

United States Vs. Jones

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Appellant : United States

Respondent : Jones

Judgement :

United States v. Jones

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SUPREME COURT OF THE UNITED STATES

SYLLABUS

UNITED STATES v. JONES

certiorari to the united states court of appeals for the district of columbia circuit

The Government obtained a search warrant permitting it to install a Global-Positioning-System (GPS) tracking device on a vehicle registered to respondent Jones's wife. The warrant authorized installation in the District of Columbia and within 10 days, but agents installed the device on the 11th day and in Maryland. The Government then tracked the vehicle's movements for 28 days. It subsequently secured an indictment of Jones and others on drug trafficking conspiracy charges. The District Court suppressed the GPS data obtained while the vehicle was parked at Jones's residence, but held the remaining data admissible because Jones had no reasonable expectation of privacy when the vehicle was on public streets. Jones was convicted. The D. C. Circuit reversed, concluding that admission of the evidence obtained by warrantless use of the GPS device violated the Fourth Amendment.

Held: The Government's attachment of the GPS device to the vehicle, and its use of that device to monitor the vehicle's movements, constitutes a search under the Fourth Amendment. Pp. 3-12.

(a) The Fourth Amendment protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. Here, the Government's physical intrusion on an effect for the purpose of obtaining information constitutes a search. This type of encroachment on an area enumerated in the Amendment would have been considered a search within the meaning of the Amendment at the time it was adopted. Pp. 3-4.

(b) This conclusion is consistent with this Court's Fourth Amendment jurisprudence, which until the latter half of the 20th century was tied to common-law trespass. Later cases, which have deviated from that exclusively property-based approach, have applied the analysis of Justice Harlan's concurrence in *Katz v. United States*, 389 U. S. 347, which said that the Fourth Amendment protects a person's reasonable expectation of privacy, *id.*, at 360. Here, the Court need not address the Government's contention that Jones had no reasonable expectation of privacy, because Jones's Fourth Amendment rights do not rise or fall with the *Katz* formulation. At bottom, the Court must assure preservation of that degree of

privacy against government that existed when the Fourth Amendment was adopted. *Kyllo v. United States*, 533 U. S. 27. Katz did not repudiate the understanding that the Fourth Amendment embodies a particular concern for government trespass upon the areas it enumerates. The Katz reasonable-expectation-of-privacy test has been added to, but not substituted for, the common-law trespassory test. See *Alderman v. United States*, 394 U. S. 165; *Soldal v. Cook County*, 506 U. S. 56. *United States v. Knotts*, 460 U. S. 276, and *United States v. Karo*, 468 U. S. 705-post-Katz cases rejecting Fourth Amendment challenges to beepers, electronic tracking devices representing another form of electronic monitoring-do not foreclose the conclusion that a search occurred here. *New York v. Class*, 475 U. S. 106, and *Oliver v. United States*, 466 U. S. 170, also do not support the Governments position. Pp. 4-12.

(c) The Governments alternative argument-that if the attachment and use of the device was a search, it was a reasonable one-is forfeited because it was not raised below. P. 12.

615 F. 3d 544, affirmed.

Scalia, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Thomas, and Sotomayor, JJ., joined. Sotomayor, J., filed a concurring opinion. Alito, J., filed an opinion concurring in the judgment, in which Ginsburg, Breyer, and Kagan, JJ., joined.

United States v. Jones - 10-1259 (2012)

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SUPREME COURT OF THE UNITED STATES

No. 10-1259

UNITED STATES, PETITIONER v. ANTOINE JONES

on writ of certiorari to the united states court of appeals for the district of columbia circuit

[January 23, 2012]

Justice Scalia delivered the opinion of the Court.

We decide whether the attachment of a Global-Positioning-System (GPS) tracking device to an individuals vehicle, and subsequent use of that device to monitor the vehicles movements on public streets, constitutes a search or seizure within the meaning of the Fourth Amendment.

I

In 2004 respondent Antoine Jones, owner and operator of a nightclub in the District of Columbia, came under suspicion of trafficking in narcotics and was made the target of an investigation by a joint FBI and Metropolitan Police Department task force. Officers employed various investigative techniques, including visual surveillance of the nightclub, installation of a camera focused on the front door of the club, and a pen register and wiretap covering Jones's cellular phone.

Based in part on information gathered from these sources, in 2005 the Government applied to the United States District Court for the District of Columbia for a warrant authorizing the use of an electronic tracking device on the Jeep Grand Cherokee registered to Jones's wife. A warrant issued, authorizing installation of the device in the District of Columbia and within 10 days.

On the 11th day, and not in the District of Columbia but in Maryland,[[1](#)] agents installed a GPS tracking device on the undercarriage of the Jeep while it was parked in a public parking lot. Over the next 28 days, the Government used the device to track the vehicles movements, and once had to replace the devices battery when the vehicle was parked in a different public lot in Maryland. By means of signals from multiple satellites, the device established the vehicles location within 50 to 100 feet, and communicated that location by cellular phone to a Government computer. It relayed more than 2,000 pages of data over the 4-week period.

The Government ultimately obtained a multiple-count indictment charging Jones and several alleged co-conspirators with, as relevant here, conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine and 50 grams or more of cocaine base, in violation of 21 U. S. C. 841 and 846. Before trial, Jones filed a motion to suppress evidence obtained through the GPS device. The District Court granted the motion only in part, suppressing the data obtained while the vehicle was parked in the garage adjoining Jones residence. 451 F. Supp. 2d 71, 88 (2006). It held the remaining data admissible, because [a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. Ibid. (quoting *United States v. Knotts*, 460 U. S. 276, 281 (1983)). Jones trial in October 2006 produced a hung jury on the conspiracy count.

In March 2007, a grand jury returned another indictment, charging Jones and others with the same conspir- acy. The Government introduced at trial the same GPS-derived locational data admitted in the first trial, which connected Jones to the alleged conspirators stash house that contained \$850,000 in cash, 97 kilograms of cocaine, and 1 kilogram of cocaine base. The jury returned a guilty verdict, and the District Court sentenced Jones to life imprisonment.

The United States Court of Appeals for the District of Columbia Circuit reversed the conviction because of admission of the evidence obtained by warrantless use of the GPS device which, it said, violated the Fourth Amend- ment. *United States v. Maynard*, 615 F. 3d 544 (2010). The D. C. Circuit denied the Governments

petition for rehearing en banc, with four judges dissenting. 625 F. 3d 766 (2010). We granted certiorari, 564 U. S. ____ (2011).

II

A

The Fourth Amendment provides in relevant part that [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. It is beyond dispute that a vehicle is an effect as that term is used in the Amendment. *United States v. Chadwick*, 433 U. S. 1, 12 (1977). We hold that the Government's installation of a GPS device on a target's vehicle,[[2](#)] and its use of that device to monitor the vehicle's movements, constitutes a search.

It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a search within the meaning of the Fourth Amendment when it was adopted. *Entick v. Carrington*, 95 Eng. Rep. 807 (C. P. 1765), is a case we have described as a monument of English freedom undoubtedly familiar to every American statesman at the time the Constitution was adopted, and considered to be the true and ultimate expression of constitutional law with regard to search and seizure. *Brower v. County of Inyo*, 489 U. S. 593, 596 (1989) (quoting *Boyd v. United States*, 116 U. S. 616, 626 (1886)). In that case, Lord Camden expressed in plain terms the significance of property rights in search-and-seizure analysis:

[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law. *Entick*, *supra*, at 817.

The text of the Fourth Amendment reflects its close connection to property, since otherwise it would have referred simply to the right of the people to be secure against unreasonable searches and seizures; the phrase in their persons, houses,

papers, and effects would have been superfluous.

Consistent with this understanding, our Fourth Amendment jurisprudence was tied to common-law trespass, at least until the latter half of the 20th century. *Kyllo v. United States*, 533 U. S. 27, 31 (2001); Kerr, *The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution*, 102 Mich. L. Rev. 801, 816 (2004). Thus, in *Olmstead v. United States*, 277 U. S. 438 (1928), we held that wiretaps attached to telephone wires on the public streets did not constitute a Fourth Amendment search because [t]here was no entry of the houses or offices of the defendants, *id.*, at 464.

Our later cases, of course, have deviated from that exclusively property-based approach. In *Katz v. United States*, 389 U. S. 347, 351 (1967), we said that the Fourth Amendment protects people, not places, and found a violation in attachment of an eavesdropping device to a public telephone booth. Our later cases have applied the analysis of Justice Harlan's concurrence in that case, which said that a violation occurs when government officers violate a person's reasonable expectation of privacy, *id.*, at 360. See, e.g., *Bond v. United States*, 529 U. S. 334 (2000); *California v. Ciraolo*, 476 U. S. 207 (1986); *Smith v. Maryland*, 442 U. S. 735 (1979).

The Government contends that the Harlan standard shows that no search occurred here, since Jones had no reasonable expectation of privacy in the area of the Jeep accessed by Government agents (its underbody) and in the locations of the Jeep on the public roads, which were visible to all. But we need not address the Government's contentions, because Jones's Fourth Amendment rights do not rise or fall with the Katz formulation. At bottom, we must assure preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted. *Kyllo*, *supra*, at 34. As explained, for most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas (persons, houses, papers, and effects) it enumerates.[[3](#)] Katz did not repudiate that understanding. Less than two years later the Court upheld defendant's contention that the Government could not introduce against them conversations between other people obtained by

warrantless placement of electronic surveillance devices in their homes. The opinion rejected the dissents contention that there was no Fourth Amendment violation unless the conversational privacy of the homeowner himself is invaded.[[4](#)] Alderman v. United States, 394 U. S. 165, 176 (1969). [W]e [do not] believe that Katz, by holding that the Fourth Amendment protects persons and their private conversations, was intended to withdraw any of the protection which the Amendment extends to the home Id., at 180.

More recently, in Soldal v. Cook County, 506 U. S. 56 (1992), the Court unanimously rejected the argument that although a seizure had occurred in a technical sense when a trailer home was forcibly removed, id., at 62, no Fourth Amendment violation occurred because law enforcement had not invade[d] the [individuals] privacy, id., at 60. Katz, the Court explained, established that property rights are not the sole measure of Fourth Amendment violations, but did not snuff[f] out the previously recognized protection for property. 506 U. S., at 64. As Justice Brennan explained in his concurrence in Knotts, Katz did not erode the principle that, when the Government does engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment. 460 U. S., at 286 (opinion concurring in judgment). We have embodied that preservation of past rights in our very definition of reasonable expectation of privacy which we have said to be an expectation that has a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society. Minnesota v. Carter, 525 U. S. 83, 88 (1998) (internal quotation marks omitted). Katz did not narrow the Fourth Amendments scope.[[5](#)]

The Government contends that several of our post-Katz cases foreclose the conclusion that what occurred here constituted a search. It relies principally on two cases in which we rejected Fourth Amendment challenges to beepers, electronic tracking devices that represent another form of electronic monitoring. The first case, Knotts, upheld against Fourth Amendment challenge the use of a beeper that had been placed in a container of chloroform, allowing law enforcement to monitor the location of the container. 460 U. S., at 278. We said that there had

been no infringement of Knotts reasonable expectation of privacy since the information obtained-the location of the automobile carrying the container on public roads, and the location of the off-loaded container in open fields near Knotts cabin-had been voluntarily conveyed to the public.[[6](#)] Id., at 281-282. But as we have discussed, the Katz reasonable-expectation-of-privacy test has been added to, not substituted for, the common-law trespassory test. The holding in Knotts addressed only the former, since the latter was not at issue. The beeper had been placed in the container before it came into Knotts possession, with the consent of the then-owner. 460 U. S., at 278. Knotts did not challenge that installation, and we specifically declined to consider its effect on the Fourth Amendment analysis. Id., at 279, n. Knotts would be relevant, perhaps, if the Government were making the argument that what would otherwise be an unconstitutional search is not such where it produces only public information. The Government does not make that argument, and we know of no case that would support it.

The second beeper case, *United States v. Karo*, 468 U. S. 705 (1984), does not suggest a different conclusion. There we addressed the question left open by Knotts, whether the installation of a beeper in a container amounted to a search or seizure. 468 U. S., at 713. As in Knotts, at the time the beeper was installed the container belonged to a third party, and it did not come into possession of the defendant until later. 468 U. S., at 708. Thus, the specific question we considered was whether the installation with the consent of the original owner constitute[d] a search or seizure . . . when the container is delivered to a buyer having no knowledge of the presence of the beeper. Id., at 707 (emphasis added). We held not. The Government, we said, came into physical contact with the container only before it belonged to the defendant Karo; and the transfer of the container with the unmonitored beeper inside did not convey any information and thus did not invade Karos privacy. See id., at 712. That conclusion is perfectly consistent with the one we reach here. Karo accepted the container as it came to him, beeper and all, and was therefore not entitled to object to the beepers presence, even though it was used to monitor the containers location. Cf. *On Lee v. United States*, 343 U. S. 747-752 (1952) (no search or seizure where an informant, who was wearing a concealed microphone, was invited into the defendants business). Jones, who possessed the Jeep at the time the Government trespassorily inserted the

information-gathering device, is on much different footing.

The Government also points to our exposition in *New York v. Class*, 475 U. S. 106 (1986), that [t]he exterior of a car . . . is thrust into the public eye, and thus to examine it does not constitute a search. *Id.*, at 114. That statement is of marginal relevance here since, as the Government acknowledges, the officers in this case did more than conduct a visual inspection of respondents vehicle, Brief for United States 41 (emphasis added). By attaching the device to the Jeep, officers encroached on a protected area. In *Class* itself we suggested that this would make a difference, for we concluded that an officers momentary reaching into the interior of a vehicle did constitute a search.[[7](#)] 475 U. S., at 114-115.

Finally, the Governments position gains little support from our conclusion in *Oliver v. United States*, 466 U. S. 170 (1984), that officers information-gathering intrusion on an open field did not constitute a Fourth Amendment search even though it was a trespass at common law, *id.*, at 183. Quite simply, an open field, unlike the curtilage of a home, see *United States v. Dunn*, 480 U. S. 294, 300 (1987), is not one of those protected areas enumerated in the Fourth Amendment. *Oliver*, *supra*, at 176-177. See also *Hester v. United States*, 265 U. S. 57, 59 (1924). The Governments physical intrusion on such an area-unlike its intrusion on the effect at issue here-is of no Fourth Amendment significance.[[8](#)]

B

The concurrence begins by accusing us of applying 18th-century tort law. *Post*, at 1. That is a distortion. What we apply is an 18th-century guarantee against unreasonable searches, which we believe must provide at a minimum the degree of protection it afforded when it was adopted. The concurrence does not share that belief. It would apply exclusively Katzs reasonable-expectation-of-privacy test, even when that eliminates rights that previously existed.

The concurrence faults our approach for present[ing] particularly vexing problems in cases that do not involve physical contact, such as those that involve the transmission of electronic signals. *Post*, at 9. We entirely fail to understand that point. For unlike the concurrence, which would make Katz the exclusive test, we

do not make trespass the exclusive test. Situations involving merely the transmission of electronic signals without trespass would remain subject to Katz analysis.

In fact, it is the concurrences insistence on the exclusivity of the Katz test that needlessly leads us into particularly vexing problems in the present case. This Court has to date not deviated from the understanding that mere visual observation does not constitute a search. See *Kyllo*, 533 U. S., at 31-32. We accordingly held in *Knotts* that [a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. 460 U. S., at 281. Thus, even assuming that the concurrence is correct to say that [t]raditional surveillance of Jones for a 4-week period would have required a large team of agents, multiple vehicles, and perhaps aerial assistance, post, at 12, our cases suggest that such visual observation is constitutionally permissible. It may be that achieving the same result through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy, but the present case does not require us to answer that question.

And answering it affirmatively leads us needlessly into additional thorny problems. The concurrence posits that relatively short-term monitoring of a persons movements on public streets is okay, but that the use of longer term GPS monitoring in investigations of most offenses is no good. Post, at 13 (emphasis added). That introduces yet another novelty into our jurisprudence. There is no precedent for the proposition that whether a search has occurred depends on the nature of the crime being investigated. And even accepting that novelty, it remains unexplained why a 4-week investigation is surely too long and why a drug-trafficking conspiracy involving substantial amounts of cash and narcotics is not an extraordinary offense which may permit longer observation. See post, at 13-14. What of a 2-day monitoring of a suspected purveyor of stolen electronics? Or of a 6-month monitoring of a suspected terrorist? We may have to grapple with these vexing problems in some future case where a classic trespassory search is not involved and resort must be had to Katz analysis; but there is no reason for rushing forward to resolve them here.

III

The Government argues in the alternative that even if the attachment and use of the device was a search, it was reasonable-and thus lawful-under the Fourth Amendment because officers had reasonable suspicion, and in- deed probable cause, to believe that [Jones] was a leader in a large-scale cocaine distribution conspiracy. Brief for United States 50-51. We have no occasion to consider this argument. The Government did not raise it below, and the D. C. Circuit therefore did not address it. See 625 F. 3d, at 767 (Ginsburg, Tatel, and Griffith, JJ., concurring in denial of rehearing en banc). We consider the argument forfeited. See *Sprietsma v. Mercury Marine*, 537 U. S. 51, n. 4 (2002).

The judgment of the Court of Appeals for the D. C. Circuit is affirmed.

It is so ordered.

Notes

[1](#) In this litigation, the Government has conceded noncompliance with the warrant and has argued only that a warrant was not required. *United States v. Maynard*, 615 F. 3d 544, 566, n. (CADC 2010).

[2](#) As we have noted, the Jeep was registered to Jones's wife. The Government acknowledged, however, that Jones was the exclusive driver. *Id.*, at 555, n. (internal quotation marks omitted). If Jones was not the owner he had at least the property rights of a bailee. The Court of Appeals concluded that the vehicle's registration did not affect his ability to make an objection, *ibid.*, and the Government has not challenged that determination here. We therefore do not consider the significance of Jones's status.

[3](#) Justice Alito's concurrence (hereinafter concurrence) doubts the wisdom of our approach because it is almost impossible to think of late-18th-century situations that are analogous to what took place in this case. *Post*, at 3 (opinion concurring in judgment). But in fact it posits a situation that is not far afield—a constable concealing himself in the target's coach in order to track its movements. *Ibid.* There is no doubt that the information gained by that trespassory activity would be the product of an unlawful search—whether that information consisted of the

conversations occurring in the coach, or of the destinations to which the coach traveled. In any case, it is quite irrelevant whether there was an 18th-century analog. Whatever new methods of investigation may be devised, our task, at a minimum, is to decide whether the action in question would have constituted a search within the original meaning of the . Where, as here, the Government obtains information by physically intruding on a constitutionally protected area, such a search has undoubtedly occurred.

4 Thus, the concurrences attempt to recast *Alderman* as meaning that individuals have a legitimate expectation of privacy in all conversations that [take] place under their roof, post, at 6-7, is foreclosed by the Courts opinion. The Court took as a given that the homeowners conversational privacy had not been violated.

5 The concurrence notes that post-Katz we have explained that an actual trespass is neither necessary nor sufficient to establish a constitutional violation. Post, at 6 (quoting *United States v. Karo*,). That is undoubtedly true, and undoubtedly irrelevant. *Karo* was considering whether a seizure occurred, and as the concurrence explains, a seizure of property occurs, not when there is a trespass, but when there is some meaningful interference with an individuals possessory interests in that property. Post, at 2 (internal quotation marks omitted). Likewise with a search. Trespass alone does not qualify, but there must be conjoined with that what was present here: an attempt to find something or to obtain information. Related to this, and similarly irrelevant, is the concurrences point that, if analyzed separately, neither the installation of the device nor its use would constitute a search. See *ibid*. Of course not. A trespass on houses or effects, or a *Katz* invasion of privacy, is not alone a search unless it is done to obtain information; and the obtaining of information is not alone a search unless it is achieved by such a trespass or invasion of privacy.

6 *Knotts* noted the limited use which the government made of the signals from this particular beeper, 460 U. S., at 284; and reserved the question whether different constitutional principles may be applicable to dragnet-type law enforcement practices of the type that GPS tracking made possible here, *ibid*.

7 The Government also points to *Cardwell v. Lewis*, , in which the Court rejected the claim that the inspection of an impounded vehicles tire tread and the collection of paint scrapings from its exterior violated the . Whether the plurality said so because no search occurred or because the search was reasonable is unclear.

Compare *id.*, at 591 (opinion of Blackmun, J.) ([W]e fail to comprehend what expectation of privacy was infringed), with *id.*, at 592 (Under circumstances such as these, where probable cause exists, a warrantless examination of the exterior of a car is not unreasonable . . .).

[8](#) Thus, our theory is not that the is concerned with any technical trespass that led to the gathering of evidence. *Post*, at 3 (Alito, J., concurring in judgment) (emphasis added). The protects against trespassory searches only with regard to those items (persons, houses, papers, and effects) that it enumerates. The trespass that occurred in *Oliver* may properly be understood as a search, but not one in the constitutional sense. 466 U. S., at 170, 183.

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SUPREME COURT OF THE UNITED STATES

No. 10-1259

UNITED STATES, PETITIONER v. ANTOINE JONES

on writ of certiorari to the united states court of appeals for the district of columbia circuit

[January 23, 2012]

Justice Alito, with whom Justice Ginsburg, Justice Breyer, and Justice Kagan join, concurring in the judgment.

This case requires us to apply the Fourth Amendments prohibition of unreasonable searches and seizures to a 21st-century surveillance technique, the use of a Global Po-sitioning System (GPS) device to monitor a vehicles move-

ments for an extended period of time. Ironically, the Court has chosen to decide this case based on 18th-century tort law. By attaching a small GPS device[[1](#)] to the underside of the vehicle that respondent drove, the law enforcement officers in this case engaged in conduct that might have provided grounds in 1791 for a suit for trespass to chattels.[[2](#)] And for this reason, the Court concludes, the installation and use of the GPS device constituted a search. Ante, at 3-4.

This holding, in my judgment, is unwise. It strains the language of the Fourth Amendment; it has little if any support in current Fourth Amendment case law; and it is highly artificial.

I would analyze the question presented in this case by asking whether respondents reasonable expectations of privacy were violated by the long-term monitoring of the movements of the vehicle he drove.

I

A

The Fourth Amendment prohibits unreasonable searches and seizures, and the Court makes very little effort to explain how the attachment or use of the GPS device fits within these terms. The Court does not contend that there was a seizure. A seizure of property occurs when there is some meaningful interference with an individual's possessory interests in that property, *United States v. Jacobsen*, 466 U. S. 109, 113 (1984), and here there was none. Indeed, the success of the surveillance technique that the officers employed was dependent on the fact that the GPS did not interfere in any way with the operation of the vehicle, for if any such interference had been detected, the device might have been discovered.

The Court does claim that the installation and use of the GPS constituted a search, see ante, at 3-4, but this conclusion is dependent on the questionable proposition that these two procedures cannot be separated for purposes of Fourth Amendment analysis. If these two procedures are analyzed separately, it is not at all clear from the Court's opinion why either should be regarded as a search. It is

clear that the attachment of the GPS device was not itself a search; if the device had not functioned or if the officers had not used it, no information would have been obtained. And the Court does not contend that the use of the device constituted a search either. On the contrary, the Court accepts the holding in *United States v. Knotts*, 460 U. S. 276 (1983), that the use of a surreptitiously planted electronic device to monitor a vehicles movements on public roads did not amount to a search. See ante, at 7.

The Court argues-and I agree-that we must assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted. Ante, at 5 (quoting *Kyllo v. United States*, 533 U. S. 27, 34 (2001)). But it is almost impossible to think of late- 18th-century situations that are analogous to what took place in this case. (Is it possible to imagine a case in which a constable secreted himself somewhere in a coach and remained there for a period of time in order to monitor the movements of the coachs owner?[[3](#)]) The Courts theory seems to be that the concept of a search, as originally un-derstood, comprehended any technical trespass that led to the gathering of evidence, but we know that this is in-correct. At common law, any unauthorized intrusion on private property was actionable, see *Prosser & Keeton* 75, but a trespass on open fields, as opposed to the curtilage of a home, does not fall within the scope of the Fourth Amendment because private property outside the curtilage is not part of a hous[e] within the meaning of the Fourth Amendment. See *Oliver v. United States*, 466 U. S. 170 (1984); *Hester v. United States*, 265 U. S. 57 (1924).

B

The Courts reasoning in this case is very similar to that in the Courts early decisions involving wiretapping and electronic eavesdropping, namely, that a technical trespass followed by the gathering of evidence constitutes a search. In the early electronic surveillance cases, the Court concluded that a Fourth Amendment search occurred when private conversations were monitored as a result of an unauthorized physical penetration into the premises occupied by the defendant. *Silverman v. United States*, 365 U. S. 505, 509 (1961). In *Silverman*, police officers listened to conversations in an attached home by inserting a spike

mike through the wall that this house shared with the vacant house next door. *Id.*, at 506. This procedure was held to be a search because the mike made contact with a heating duct on the other side of the wall and thus usurp[ed] . . . an integral part of the premises. *Id.*, at 511.

By contrast, in cases in which there was no trespass, it was held that there was no search. Thus, in *Olmstead v. United States*, 277 U. S. 438 (1928), the Court found that the Fourth Amendment did not apply because [t]he taps from house lines were made in the streets near the houses. *Id.*, at 457. Similarly, the Court concluded that no search occurred in *Goldman v. United States*, 316 U. S. 129, 135 (1942), where a detectaphone was placed on the outer wall of defendants office for the purpose of overhearing conversations held within the room.

This trespass-based rule was repeatedly criticized. In *Olmstead*, Justice Brandeis wrote that it was immaterial where the physical connection with the telephone wires was made. 277 U. S., at 479 (dissenting opinion). Although a private conversation transmitted by wire did not fall within the literal words of the Fourth Amendment, he argued, the Amendment should be understood as prohibiting every unjustifiable intrusion by the government upon the privacy of the individual. *Id.*, at 478. See also, e.g., *Silverman*, *supra*, at 513 (Douglas, J., concurring) (The concept of an unauthorized physical penetration into the premises, on which the present decision rests seems to me beside the point. Was not the wrong . . . done when the intimacies of the home were tapped, recorded, or revealed? The depth of the penetration of the electronic device-even the degree of its remoteness from the inside of the house-is not the measure of the injury); *Goldman*, *supra*, at 139 (Murphy, J., dissenting) ([T]he search of ones home or office no longer requires physical entry, for science has brought forth far more effective devices for the invasion of a persons privacy than the direct and obvious methods of oppression which were detested by our forebears and which inspired the Fourth Amendment).

Katz v. United States, 389 U. S. 347 (1967), finally did away with the old approach, holding that a trespass was not required for a Fourth Amendment violation. *Katz* involved the use of a listening device that was attached to the

outside of a public telephone booth and that allowed police officers to eavesdrop on one end of the targets phone conversation. This procedure did not physically intrude on the area occupied by the target, but the Katz Court, repudiate[ed] the old doctrine, *Rakas v. Illinois*, 439 U. S. 128, 143 (1978), and held that [t]he fact that the electronic device employed . . . did not happen to penetrate the wall of the booth can have no constitutional significance, 389 U. S., at 353 ([T]he reach of th[e] [Fourth] Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure); see *Rakas*, supra, at 143 (describing *Katz* as holding that the ca-pacity to claim the protection for the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place); *Kyllo*, supra, at 32 (We have since decoupled violation of a persons Fourth Amendment rights from trespassory violation of his property). What mattered, the Court now held, was whether the conduct at issue violated the privacy upon which [the defendant] justifiably relied while using the telephone booth. *Katz*, supra, at 353.

Under this approach, as the Court later put it when addressing the relevance of a technical trespass, an actual trespass is neither necessary nor sufficient to establish a constitutional violation. *United States v. Karo*, 468 U. S. 705, 713 (1984) (emphasis added). *Ibid.* (Compar[ing] *Katz v. United States*, 389 U. S. 347 (1967) (no trespass, but Fourth Amendment violation), with *Oliver v. United States*, 466 U. S. 170 (1984) (trespass, but no Fourth Amendment violation)). In *Oliver*, the Court wrote:

The existence of a property right is but one element in determining whether expectations of privacy are legitimate. The premise that property interests control the right of the Government to search and seize has been discredited. *Katz*, 389 U. S., at 353, (quoting *Warden v. Hayden*, 387 U. S. 294, 304 (1967); some internal quotation marks omitted). 466 U. S., at 183.

The majority suggests that two post-Katz decisions-Soldal v. Cook County, 506 U. S. 56 (1992), and Alderman v. United States, 394 U. S. 165 (1969)-show that a technical trespass is sufficient to establish the existence of a search, but they provide little support.

In Soldal, the Court held that towing away a trailer home without the owners consent constituted a seizure even if this did not invade the occupants personal privacy. But in the present case, the Court does not find that there was a seizure, and it is clear that none occurred.

In Alderman, the Court held that the Fourth Amendment rights of homeowners were implicated by the use of a surreptitiously planted listening device to monitor third-party conversations that occurred within their home. See 394 U. S., at 176-180. Alderman is best understood to mean that the homeowners had a legitimate expectation of privacy in all conversations that took place under their roof. See Rakas, 439 U. S., at 144, n. 12 (citing Alderman for the proposition that the Court has not altogether abandoned use of property concepts in determining the presence or absence of the privacy interests protected by that Amendment); 439 U. S., at 153 (Powell, J., concurring) (citing Alderman for the proposition that property rights reflect societys explicit recognition of a persons au-thority to act as he wishes in certain areas, and there- fore should be considered in determining whether an individuals expectations of privacy are reasonable); Karo, supra, at 732 (Stevens, J., concurring in part and dissenting in part) (citing Alderman in support of the proposition that a homeowner has a reasonable expectation of privacy in the contents of his home, including items owned by others).

In sum, the majority is hard pressed to find support in post-Katz cases for its trespass-based theory.

III

Disharmony with a substantial body of existing case law is only one of the problems with the Courts approach in this case.

I will briefly note four others. First, the Courts reasoning largely disregards what is really important (the use of a GPS for the purpose of long-term tracking) and instead attaches great significance to something that most would view as relatively minor (attaching to the bottom of a car a small, light object that does not interfere in any way with the cars operation). Attaching such an object is generally regarded as so trivial that it does not provide a basis for recovery under modern tort law. See Prosser & Keeton 14, at 87 (harmless or trivial contact with personal property not actionable); D. Dobbs, Law of Torts 124 (2000) (same). But under the Courts reasoning, this conduct may violate the Fourth Amendment. By contrast, if long-term monitoring can be accomplished without committing a technical trespass-suppose, for example, that the Federal Government required or persuaded auto manufacturers to include a GPS tracking device in every car-the Courts theory would provide no protection.

Second, the Courts approach leads to incongruous results. If the police attach a GPS device to a car and use the device to follow the car for even a brief time, under the Courts theory, the Fourth Amendment applies. But if the police follow the same car for a much longer period using unmarked cars and aerial assistance, this tracking is not subject to any Fourth Amendment constraints.

In the present case, the Fourth Amendment applies, the Court concludes, because the officers installed the GPS device after respondents wife, to whom the car was registered, turned it over to respondent for his exclusive use. See ante, at 8. But if the GPS had been attached prior to that time, the Courts theory would lead to a different result. The Court proceeds on the assumption that respondent had at least the property rights of a bailee, ante, at 3, n. 2, but a bailee may sue for a trespass to chattel only if the injury occurs during the term of the bailment. See 8A Am. Jur. 2d, Bailment 166, pp. 685-686 (2009). So if the GPS device had been installed before respondents wife gave him the keys, respondent would have no claim for trespass-and, presumably, no Fourth Amendment claim either.

Third, under the Courts theory, the coverage of the Fourth Amendment may vary from State to State. If the events at issue here had occurred in a community property State[[4](#)] or a State that has adopted the Uniform Marital Property Act,[

[5](#)] respondent would likely be an owner of the vehicle, and it would not matter whether the GPS was installed before or after his wife turned over the keys. In non-community-property States, on the other hand, the registration of the vehicle in the name of respondents wife would generally be regarded as presumptive evidence that she was the sole owner. See 60 C. J. S., Motor Vehicles 231, pp. 398-399 (2002); 8 Am. Jur. 2d, Automobiles 1208, pp. 859-860 (2007).

Fourth, the Courts reliance on the law of trespass will present particularly vexing problems in cases involving surveillance that is carried out by making electronic, as opposed to physical, contact with the item to be tracked. For example, suppose that the officers in the present case had followed respondent by surreptitiously activating a stolen vehicle detection system that came with the car when it was purchased. Would the sending of a radio signal to activate this system constitute a trespass to chattels? Trespass to chattels has traditionally required a physical touching of the property. See Restatement (Second) of Torts 217 and Comment e (1963 and 1964); Dobbs, *supra*, at 123. In recent years, courts have wrestled with the application of this old tort in cases involving unwanted electronic contact with computer systems, and some have held that even the transmission of electrons that occurs when a communication is sent from one computer to another is enough. See, e.g., *CompuServe, Inc. v. Cyber Promotions, Inc.* 962 F. Supp. 1015, 1021 (SD Ohio 1997); *Thrifty-Tel, Inc. v. Bezenek*, 46 Cal. App. 4th 1559, 1566, n. 6 (1996). But may such decisions be followed in applying the Courts trespass theory? Assuming that what matters under the Courts theory is the law of trespass as it existed at the time of the adoption of the Fourth Amendment, do these recent decisions represent a change in the law or simply the application of the old tort to new situations?

IV

A

The Katz expectation-of-privacy test avoids the problems and complications noted above, but it is not without its own difficulties. It involves a degree of circularity, see *Kyllo*, 533 U. S., at 34, and judges are apt to confuse their own

expectations of privacy with those of the hypothetical reasonable person to which the Katz test looks. See *Minnesota v. Carter*, 525 U. S. 83, 97 (1998) (Scalia, J., concurring). In addition, the Katz test rests on the assumption that this hypothetical reasonable person has a well-developed and stable set of privacy expectations. But technology can change those expectations. Dramatic technological change may lead to periods in which popular expectations are in flux and may ultimately produce significant changes in popular attitudes. New technology may provide increased convenience or security at the expense of privacy, and many people may find the tradeoff worthwhile. And even if the public does not welcome the diminution of privacy that new technology entails, they may eventually reconcile themselves to this development as inevitable.[[6](#)]

On the other hand, concern about new intrusions on privacy may spur the enactment of legislation to protect against these intrusions. This is what ultimately happened with respect to wiretapping. After *Katz*, Congress did not leave it to the courts to develop a body of Fourth Amendment case law governing that complex subject. Instead, Congress promptly enacted a comprehensive statute, see 18 U. S. C. 2510-2522 (2006 ed. and Supp. IV), and since that time, the regulation of wiretapping has been governed primarily by statute and not by case law.[[7](#)] In an ironic sense, although *Katz* overruled *Olmstead*, Chief Justice Taft's suggestion in the latter case that the regulation of wiretapping was a matter better left for Congress, see 277 U. S., at 465-466, has been borne out.

B

Recent years have seen the emergence of many new devices that permit the monitoring of a person's movements. In some locales, closed-circuit television video monitoring is becoming ubiquitous. On toll roads, automatic toll collection systems create a precise record of the movements of motorists who choose to make use of that convenience. Many motorists purchase cars that are equipped with devices that permit a central station to ascertain the car's location at any time so that roadside assistance may be provided if needed and the car may be found if it is stolen.

Perhaps most significant, cell phones and other wireless devices now permit wireless carriers to track and record the location of users-and as of June 2011, it has been reported, there were more than 322 million wireless devices in use in the United States.[[8](#)] For older phones, the accuracy of the location information depends on the den-sity of the tower network, but new smart phones, which are equipped with a GPS device, permit more precise tracking. For example, when a user activates the GPS on such a phone, a provider is able to monitor the phones location and speed of movement and can then report back real-time traffic conditions after combining (crowdsourcing) the speed of all such phones on any particular road.[[9](#)] Similarly, phone-location-tracking services are offered as social tools, allowing consumers to find (or to avoid) others who enroll in these services. The availability and use of these and other new devices will continue to shape the average persons expectations about the privacy of his or her daily movements.

V

In the pre-computer age, the greatest protections of privacy were neither constitutional nor statutory, but practical. Traditional surveillance for any extended period of time was difficult and costly and therefore rarely undertaken. The surveillance at issue in this case-constant monitoring of the location of a vehicle for four weeks-would have required a large team of agents, multiple vehicles, and perhaps aerial assistance.[[10](#)] Only an investigation of unusual importance could have justified such an expenditure of law enforcement resources. Devices like the one used in the present case, however, make long-term monitoring relatively easy and cheap. In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative. See, e.g., Kerr, 102 Mich. L. Rev., at 805-806. A legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.

To date, however, Congress and most States have not enacted statutes regulating the use of GPS tracking technology for law enforcement purposes. The best that we can do in this case is to apply existing Fourth Amendment doctrine

and to ask whether the use of GPS tracking in a particular case involved a degree of intrusion that a reasonable person would not have anticipated.

Under this approach, relatively short-term monitoring of a persons movements on public streets accords with expectations of privacy that our society has recognized as reasonable. See *Knotts*, 460 U. S., at 281-282. But the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy. For such offenses, societys expectation has been that law enforcement agents and others would not-and indeed, in the main, simply could not-secretly monitor and catalogue every single movement of an individuals car for a very long period. In this case, for four weeks, law enforcement agents tracked every movement that respondent made in the vehicle he was driving. We need not identify with precision the point at which the tracking of this vehicle became a search, for the line was surely crossed before the 4-week mark. Other cases may present more difficult questions. But where uncertainty exists with respect to whether a certain period of GPS surveillance is long enough to constitute a Fourth Amendment search, the police may always seek a warrant.[[11](#)] We also need not consider whether prolonged GPS monitoring in the context of investigations involving extraordinary offenses would similarly intrude on a constitutionally protected sphere of privacy. In such cases, long-term tracking might have been mounted using previously available techniques.

For these reasons, I conclude that the lengthy monitoring that occurred in this case constituted a search under the Fourth Amendment. I therefore agree with the majority that the decision of the Court of Appeals must be affirmed.

Notes

[1](#) Although the record does not reveal the size or weight of the device used in this case, there is now a device in use that weighs two ounces and is the size of a credit card. Tr. of Oral Arg. 27.

[2](#) At common law, a suit for trespass to chattels could be maintained if there was a violation of the dignitary interest in the inviolability of chattels, but today there must be some actual damage to the chattel before the action can be maintained.

W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser & Keeton on Law of Torts* 87 (5th ed. 1984) (hereinafter *Prosser & Keeton*). Here, there was no actual damage to the vehicle to which the GPS device was attached.

3 The Court suggests that something like this might have occurred in 1791, but this would have required either a gigantic coach, a very tiny constable, or both-not to mention a constable with incredible fortitude and patience.

4 See, e.g., Cal. Family Code Ann. 760 (West 2004).

5 See Uniform Marital Property Act 4, 9A U. L. A. 116 (1998).

6 See, e.g., NPR, *The End of Privacy* <http://www.npr.org/series/114250076/the-end-of-privacy> (all Internet materials as visited Jan. 20, 2012, and available in Clerk of Courts case file); *Time Magazine*, *Everything About You Is Being Tracked-Get Over It*, Joel Stein, Mar. 21, 2011, Vol. 177, No. 11.

7 See Kerr, *The and New Technologies: Constitutional Myths and the Case for Caution*, 102 Mich. L. Rev. 801, 850-851 (2004) (hereinafter Kerr).

8 See CTIA Consumer Info, 50 Wireless Quick Facts, http://www.ctia.org/consumer_info/index.cfm/AID/10323.

9 See, e.g., *The bright side of sitting in traffic: Crowdsourcing road congestion data*, Google Blog, <http://googleblog.blogspot.com/2009/08/bright-side-of-sitting-in-traffic.html>.

10 Even with a radio transmitter like those used in *United States v. Knotts*, , or *United States v. Karo*, , such long-term surveillance would have been exceptionally demanding. The beepers used in those cases merely emit[ted] periodic signals that [could] be picked up by a radio receiver. *Knotts*, 460 U.S., at 277. The signal had a limited range and could be lost if the police did not stay close enough. Indeed, in *Knotts* itself, officers lost the signal from the beeper, and only with the assistance of a monitoring device located in a helicopter [was] the approximate location of the signal . . . picked up again about one hour later. *Id.*, at 278.

11 In this case, the agents obtained a warrant, but they did not comply with two of the warrants restrictions: They did not install the GPS device within the 10-day period required by the terms of the warrant and by Fed. Rule Crim. Proc. 41(e)(2)(B)(i), and they did not install the GPS device within the District of Columbia, as required by the terms of the warrant and by and Rule 41(b)(4). In the

courts below the Government did not argue, and has not argued here, that the does not impose these precise restrictions and that the violation of these restrictions does not demand the suppression of evidence obtained using the tracking device. See, e.g., *United States v. Gerber*, 994 F. 2d 1556, 1559-1560 (CA11 1993); *United States v. Burke*, 517 F. 2d 377, 386-387 (CA2 1975). Because it was not raised, that question is not before us.

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