

The Constitution, the Fourth Amendment, and the Use of Technology
State v. Tate
Student Materials

Overall Learning Target:

- In a world of social media and changing technology, what is the future of the Fourth Amendment?

Introduction

Over the next several days you will be looking at a fascinating area of the law, the intersection of privacy and technology. Do you expect your social media posts to be accessible to future employers or universities? How would you react to your parents monitoring your cell phone calls? Would you behave differently if you believed the police could track your use of cellphone data?

You will be investigating the answers to questions like these using a number of different sources, including a case decided by the Wisconsin Supreme Court. By the end of this unit you will be asked to craft an answer to the question: In a world of social media and changing technology, what is the future of the Fourth Amendment?

Fourth Amendment and the Right to Privacy: An Overview

Constitutions

The [United States \(U.S.\) Constitution](#) includes a Bill of Rights, which is made up of the first ten amendments. You will focus on Amendment IV (Four);

Amendment IV: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The [Wisconsin Constitution](#) also protects the rights of individuals, though it includes individual rights upfront, in the first article. Article I (One), section 11 of the Wisconsin Constitution mirrors the language of the Fourth Amendment exactly. It was common for states to adopt the language of the U.S. Constitution.

An introduction to the Bill of Rights.

1. What is the Bill of Rights?
2. What is the purpose of the Fourth Amendment?

Begin by getting a feel for the Constitution as a whole. Take a few minutes to look at the following website: [Constitution USA with Peter Sagal](#) (Rights)

- Take a look specifically at the following short video: [“Rights,” Akhil Amar](#)

State v. Tate: Exploring the intersection of privacy and technology in Wisconsin

You will need the following materials over the next few days:

- [Overview of State v. Tate, view from the beginning to 8:30.](#)
- [State v. Tate, annotated version](#)

Status of the case

1. Police obtain a court order to track Tate's cell phone using various devices. There is not Wisconsin Statute/ Law that directly allows this type of tracking.
2. Tate is located and arrested.
3. Tate's attorney files a pretrial motion seeking to suppress all evidence that resulted from the tracking of the cell phone (for example items seized when he was arrested, witness statements, and Tate's post-arrest statement). His attorney argued that the search was illegal because there is no statute in Wisconsin that authorizes this type of search, thus the search is illegal. Tate loses the motion and the evidence can be used against him at trial.
4. Tate lost the motion, he knew the evidence would be used against him so he plead no contest to the murder.
 - In criminal law, a defendant's plea in court that he/she will not contest the charge of a particular crime, also called nolo contendere. While technically not an admission of guilt for commission of the crime, the judge will treat a plea of "no contest" as such an admission and proceed to find the defendant guilty as charged.
5. Tate appealed the loss at the suppression hearing, arguing that if the evidence had been suppressed, there would not have been enough evidence to convict him.
 - Tate loses the appeal, he then files a petition for certiorari, asking the Wisconsin Supreme Court to take his case
6. Tate's case is taken before the Wisconsin Supreme Court

Issue: Can the state get an order to locate a cellphone to help find a suspect when the phone is not evidence of a crime?

- The issue is the key question the court is being asked to answer

Law: Fourth Amendment of the U.S. Constitution and Article I, section 11 of the Wisconsin Constitution

A key consideration for the Wisconsin Supreme Court in this case is a balancing of the right to privacy vs. the need to protect society as a whole

- Privacy: cell phone use is a private thing, especially when the cell phone itself is not evidence of a crime
- Need to protect society as a whole: allow law enforcement to use new technology to track criminals before they harm others

Helpful background / Context for State v. Tate

What is a stingray phone tracker? How does it work?

- [Stingray Phone Trackers](#) - Chicago Tribune
- [Stingray Phone Trackers](#) - USA Today

[What is the Fusion Center?](#)

State v. Tate: Oral Arguments

Preliminary Information - takes place in Sheboygan rather than in Madison

- [Background information on the Court and Justices](#)
- [Link to oral argument](#) (cannot be viewed using Chrome Browser)
 - from 0-8:20 is a nice overview of the court and the case by Attorney Casey J. Hoff
 - from 8:30 - 12:10 is dead time and can be skipped
 - oral arguments begin at about 14:00

Issue: Whether law enforcement officers performed an illegal search when they tracked Tate’s cell phone using cell site information and a Stingray Phone Tracker

1. The tracking was a search under the United States and Wisconsin Constitutions and
2. The Judge who authorized the search lacked the authority/power to issue an order/warrant authorizing the police to track Tate’s phone

Key part of this is a balancing of the right to privacy vs. the need to protect society as a whole

- Privacy: cell phone use is a private thing, especially when the cell phone itself is not evidence of a crime
- Need to protect society as a whole: allow law enforcement to use new technology to track criminals before they harm others

Complete two column notes below as you view the oral arguments

Tate’s Arguments, Attorney Byron Lichstein	State of Wisconsin’s Argument (Assistant Attorney General Jeffrey Kassel

[State v. Tate: Reading the case](#)

Issue: this is the question the Court is being	Whether law enforcement officers performed an illegal search when they tracked his cell phone using cell site information and a Stingray Phone Tracker 1. The tracking was a search under the United States and Wisconsin Constitutions and
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asked to answer.	2. The Judge who authorized the search lacked the authority/power to issue an order/warrant authorizing the police to track Tate's phone
Facts: state those facts that are relevant (essential) to understanding the case)	
Law: May be any or all of the following <ul style="list-style-type: none"> ● case law ● statutory law ● constitutional law 	
Analysis: How does the Court reach its conclusion	
Holding: the Court's decision, who wins	

Consider what you have learned about State v. Tate. What can you use from this case to assist you in answering the following question: **In a world of social media and changing technology, what is the future of the Fourth Amendment?**