MAJORITY OPINION by Justices Swanbom, Tims , and Gourd

Regarding the governmental use of GPS information from cell phones to track suspects, the court has found that the government has the right and is not in violation of the Constitution. Provided authorities have probable cause to observe, lack of a warrant does not violate the Constitution. Evolving logic in law enforcement validate the “observe from a distance” philosophy to reduce injury to the suspect and innocent bystanders. Rather than provoking an incident with a desperate suspect due to a close proximity, officers emphasize public safety by replacing their physical presence with GPS aided observation. GPS technology is, and has been for some time, pervasive in the automobile and personal device markets. No modern consumer can reasonably expect to avoid a minimum level of detection with these commonly accepted technologies.

A citizen’s expectation of privacy differs depending on location. When an individual is in public, his or her expected level should be reasonably low. The public can very easily, often without that individual even realizing it, view and listen to actions and conversations. Currently, it is perfectly acceptable for authorities to follow someone with a vehicle or on foot if they are curious as to what that person is doing. Once within a private residence, the reasonable level increases, but even that fluctuates with the proximity to neighbors, presence of privacy fencing, etc...

This Court also finds it is constitutionally sound for the Government to use unmanned drones for the surveillance of activities upon private property without a warrant, but only to a degree that stops short of enlisting technologies, such as thermal imaging, that “see” into structures. The Fourth Amendment states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”. This clearly establishes that people should feel secure and have a high expectation of privacy inside their homes. Drones can observe actions taking place outside of the home but should not be allowed to use technology to view inside of the home without a warrant.

DISSENTING OPINION by Justice De Fee

Regarding restricting the domestic use of invasive technologies, such as thermal imaging and Stingray, for law enforcement, while it is tempting to move full force in the prevention of crime to ensure public safety, at this time the various invasive technologies such as thermal imaging or Stingray to collect data are not accompanied by equitable safeguards for collateral data collected to not be used against innocent citizens at a future date. Can any agency reasonably declare that crowd images collected from an aerial drone will not be used later to distinguish and record those in attendance for the express purpose of social network analysis? The rush to crush the effectiveness of a criminal element must never exceed the reasonable expectation of a citizen to speak, assemble, or practice any inalienable right.