



## Michigan Court of Appeals Holds Drone Surveillance a Search Under Fourth Amendment

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A recent Michigan Court of Appeals decision held that the government's use of drone surveillance over private property constitutes a search under the Fourth Amendment of the U.S. Constitution and is therefore subject to the Fourth Amendment warrant requirement.

In *Long Lake Township v Maxon*, the Township suspected township resident, Maxon, was storing junk cars and materials on his property in violation of the Long Lake Township Zoning Ordinance. The Township hired a third-party to conduct drone surveillance over Maxon's property and take aerial photographs of the property not generally visible to the public. The Township filed a lawsuit against Maxon to abate the zoning violations and provided the aerial photographs as evidence. Maxon filed a motion with the court to suppress the photographs claiming the drone surveillance constituted an illegal search under the Fourth Amendment.

The trial court denied Maxon's motion holding that drone surveillance did not constitute a search under the Fourth Amendment because Maxon did not have a reasonable expectation of privacy in property visible from above. In doing so, the trial court relied on precedent set by the U.S. Supreme Court in *Florida v Riley* which held "visual observation of the defendant's premises from a helicopter did not constitute a search under the Fourth Amendment."

On appeal, the Michigan Court of Appeals reversed the trial court's determination holding that:

Drone surveillance of this nature intrudes into persons' reasonable expectations of privacy, so such surveillance implicates the Fourth Amendment and is illegal without a warrant or a traditional exception to the warrant requirement.

The Court distinguished this case from *Florida v Riley* providing that "low-altitude, unmanned, specifically-targeted drone surveillance of a private individual's property is qualitatively different from the kinds of

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human-operated aircraft overflights permitted by . . . *Riley*.”

Most notably, this case stands for the proposition that drone surveillance constitutes a search under the Fourth Amendment. It does not stand for the proposition that drone surveillance is per se unlawful under the Fourth Amendment. Moving forward, municipalities are still authorized to use drone surveillance if conducted pursuant to a valid search warrant.

Foster Swift's municipal attorneys can assist with preparing and obtaining administrative search warrants. Please feel free to contact us with any questions.

