Strengthening the Guard: The Use of GPS Surveillance to Enforce Domestic Violence Protection Orders

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Abstract:
This essay examines the use of GPS surveillance in enforcing domestic violence protection orders. Part I explores the rationale for using GPS surveillance in domestic violence situations. Part II addresses the primary constitutional concerns associated with GPS monitoring in the domestic violence context. Finally, Part III discusses the effectiveness of GPS surveillance in domestic violence cases.
Introduction

On Valentine’s Day in 2009, Tiana Notice frantically called 911, exclaiming that her “ex-boyfriend just stabbed [her] to death.”¹ James Carter Jr. stabbed Tiana about 18 times on her apartment deck.² In addition to murder, Carter was charged with violating a protection order issued against him on behalf of Tiana.³ Tiana’s story is not unique; many men have violated protection orders and subsequently murdered their former partners.⁴

Due in part to these tragic deaths, the use of global position monitoring system (GPS) surveillance is becoming more prevalent in domestic violence cases.⁵ GPS surveillance is a necessary and effective tool that should be utilized by law enforcement personnel to protect victims of domestic violence. Part I of this essay explores the rationale for using GPS surveillance in domestic violence situations. Part II addresses the primary constitutional

³ Dempsey, supra 2.
⁵ Shelley M. Santry, Can You Find Me Now?, 29 QUINNIPIAC L. REV. 1101, 1102 (2011). For an overview of the development of GPS technology and the various devices used by law enforcement personnel, see Ian Herbert, Where We Are With Location Tracking: A Look at the Current Technology and the Implications on Fourth Amendment Jurisprudence, 16 BERKELEY J. CRIM. L. 442, 466-488 (2011). See also EDNA EREZ ET AL., GPS MONITORING TECHNOLOGIES AND DOMESTIC VIOLENCE: AN EVALUATION STUDY x (2012), available at https://www.ncjrs.gov/pdffiles1/nij/grants/238910.pdf (“Since 2000, twenty-one states and the District of Columbia have enacted legislation mandating or recommending that justice agencies employ GPS to protect victims of DV during the pretrial period; several other states are in the process of considering such legislation.”).
concerns associated with GPS monitoring in the domestic violence context. Finally, Part III discusses the effectiveness of GPS surveillance in domestic violence cases.

**Part I: The Necessity of GPS Monitoring in Domestic Violence Cases**

All three women had had restraining orders against the men who finally killed them, legal papers saying that the men had to keep away. Maybe they were the last three women in New York to know what all emergency-room nurses know, and cops’ wives know, too: that restraining orders are a joke, made, as they say, to be broken.¹⁶

In the best-selling novel *Black and Blue*, renowned author Anna Quindlen notes the perceived ineffectiveness of protection orders in domestic violence cases.⁷ However, evidence suggests that, most of the time, a protection order lessens instances of abuse. As one author noted, “[r]eports indicate some 86% of the women who received a protection order state the abuse either stopped or was greatly reduced.”⁸

As evidenced by this statistic, a civil protection order can be a valuable tool against an abuser. This tool is intended to prevent future abuse by requiring the abuser to avoid contact

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¹⁶ **Anna Quindlen**, *Black and Blue* 78 (1998).

⁷ *Id.* Anna Quindlen is the author of three best-selling novels, one of which is *Black and Blue*. *Black and Blue* tells the story a woman who has been subject to years of abuse at the hands of her husband.

⁸ See Domestic Violence Statistics, Am. Bar Ass’n, available at http://www.americanbar.org/groups/domestic_violence/resources/statistics.html (citing James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Response* (1999)) (last visited Sept. 30, 2012) (“Reports indicate some 86% of the women who received a protection order state the abuse either stopped or was greatly reduced.”) But see Mary Ann Scholl, *GPS Monitoring May Cause Orwell to Turn in his Grave, But Will it Escape Constitutional Challenges? A Look at GPS Monitoring of Domestic Violence Offenders in Illinois*, 43 J. MARSHALL L. REV. 845, 845-50 (2010) (noting that “[t]hree women are killed each day by an intimate partner, many of whom are known to have had orders of protection. . . . the [protection] order is often, in effect, nothing more than a piece of paper”).
with the victim and, if the abuser resides with the victim, it will often require him to relocate.\(^9\) Additionally, a civil protection order re-establishes the independence of the victim.\(^{10}\)

However, a civil protection order in a domestic violence case can be particularly difficult to enforce given the intimate relationship between both parties.\(^{11}\) The abuser is familiar with the victim’s usual daily routine and social habits, and knows her friends and family.\(^{12}\) This knowledge provides the abuser with several opportunities to harass or abuse the victim and thereby violate the protection order.\(^{13}\)

GPS surveillance addresses this difficulty based upon the premise that an abuser will be less likely to contact a victim when he knows that he cannot do so without detection.\(^{14}\) As one judge noted:

[The GPS program] drives the message home to the offender that there is to be no contact, that the no-contact order is going to be supervised and that there are repercussions if there is any contact. Likewise, I think it gives the victim some added sense of security. It puts some teeth into an oral order: ‘stay away and have no contact’. You can tell somebody that, but if you actually have a device or system in place that’s really going to measure it and make sure that there isn't contact, that helps across the board. It enhances a temporary protection order; it puts some teeth into it.\(^{15}\)

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\(^{10}\) See Santry, *supra* note 5, at 1106 n.40 (noting that civil protection orders “advance the autonomy and independence of the battered woman from the abuser”).

\(^{11}\) See Erez et al., *supra* note 9, at 16.

\(^{12}\) *Id.*

\(^{13}\) *Id.*

\(^{14}\) *Id.*

\(^{15}\) *Id.*
Part II: The Constitutionality of GPS Monitoring

A. Fourth Amendment Concerns

The Fourth Amendment, and its proscription of unreasonable searches and seizures, is the primary constitutional concern associated with GPS monitoring of alleged domestic violence perpetrators. Specifically, the Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” by the government.\(^\text{16}\) GPS surveillance in domestic violence cases implicates the Fourth Amendment because the alleged abuser is required to wear a GPS tracking device, and this monitoring could infringe on his privacy rights.\(^\text{17}\)

In response to this concern, one argument is that the alleged abuser consents to GPS surveillance.\(^\text{18}\) After violating a protection order, the alleged abuser has two options: incarceration or GPS monitoring.\(^\text{19}\) By selecting GPS monitoring, the alleged abuser impliedly consents to the intrusive nature of electronic surveillance.\(^\text{20}\) If an individual consents to a search and seizure, he cannot later claim that it was unreasonable and, therefore, in violation of his Fourth Amendment rights.

Prior to the Supreme Court’s recent decision United States v. Jones, Fourth Amendment jurisprudence focused on the two-part “reasonable expectation of privacy” test articulated by Justice Harlan in Katz v. United States.\(^\text{21}\) The first question is whether the individual had a

\(\text{16}\) U.S. CONST. amend. IV.
\(\text{17}\) Santry, supra note 5, at 1113. See also Scholl, supra note 8, at 856 (“[O]ne constitutional concern is whether electronic monitoring invades the privacy rights of offenders because one can reasonably expect to have privacy in one’s own movements and whereabouts.”).
\(\text{18}\) Scholl, supra note 8, at 856.
\(\text{19}\) Id.
\(\text{20}\) Id.
subjective expectation of privacy. After finding that the individual did have a subjective expectation of privacy, the court will then ask whether this subjective expectation of privacy is one that society considers objectively “reasonable.”

The analysis under Katz is simple if the law enforcement personnel use a “reverse tagging” GPS surveillance system. “Reverse tagging” is a GPS technology that records data only if the alleged abuser enters a location prohibited by the protection order. It does not constantly monitor the alleged abuser’s whereabouts; it only recognizes the victim and the areas forbidden by the protection order. With “reverse tagging,” law enforcement personnel and the victim are aware of when the alleged abuser violates the protection order, but the alleged abuser’s location is unknown when he is not in violation of the order.

Under the Katz analysis, an individual cannot have a reasonable expectation of privacy when he is unlawfully present in an area. Since the alleged abuser does not have a reasonable expectation of privacy in those locations forbidden by the protection order, “reverse tagging” GPS monitoring will not violate his Fourth Amendment right against unreasonable search and

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22 Katz, 389 U.S. at 361.
23 Id.
24 See Scholl, supra note 8, at 857.
25 Leah Satine, Maximal Safety, Minimal Intrusion: Monitoring Civil Protective Orders Without Implicating Privacy, 43 HARV. C.R.-C.L. L. REV. 267, 268 (2008). When “reverse tagging” is used “[t]he batterer wears only the signal receiving component of the GPS device, while the monitoring unit, which reads the location data captured by the signal receiver, is placed with the endangered woman. Preferably, multiple monitoring units are used, one that the woman wears on her person and others that are placed in each of the woman's liberty zones. The monitoring units read location information from a distance. The signal receiver could be designed so that the distances at which information is read correspond with, but do not exceed, the bounds of the liberty zones designated by the civil protective order.” Id.
26 Id.
27 Id.
28 Santry, supra note 5, at 1113-14 & n.101 (citing Illinois v. Caballes, 543 U.S. 405, 409-10 (2005) for the notion that “there is no reasonable expectation of privacy in illegal activity”).
seizure.\textsuperscript{29} However, constant GPS monitoring – meaning that the GPS system transmits data regardless of the alleged abuser’s location relative to a forbidden zone – may be too invasive under the \textit{Katz} analysis.\textsuperscript{30}

Until recently, the Supreme Court had not directly addressed the constitutional implications of GPS monitoring.\textsuperscript{31} In \textit{United States v. Jones}, the Supreme Court held that attaching a GPS monitor to a car, and then subsequently using it to observe the car’s movements on public roads, was a Fourth Amendment “search.”\textsuperscript{32} The Supreme Court’s decision in \textit{Jones} deviated from \textit{Katz} in that Justice Scalia’s majority opinion relied on the “trespassory theory of searches,” which focuses on the property rights protected by the Fourth Amendment.\textsuperscript{33} Scalia did not consider whether the defendant possessed a reasonable expectation of privacy in his conduct.\textsuperscript{34}

According to the majority, this use of GPS monitoring constituted a “search” because law enforcement personnel “physically occupied private property for the purpose of obtaining information.”\textsuperscript{35} The Supreme Court did not address whether the search was reasonable because the government forfeited that argument by failing to raise it at the appellate court.\textsuperscript{36}

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\textsuperscript{29} \textit{Id.} at 1114.
\textsuperscript{30} Scholl, \textit{supra} note 8, at 857.
\textsuperscript{32} \textit{Id.} at 949.
\textsuperscript{34} \textit{Id.}: \textit{Jones}, 132 S. Ct. at 950. (“But we need not address the Government’s contentions [that Jones had no reasonable expectation of privacy], because Jones’s Fourth Amendment rights do not rise or fall with the \textit{Katz} formulation.”)
\textsuperscript{35} \textit{Jones}, 132 S. Ct. at 949.
\textsuperscript{36} \textit{Id.} at 954.
\end{flushleft}
This property-based analysis fails to provide much guidance in the context of GPS monitoring of alleged abusers. In fact, the Supreme Court noted in Jones that “[s]ituations involving merely the transmission of electronic signals without trespass would remain subject to Katz analysis.”

Thus, the question is whether submitting an individual to GPS surveillance is a trespass. Simply, is the government “physically occup[ying] private property?” Although the Fourth Amendment protects “the right of the people to be secure in their persons,” Jones focuses on the property protections provided by the Fourth Amendment. Since an individual is not private property that can be subject to trespass, it appears as though the Katz analysis will still apply.

But assuming that it is a trespass, the next question is whether the trespass is intended to gather information. In Jones, FBI agents used GPS to monitor the car’s movements over 28 days for the purpose of investigating whether the defendant was trafficking drugs. The sole purpose of the GPS surveillance was to gather evidence to be used in a prosecution. In a domestic violence case, the government could argue that the primary purpose of the GPS monitor is not to gather evidence for an ongoing criminal investigation, but rather to protect the victim by deterring the alleged abuser from contacting her.

37 See id. at 955 (Sotomayor, J., concurring) (“In cases of electronic or other novel modes of surveillance that do not depend upon the physical invasion on property, the majority opinion’s trespassory test may provide little guidance.”).
38 Id. at 953.
39 See id. at 949.
40 U.S. CONST. amend. IV.; id. at 949.
41 See Jones, 132 S. Ct. at 955; see also supra text accompanying note 35.
42 See id.
43 Id. at 948.
44 Id.
B. Equal Protection Concerns

The Fourteenth Amendment to the U.S. Constitution provides that “[n]o State . . . shall deny to any person within its jurisdiction the equal protection of the laws.”\(^{45}\) In *Griffin v. Illinois*, the Supreme Court interpreted the equal protection clause to mean that a “State can no more discriminate on account of poverty than on account of religion, race, or color.”\(^{46}\)

i. Indigent offenders

Many state statutes require that the alleged abuser pay for all or a portion of the GPS surveillance cost.\(^{47}\) The equal protection clause of the Fourteenth Amendment is implicated when an individual cannot participate in GPS monitoring because he is indigent.\(^{48}\)

One way to avoid an equal protection challenge on this ground is to implement a sliding scale fee.\(^{49}\) In fact, Kentucky utilizes a sliding scale fee that determines the amount the alleged abuser must pay based upon where he falls within the current Federal Poverty Guidelines.\(^{50}\) In addition to a sliding scale, a state could require that an alleged abuser perform community

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\(^{45}\) U.S. CONST. amend. XIV.


\(^{47}\) ANN. H. CROWE ET AL., OFFENDER SUPERVISION WITH ELECTRONIC TECHNOLOGY 20 (2002), available at https://www.ncjrs.gov/pdffiles1/nij/grants/197102.pdf (“[A]t least 26 states require the offender to pay a portion of the costs involved; however, none of these states exclude offenders who are unable to pay from participating in the program.”).

\(^{48}\) *Id.* at 47 (“[W]hile it is acceptable to charge offenders a fee for use of electronic supervision technologies, programs should not disqualify offenders from the program solely because of their inability to pay a fee. To do so would be discriminatory.”).

\(^{49}\) *Id.*

\(^{50}\) KY. REV. STAT. ANN. § 403.761(9)(b) (West 2010) provides: “If the court determines that a respondent is indigent, the court may, based on a sliding scale established by the Supreme Court of Kentucky by rule, require the respondent to pay the costs imposed under this section in an amount that is less than the full amount of the costs associated with operating the global positioning monitoring system in relation to the respondent or providing the petitioner with an electronic receptor device.” *See also* Santry, *supra* note 5, at 1115-16 & n.116.
service instead of requiring him to pay GPS program costs.\textsuperscript{51} Alternatively, the state could incur the costs of electronic monitoring.\textsuperscript{52}

\textit{ii. African-Americans}

Another concern is that GPS monitoring could be disproportionately applied to African-American abusers.\textsuperscript{53} The stereotype of black men as aggressive and violent may encourage state courts to impose GPS surveillance.\textsuperscript{54} Also, officials are likely to identify black men as more likely to engage in other illegal activities.\textsuperscript{55} This mentality provides further incentive to subject black men to GPS surveillance because even if an abuser does not violate a protective order, the GPS could implicate him in another crime. A state legislature should ensure that its domestic violence GPS monitoring policy does not result in a discriminatory impact against African-Americans, particularly men.\textsuperscript{56}

\textsuperscript{51} CROWE ET AL., \textit{supra} note 47, at 47.
\textsuperscript{52} In fact, a recently amended California statute authorizing GPS surveillance states that “[i]f the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring.” \textit{See} 2012 Cal. Legis. Serv. Ch. 513 (A.B. 2467) (WEST) (amending CAL. PENAL CODE § 136.2 (West 2010).
\textsuperscript{54} \textit{Id.} at 271-72.
\textsuperscript{55} \textit{Id.} at 271.
\textsuperscript{56} \textit{Id.} at 273. (“[A] policy that includes a GPS system must be designed to minimize racially disparate impact before being enacted or enforced.”).
C. Procedural Due Process Concerns

Under the Fourteenth Amendment, the government must adhere to certain procedures before depriving an individual of his freedom. In the domestic violence context, a GPS surveillance program could be subject to a procedural due process challenge if it fails to individually consider the risk the alleged abuser poses to the victim and the community.

In response to this concern, many state statutes provide for an individualized determination of whether GPS monitoring is appropriate. To avoid a procedural due process challenge, a statute should “individualiz[e] the application of tracking in terms of both the identity of the wearer and the area where the wearer is located.” Individualization can be accomplished by utilizing a “uniform dangerousness assessment protocol” to determine the danger the alleged abuser poses to the victim.

D. Court Decisions

Despite these constitutional issues, courts have decided few cases concerning the use of GPS in the domestic violence context. Recently, a California appellate court addressed the matter in People v. Holiday. This case concerned Ezell Holiday and the separation from his

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57 CROWE ET AL., supra note 47, at 22. See U.S. CONST. amend. XIV. (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . .”).
58 Scholl, supra note 8, at 860; Santry, supra note 5, at 1114-15.
59 Scholl, supra note 8, at 860-61.
61 See id. at 286. (“Section 1 of the [Massachusetts] statute requires the executive office of public safety to adopt a ‘uniform dangerousness assessment protocol’ to determine which abusers are most likely to injure their domestic partners and thus to decide who should be fitted with a GPS tracking device.”).
wife, B.H. As a result of two abusive episodes, a felony complaint was filed against Holiday alleging “corporal injury on a spouse, while personally using a deadly weapon and causing great bodily injury . . . and assault while personally using a deadly weapon.”

Holiday entered a guilty plea on the felony assault charge and the domestic violence charge was dismissed pursuant to a Harvey waiver. Prior to sentencing, a probation officer recommended GPS surveillance, citing concern for B.H’s safety, Holiday’s “despondent” mental state, and the fact that Holiday’s results on the “Spousal Assault Risk Assessment” placed him in the high-risk group. At the sentencing hearing, the court granted probation and issued a domestic violence criminal protective order. Moreover, the court required that Holiday “[p]articipate in electronic monitoring, specifically Global Positioning System (GPS) to monitor [his] location if directed by [the probation officer].”

Holiday objected to this GPS condition on his probation. Despite this objection, the court imposed the condition, noting this was a domestic violence case.

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63 In February of 2010, Holiday attacked B.H. in their home. Id. at *1. Specifically, Holiday pushed her onto a bed and then attempted to choke her. Id. Once B.H. tried to leave, Holiday pulled a knife on her and told her she was not permitted to leave the house. Id. The next episode occurred two months later. Id. Holiday had moved out of their home and B.H.’s boyfriend had moved in. Id. On April 17th, Holiday waited outside the home and attacked B.H. with a two-foot long knife. Id. Holiday struck B.H. on the arm, partially severing an artery, nerve and tendon. Id. at *1-*2.

64 Id. at *1.

65 Id. See Edward A. Rucker & Martin B. Overland, 1 Cal. Crim. Practice: Motions, Jury Instr. & Sent. § 9:3 (3d ed.). (“Ordinarily, the court cannot consider facts underlying a dismissed count in imposing sentence. A Harvey waiver permits a trial court to consider facts underlying dismissed counts in determining the appropriate punishment for the offenses of which the defendant was convicted.”). See generally People v. Harvey, 25 Cal.3d 754 (Cal. 1979).

66 Id. at *2.

67 This order prohibited Holiday from contact with B.H. or her boyfriend and also forbade Holiday from being within 100 feet of B.H. or her boyfriend. Id.

68 Id. (emphasis added).

69 Id. at *1.
In his appeal, Holiday asserted that the trial court abused its discretion and violated Holiday’s “basic” rights under the Constitution by requiring GPS monitoring at the direction of his probation officer.\textsuperscript{71} According to Holiday, this GPS surveillance was “not reasonably related to the [assault conviction] nor designed to serve any other purpose.”\textsuperscript{72}

The appellate court determined that the trial court did not abuse its discretion in requiring Holiday to submit to GPS surveillance.\textsuperscript{73} First, the GPS monitoring was related to Holiday’s crime.\textsuperscript{74} Although the domestic violence charge was dismissed pursuant to a Harvey waiver, the court could still consider it while imposing probation conditions.\textsuperscript{75} Furthermore, the assault conviction involved domestic violence.\textsuperscript{76}

The court also noted that the GPS condition was reasonable.\textsuperscript{77} Unless directed by his probation officer, Holiday will not have to wear a GPS device.\textsuperscript{78} Even if Holiday was required to wear a device, he could still engage in noncriminal activities.\textsuperscript{79}

Most notably, the court reasoned “the GPS condition serve[d] as a deterrent to future criminal conduct.”\textsuperscript{80} Specifically, Holiday would not commit future domestic abuse against B.H.

\textsuperscript{70} Id. at *2. During the sentencing hearing, the judge stated that he was going to impose the GPS condition because “[t]his is a domestic violence offense. There’s a stay-away order that the defendant not have contact, direct or indirect, nor come within one hundred yards of the protected persons’ home, or person, or car. The GPS device might serve as evidence if he does violate.” \textit{Id.}

\textsuperscript{71} Id. Holiday failed to articulate which “basic” constitutional rights were infringed upon.

\textsuperscript{72} Id. at *1.

\textsuperscript{73} Id. at *3.

\textsuperscript{74} Id.

\textsuperscript{75} Id.

\textsuperscript{76} Id.

\textsuperscript{77} Id.

\textsuperscript{78} Id.

\textsuperscript{79} Id.

\textsuperscript{80} Id.
if he were aware that police knew his whereabouts.\textsuperscript{81} Such awareness would also dissuade Holiday from violating the protective order.\textsuperscript{82}

Almost six years prior to reaching its decision in \textit{Holiday}, the same California appellate court decided \textit{People v. Randolph}.\textsuperscript{83} In this case, Randy Randolph entered a plea agreement whereby he pled guilty to corporal injury to a spouse.\textsuperscript{84} As a result, a trial court placed Randolph on formal probation for a three-year period.\textsuperscript{85} One condition of his probation required that Randolph “[s]ubmit to continuous electronic monitoring, [GPS] device, or other device as directed by [his] probation officer.”\textsuperscript{86}

On appeal, Randolph argued that the GPS condition was (1) unreasonable based upon the facts of his case, (2) constitutionally overbroad, and (3) an infringement on his constitutional rights.\textsuperscript{87}

The appellate court upheld the trial court’s decision to impose a GPS surveillance condition.\textsuperscript{88} Noting that “the crime of domestic violence justifies increased surveillance and protection as noted by the [California] Legislature,” the court found that the GPS condition supported a compelling state interest in preventing future instances of domestic violence.\textsuperscript{89} Moreover, this compelling interest “justified the restriction on [Randolph’s] right to associate

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.} at *1. In 2003, Randy Randolph inflicted facial injuries upon his then-wife, including two black eyes. \textit{Id.} Less than a year later, Randolph attacked his girlfriend. \textit{Id.} Specifically, he pushed her three times, slammed her up against a wall, and then sat on her and choked her. \textit{Id.} When his girlfriend began to yell for help, Randolph bit her hands and her forearm. \textit{Id.} Pursuant to Randolph’s plea deal, the state dismissed the charges stemming from his attack against his girlfriend. \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.} Like in \textit{Holiday}, Randolph failed to articulate the specific constitutional rights violated.
\item \textit{Id.}
\item \textit{Id.} at *4.
\end{enumerate}
\end{footnotesize}
with whomever he desires and his right to privacy.” 90 Focusing on deterrence, the court determined that the GPS monitoring condition was necessary to (1) dissuade Randolph from “concealing future criminality” and (2) guarantee that Randolph complied with his probation terms. 91

In each of these cases, neither defendant specifically articulated which constitutional provision was violated when the state imposed a GPS condition on probation. Nonetheless, it is apparent that the judiciary supports the use of GPS surveillance in the domestic violence context.

Part III: Effectiveness of GPS Monitoring in Domestic Violence Cases

GPS surveillance is an effective tool in domestic violence cases. In June of 2012, the U.S. Department of Justice published GPS MONITORING TECHNOLOGIES AND DOMESTIC VIOLENCE: AN EVALUATION STUDY. 92 Edna Erez, Peter R. Ibarra, and Oren M. Gur, faculty in the University of Illinois at Chicago Department of Criminology, Law and Justice, authored the study along with William D. Bales from the College of Criminology and Criminal Justice at Florida State University. 93

According to this study, “GPS defendants stayed away from the exclusion zones from which they were banned, thereby showing that GPS monitoring buttresses the no contact orders of the court – at least in regards to physical contact taking place within the programmed exclusion zones.” 94 Moreover, the study demonstrated that an individual subject to GPS

90 Id. at *5.
91 Id. Notably, the court mentioned the societal impact of domestic violence. Id. (“Domestic violence is not only a private harm, but it also affects society as a whole.”).
92 See EREZ ET AL., supra note 5.
93 Id.
94 Id. at 147.
monitoring is “significantly less likely to be arrested for a subsequent domestic violence crime in the long term.”

Study victim experience with GPS monitoring further demonstrates the importance of this tool. Many women found that GPS surveillance allowed them to re-establish a sense of control over their own lives. Victims felt safe in their own homes and the constant fear with which they were accustomed began to dissipate. One victim in particular noted that “once he was put on the GPS and couldn’t contact me, I felt free.” Some victims preferred placing their alleged abusers on GPS surveillance as opposed to having them serve jail time.

Even some of the alleged abusers found GPS monitoring to be beneficial. Most notably, GPS surveillance shielded alleged abusers from false accusations. They were able to maintain their current employment, whereas serving jail time would have likely resulted in termination. On the other hand, many alleged abusers found the GPS monitoring program to be demanding.

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95 Id. at 70, 147.
96 Id. at 97. (“[V]ictims deeply appreciated the relief that they received from the incessant abuse and harassment, the increased number of areas they could visit, and the peace of mind they experienced knowing that their abuser could no longer ignore restraining/protection orders without consequences.”).
97 Erez et al., supra note 9, at 18.
98 Id.
99 EREZ ET AL., supra note 5, at 97.
100 Id. at 98. One victim stated: “[I]n some ways it’s probably a whole lot better that they put him on a GPS system versus putting him in jail. Because he may be nasty to me, but he’s not going out [and committing new crimes], he’s still an active contributing member of society whereas if they had put him in jail and then let him out, he wouldn’t be.” Id.
101 Id. at 121 (“Some former defendants spoke about how their tracking histories had given them an alibi after the alleged victim had accused them of harassing her at a specific time and location. . . .”).
102 Id. at 109. (“Many clients noted that the GPS program allowed them to keep their jobs, as sitting in jail would have likely resulted in their termination at work, and for this benefit they expressed gratitude to the program.”).
and burdensome. Some expressed the concern that GPS was too intrusive and resulted in their lives becoming transparent.

Despite these benefits of GPS surveillance, the technology does have limitations. GPS monitoring does not ensure physical protection of the victim. It only warns the victim and law enforcement personnel of when the alleged abuser is within a restricted location. As one alleged abuser noted: “If your intent was to go out there and hurt and murder somebody, [GPS] is not going to stop you.” Also, GPS surveillance does not prevent the alleged abuser from using a proxy to harass or abuse the victim. A proxy could be a current girlfriend, friend, or family member.

The most glaring limitation to GPS monitoring is that it is a temporary answer to what is often a long-term problem. Most victims grow accustomed to the sense of protection provided by GPS surveillance. Many victims revert to a constant state of fear once the alleged abuser is no longer being monitored. One woman stated that she is “back to being totally one hundred percent paranoid” when she leaves her home. This response is exacerbated when the alleged abuser is suddenly removed from GPS surveillance.

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103 Id. at 109-12.
104 Id. at 117-18.
106 Id.
107 EREZ ET AL., supra note 5, at 112.
108 See EREZ ET AL., supra note 5, at 102; see also Erez & Ibarra, supra note 105, at 116.
109 Id.
110 Erez & Ibarra, supra note 105, at 116.
111 Id. at 117.
112 Id. at 116.
113 Id.
114 Id.
Conclusion

Like any technology, GPS surveillance is not perfect. As noted, GPS monitoring has limitations: it provides no physical protection; it has no effect on a proxy; and, it is only a short-term solution.115 However, these limitations are also present when an alleged abuser is not subject to GPS surveillance. For instance, other methods of protecting the victim are not long-term solutions. Residence in a shelter is just a temporary solution.116 The abuser’s incarceration is also a temporary solution.117 Also, an abuser can still use a proxy. Most notably, the abuser can still physically harm the victim.

Although GPS monitoring has its flaws, it is a necessary and effective tool in protecting victims from “separation assaults.” All states should implement this technology. Properly drafted statutes can avoid constitutional challenges and ensure the safety of domestic violence victims for years to come.

115 See supra text accompanying notes 105-14.
116 Erez & Ibarra, supra note 105, at 117.
117 Id.