

Warrant Not Needed For Phone Register

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The Maryland Court of Appeals ruled yesterday that police do not need a search warrant to install a surveillance device that records telephone numbers dialed from a private phone.

In a 4-to-3 decision, the court held that the use of the device did not violate the constitutionally guaranteed right to privacy of a Baltimore man, Michael Lee Smith, convicted of robbery. The device, called a pen register, was installed at central telephone headquarters to record the numbers dialed from Smith's phone and helped lead to his arrest.

The court majority, in an opinion written by Chief Judge Robert C. Murphy, said telephone users have no constitutionally protected expectation that the numbers they dial will remain private since the numbers go through telephone company switching equipment.

"The intrusion involved in pen register surveillance is minimal; no violation of the integrity of the communication system itself is entailed, and no conversation is overheard," Murphy wrote.

Three judges disagreed, saying that Smith did have a right to expect that the phone numbers dialed in his own home would remain private.

"The heart of the Fourth Amendment is to protect citizens against every unjustifiable intrusion by the state upon their privacy, whatever the means," Judge Harry A. Cole wrote in his dissent. "For the Fourth Amendment to remain viable, it must adjust to the times and afford protection against new forms of invasion of privacy, however sophisticated."