

**WISCONSIN SUPREME COURT
TUESDAY, MARCH 2, 2010
10:45 a.m.**

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a Dane County Circuit Court decision, Judge Steven D. Ebert presiding.

2008AP658

State v. Michael A. Sveum

In this criminal case, the Supreme Court is asked to consider whether a defendant's constitutional rights or Wisconsin Statutes were violated when police placed a global positioning system (GPS) device on his vehicle and recorded its movements.

Some background, according to the Court of Appeals: Sveum was convicted of stalking a woman in 1996 and was later imprisoned for related crimes against her. In 1999, from prison, he began stalking the same woman again with help from his sister. Sveum continued stalking the woman when he was released from prison in 2002.

In March 2003, the woman reported to the police that she believed Sveum was stalking her again. Police sought and received an order authorizing them to covertly attach a GPS device to Sveum's car in order to track it. Based in part on tracking information retrieved from the GPS device, the police obtained a warrant to search one of Sveum's residences and his car. The search revealed additional evidence incriminating Sveum, along with evidence confirming his sister's involvement.

Sveum was charged with an aggravated stalking offense under Wis. Stat. § 940.32(2) and (3)(b) (2001-02), as party to a crime. The more serious "aggravated" version of the crime was charged based on Sveum's previous conviction for stalking the same woman. See § 940.32(3)(b).

The circuit court denied motions by Sveum to suppress evidence obtained from the GPS device and from the search of his residence and car. A jury found Sveum guilty, and the court sentenced him to seven years and six months in prison followed by five years of extended supervision.

Sveum appealed, and the Court of Appeals concluded that no Fourth Amendment search or seizure occurred when the police attached the device to his vehicle while it was parked in a public place, and then used the device to track the vehicle in public view.

Sveum, who is representing himself, asks the Supreme Court to determine whether the placement of the GPS device and recording of his vehicle's location violated the Fourth Amendment. He also asks the Supreme Court to review whether Wisconsin's electronic surveillance law, Wis. Stat. § 968.27-.37, requires the police to obtain judicial approval to place a GPS device on a vehicle to record its travel.

Contrary to Sveum's position, the state contends the Court of Appeals followed precedent of the Wisconsin Supreme Court and the United States Supreme Court.

Further, assuming Sveum had a Fourth Amendment interest requiring the suppression of information obtained while his car was in the garage, suppression of all the information concerning the whereabouts of his car while it was on public thoroughfares would not be required. The state says the Court of Appeals correctly held that the GPS is a "tracking device" specifically excluded from the definition of "electronic communication" under Wisconsin's Electronic Surveillance Control Law.