

Constitutional Concerns with AI Use in Law Enforcement

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In a recent article by Forbes, attention was brought to the case of David Zayas who was arrested in Westchester County, New York. He later pled guilty to a drug trafficking charge. This arrest originated after an Artificial Intelligence (AI) program, having analyzed extensive vehicle data captured by License Plate Recognition (LPR) software, determined that Zayas' car was on a journey typical of a drug dealer. As a result, Westchester Police Department pulled the vehicle over and searched it. They found 112 grams of crack cocaine, a firearm and \$34,000 in cash.

This raised a question of constitutionality for me. How does the development and such use of this technology infringe on our 4th amendment rights? The case that immediately sprung to mind was *Carpenter vs United States* which addresses the question of whether the warrantless search and seizure of cell phone data, specifically cell site analysis in tracking a persons whereabouts, violates the Fourth Amendment.

The Supreme Court concluded, in a 5-4 decision that the warrantless search of *Carpenter's* cell phone records was unconstitutional. So, how does this

apply in the case of *Zayas*? Is there an argument here based on the use of the AI and LPR technology?

The majority opinion in *Carpenter* opens up referencing the Fourth Amendment and states, "The "basic purpose of this Amendment," our cases have recognized, "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials."

It references the founders intent to prevent the unrestrained search for evidence of criminal activity conducted by British officers during the colonial era. It also points out that this subject was a catalyst to the Revolution itself.

However, there are also some considerations in the case law about advancements in technology and reasonable expectations of privacy when traveling on a public thoroughfare. *US v Knotts* references that a person does not have a reasonable expectation of privacy here, because their movements and location were voluntarily conveyed to anyone who wanted to look. The *Knotts* opinion did state that "different constitutional principles may apply if twenty four hour surveillance of any citizen of this country were



possible." It should also be noted that Knotts was in 1983, some 40 years ago when technology such as AI was only in science fiction movies.

The Supreme Court in Carpenter also point to Katz and Jones for reference. Stating that privacy, even in an area accessible to the public, may be constitutionally protected and that a person has a reasonable expectation of privacy in the whole of their physical movements.

While addressing the data collection itself it is noted that this case is unlike Jones where the subject of GPS tracking was targeted, this particular method of data collection is continually logged, for everyone, not just those under investigation and "police need not even know in advance whether they want to follow a particular individual, or when."

This particular point is very much in line with the Zayas matter. To my knowledge, Zayas had not been

developed as a suspect beyond this autonomous data collection and AI analysis. Traveling routes on public thoroughfares is not illegal. Drug traffickers also use the road system. Should that correlation open people up to suspicion? In the Zayas case the AI was correct, but how many innocent civilians have been stopped by the government based on this data alone? We will likely never know.

I would expect this case or something similar to be tested in the Supreme Court in the near future. For now though, I would be curious to know the opinions of our members.

