

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
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Granted Appeal Summary

Case

FAIRFAX COUNTY POLICE DEPARTMENT, ET AL. v. HARRISON NEAL
(Record Number 191129)

From

The Circuit Court of Fairfax County; R. Smith, Judge.

Counsel

Elizabeth D. Teare, Karen L. Gibbons, and Kimberly P. Baucom (Fairfax County Attorney's Office); Stuart A. Raphael, Trevor S. Cox, and Matthew R. McGuire (Hunton Andrews Kurth LLP) for appellant.

Edward S. Rosenthal, Lana M. Manitta, and David C. Rohrbach (Rich Rosenthal Brincefield Manitta Dzubin & Kroeger, PLLC); Eden Heilman and Jennifer Safstrom (American Civil Liberties Union Foundation of Virginia, Inc.) for appellee.

Assignments of Error

1. The circuit court erred in concluding that the Department's ALPR system is an "information system" under the Data Act because the ALPR system does not itself contain "the name, personal number, or other identifying particulars of a data subject." Va. Code Ann. § 2.2-3801. The ALPR system does not become "a record-keeping process" under the Data Act simply because police officers have the ability [to] take a license plate number stored in the ALPR system and manually enter it into other databases, not maintained by the Department, to discover the identity of the vehicle owner. If the ALPR system is construed to include information that the Department could potentially access through the NCIC, VCIN, and the DMV databases, which can only be accessed with a valid criminal justice purpose, then the Court should decide anew, based on the changed factual predicate, whether the ALPR system is exempt under Code § 2.2-3802(7) notwithstanding Neal I's contrary conclusion.
2. The circuit court erred in ruling that the Department's creation of an "information system" consisting of passively acquired ALPR data violates the Data Act.
3. The circuit court erred in enjoining the Department from creating and maintaining an information system that consists of information captured by ALPR cameras.