monitored with the naked eye.

In North Carolina, to prove common law trespass, the plaintiff merely has to show: (1) that they were in actual or constructive possession of the property; (2) that Defendant made an unauthorized entry; and (3) some damage (or if no actual damages, Plaintiff is

entitled to nominal damages). In addition to trespass by walking on a person's property, North Carolina also recognizes the tort of trespass to chattels which is a trespass to personal property (like a car). A successful action for trespass to chattel requires: (1) actual or constructive possession of the personal property at the time of the trespass; and (2) an unauthorized, unlawful interference or dispossession of the property, *See Fordham v. Eason*, 351 N.C. 151, 155, 521 S.E.2d 701, 704 (1999).

While there are no cases on point in North Carolina regarding whether the use of a GPS tracking device could constitute a trespass, given the U.S. Supreme Court's decision in *Jones* and North Carolina jurisprudence, it is our belief that such a claim would be valid in North Carolina by an owner of the vehicle against an individual (and their agents) who planted the device and monitored the data. Some lawyers have expressed their view that since there are "no prohibitions on the use of such devices" that they must be legal. Follow this advice at your own risk! Relying on bad legal advice, even from your lawyer, is not a defense in North Carolina.

Another possible claim against a person who puts a GPS tracking device on your vehicle under North Carolina law is invasion of privacy. To prove invasion of privacy in North Carolina, you have to show an intentional intrusion upon the solitude or seclusion of another or his private affairs or concerns and that the intrusion would have been highly offensive to a reasonable person. *See Miller v. Brooks*, 123 N.C.App. 20 (1996). Under NC law, defendants have been found liable for invasion of privacy for such conduct as eavesdropping, wiretapping, peering through windows, persistent telephoning, unauthorized prying into one's bank account and opening the mail of another. This too could be a valid claim against an individual for placing a GPS tracking device on your vehicle.

There are additional questions that a court may ultimately be asked to answer including:

- (1) What if the device is attached to a vehicle while it is parked in public and not on private property?

Our opinion: It would still be a trespass to chattels and possibly an invasion of privacy unless the device is attached by the owner of the vehicle or his or her agent.

- (2) Does it matter whether the device is used on a vehicle to monitor his wife or her husband?

Our opinion is that it is not a trespass for the device to be used on marital property before the parties date of separation and it is not likely to be considered an invasion of privacy. However, the answer is simply “unknown”.

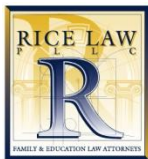
- (3) If used to monitor a spouse, does it matter whether the device is used before date of separation or after?

We think the answer is absolutely. In the Miller v. Brooks case, Court of Appeals found that wife’s conduct of having a hidden video camera installed in the former marital home after date of separation constituted invasion of privacy.

- (4) Can an employer use a GPS device to monitor his or her employees without their knowledge or consent?

Employers generally have a right to monitor employees use of employer owned equipment. If the vehicle is company owned, the employer likely has a right to install a GPS device. However, it would be good practice to notify the employees in writing of the company practice to monitor company owned vehicles with a GPS device and what data is collected to avoid claims of invasion of privacy.

Until a case with these facts reaches the North Carolina Court of Appeals, the simple answer is that we don’t know whether it is legal or not.



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