

United States v. Jones

Supreme Court of the United States

November 8, 2011, Argued; January 23, 2012, Decided

No. 10-1259

Opinion

[*402] [**948] Justice **Scalia** delivered the opinion of the Court.

We decide whether the attachment of a Global-Positioning-System (GPS) tracking device to an individual's vehicle, and subsequent use of that device to monitor the vehicle's 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 Federal Bureau Investigation 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 [***917] to Jones's wife. A warrant issued, authorizing [*403] installation of the device in the District of Columbia and within [****5] 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 vehicle's movements, and once had to

replace the device's battery when the vehicle was parked in a different public lot in Maryland. By means of signals from multiple satellites, the device established the vehicle's 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 [****6] 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's 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, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (1983)*). Jones's 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 conspiracy. The Government introduced at trial the same GPS-derived locational data admitted in the first trial, which connected Jones [*404] to the alleged conspirators' stash house that contained \$850,000 in cash, 97 kilograms of [**949] 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 [****7] of the GPS device which, it said, violated the *Fourth Amendment*. *United States v. Maynard*, *615 F.3d 544, 392 U.S. App. D.C. 291*

¹In 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. (CA DC, 392 U.S. App. D.C. 291 2010)*.

(2010). The D. C. Circuit denied the Government's petition for rehearing en banc, with four judges dissenting. 625 F.3d 766, 393 U.S. App. D.C. 194 (2010). We granted certiorari, 564 U.S. 1036, 131 S. Ct. 3064; 180 L. Ed. 2d 885 (2011).

II

A

The Fourth Amendment provides in relevant part that HN1 LEdHN1 [1] “[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.” HN2 LEdHN2 [2] It is beyond dispute that a vehicle is an “effect” as that term is used in the Amendment **[**918]**. United States v. Chadwick, 433 U.S. 1, 12, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977). We hold that HN3 LEdHN3 [3] 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 **[*405]** “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

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 a Fourth Amendment objection, ibid., [****8] and the Government has not challenged that determination here. We therefore do not consider the Fourth Amendment significance of Jones's status.

search and seizure. Brower v. County of Inyo, 489 U.S. 593, 596, 109 S. Ct. 1378, 103 L. Ed. 2d 628 (1989) (quoting Boyd v. United States, 116 U.S. 616, 626, 6 S. Ct. 524, 29 L. Ed. 746 (1886)). In that case, Lord Camden expressed in plain terms HN4 LEdHN4 [4] 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; **[****9]** if he will tread upon his neighbour's ground, he must justify it by law.” Entick, supra, at 817.

HN5 LEdHN5 [5] 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, HN6 LEdHN6 [6] 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, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001); Kerr, The [**950] 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, 48 S. Ct. 564, 72 L. Ed. 944 (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, 48 S. Ct. 564, 72 L. Ed. 944.

Our later cases, of course, have deviated from that exclusively property-based approach. In Katz v. United States, [*406] 389 U.S. 347, 351, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967), we said that “the Fourth Amendment protects people, not places,” and **[****10]** found a violation in attachment of an eavesdropping device to a public telephone

[**919] 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, 88 S. Ct. 507, 19 L. Ed. 2d 576. See, e.g., *Bond v. United States*, 529 U.S. 334, 120 S. Ct. 1462, 146 L. Ed. 2d 365 (2000); *California v. Ciruolo*, 476 U.S. 207, 106 S. Ct. 1809, 90 L. Ed. 2d 210 (1986); *Smith v. Maryland*, 442 U.S. 735, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (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. HN7[7] LEdHN[7][7] [7] At bottom, we must "assur[e] preservation of that degree of privacy against government that existed when the *Fourth Amendment* was adopted." *Kyllo*, *supra*, at 34, 121 S. Ct. 2038, 150 L. Ed. 2d 94. 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, ****11] papers, and effects") it enumerates.³ *Katz* did not [*407] repudiate that

³Justice 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 181 L. Ed. 2d at 928 (opinion concurring in judgment). But in fact it posits a situation that is not far afield—a constable's concealing himself in the target's coach in order to track its movements. *Ibid*. There is no doubt that ****12] 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. LEdHN[8][8] [8] In any case, it is quite irrelevant whether there was an 18th-century analog. HN8[8] [8] 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 *Fourth Amendment*. Where, as here, the Government obtains information by physically intruding on a constitutionally protected area, such a search has undoubtedly occurred.

understanding. Less than two years later the Court upheld defendants' 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 dissent's contention that there was no *Fourth Amendment* violation "unless the conversational privacy of the homeowner himself is invaded."⁴ *Alderman v. United States*, [**951] 394 U.S. 165, 176, 89 S. Ct. 961, 22 L. Ed. 2d 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, 89 S. Ct. 961, 22 L. Ed. 2d 176.

More recently, in *Soldal v. Cook County*, 506 U.S. 56, 113 S. Ct. 538, 121 L. Ed. 2d 450 (1992), the Court unanimously rejected the argument that although a "seizure" had occurred "in a 'technical' sense" when a [**920] trailer home was forcibly removed, [****13] *id.*, at 62, 113 S. Ct. 538, 121 L. Ed. 2d 450, no *Fourth Amendment* violation occurred because law enforcement had not "invade[d] the [individuals'] privacy," *id.*, at 60, 113 S. Ct. 538, 121 L. Ed. 2d 450. HN9[9] LEdHN[9][9] [9] *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, 113 S. Ct. 538, 121 L. Ed. 2d 450. 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

⁴Thus, the concurrence's 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 181 L. Ed. 2d at 930, is foreclosed by the Court's opinion. The Court took as a given that the homeowner's "conversational privacy" had not been violated.

violation of the *Fourth Amendment*.” 460 U.S., at 286, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (opinion concurring in judgment). We have embodied that preservation [*408] 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, 119 S. Ct. 469, 142 L. Ed. 2d 373 (1998) (internal quotation marks omitted). Katz did not narrow the *Fourth Amendment's* scope.⁵

The Government [****15] 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, 103 S. Ct. 1081, 75 L. Ed. 2d 55. We said that there had been no infringement of Knotts' reasonable expectation of

privacy since the information obtained--the location of the automobile carrying [*409] 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 [**952] public.⁶ Id., at 281-282, 103 S. Ct. 1081, 75 L. Ed. 2d 55. But as we [***921] have discussed, HN11[¶] LEdHN/11[¶] [11] 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. [****16] 460 U.S., at 278, 103 S. Ct. 1081, 75 L. Ed. 2d 55. Knotts did not challenge that installation, and we specifically declined to consider its effect on the *Fourth Amendment* analysis. Id., at 279, 103 S. Ct. 1081, 75 L. Ed. 2d 55. *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, 104 S. Ct. 3296, 82 L. Ed. 2d 530 (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, 104 S. Ct. 3296, 82 L. Ed. 2d 530. 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, 104 S. Ct. 3296, 82 L. Ed. 2d 530. [****17] Thus, the specific question we considered was whether the installation “*with the consent of*

⁵ The concurrence notes that post-Katz we [****14] have explained that “ ‘an actual trespass is neither necessary nor sufficient to establish a constitutional violation.’ ” Post, at 181 L. Ed. 2d at 930 (quoting *United States v. Karo*, 468 U.S. 705, 713, 104 S. Ct. 3296, 82 L. Ed. 2d 530 (1984)). 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 individual's possessory interests in that property.” Post, at 181 L. Ed. 2d at 927 (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. LEdHN/10[¶] [10] Related to this, and similarly irrelevant, is the concurrence's point that, if analyzed separately, neither the installation of the device nor its use would constitute a *Fourth Amendment* search. See *ibid.* Of course not. HN10[¶] 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, 103 S. Ct. 1081, 75 L. Ed. 2d 55, 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.*

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, 104 S. Ct. 3296, 82 L. Ed. 2d 530 (emphasis added). We held not. The Government, we said, came into physical contact with the container only before it belonged to the defendant [*410] Karo; and the transfer of the container with the unmonitored beeper inside did not convey any information and thus did not invade Karo's privacy. See *id.*, at 712, 104 S. Ct. 3296, 82 L. Ed. 2d 530. 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 beeper's presence, even though it was used to monitor the container's location. Cf. On *Lee v. United States*, 343 U.S. 747, 751-752, 72 S. Ct. 967, 96 L. Ed. 1270 (1952) (no search or seizure where an informant, who was wearing a concealed microphone, was invited into the defendant's 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, 106 S. Ct. 960, 89 L. Ed. 2d 81 (1986), [****18] 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, 106 S. Ct. 960, 89 L. Ed. 2d 81. 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 respondent's 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 officer's momentary [***922] reaching into the interior of a vehicle did constitute a search.⁷ 475 U.S., at 114-115, 106 S.

Ct. 960, 89 L. Ed. 2d 81.

[**953] Finally, the Government's position gains little support from our conclusion in *Oliver v. United States*, 466 U.S. 170, 104 S. Ct. 1735, 80 L. Ed. 2d 214 [***411] (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, 104 S. Ct. 1735, 80 L. Ed. 2d 214. HNI2[☞] LEdHN[12][☞] [12] Quite simply, an open field, unlike the curtilage of a home, see *United States v. Dunn*, 480 U.S. 294, 300, 107 S. Ct. 1134, 94 L. Ed. 2d 326 (1987), is not one of those protected areas enumerated in the *Fourth Amendment*. *Oliver*, *supra*, at 176-177, 104 S. Ct. 1735, 80 L. Ed. 2d 214. See also *Hester v. United States*, 265 U.S. 57, 59, 44 S. Ct. 445, 68 L. Ed. 898 (1924). The Government's 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 181 L. Ed. 2d, at 927. 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

collection of paint scrapings from its exterior violated the *Fourth Amendment*. Whether the plurality said so because no search occurred or because the search was reasonable is unclear. Compare *id.*, at 591, 94 S. Ct. 2464, 41 L. Ed. 2d 325 (opinion of Blackmun, J.) (“[W]e fail to comprehend what expectation of privacy was infringed”), with *id.*, at 592, 94 S. Ct. 2464, 41 L. Ed. 2d 325 (“Under circumstances such as these, where probable cause exists, a warrantless [****19] examination of the exterior of a car is not unreasonable . . .”).

⁸ Thus, our theory is not that the *Fourth Amendment* is concerned with “any technical trespass that led to the gathering of evidence.” *Post*, at 181 L. Ed. 2d, at 928 (Alito, J., concurring in judgment) (emphasis added). The *Fourth Amendment* 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,” [****20] but not one “in the constitutional sense.” 466 U.S., at 170, 183, 104 S. Ct. 1735, 80 L. Ed. 2d 214.

⁷ The Government also points to *Cardwell v. Lewis*, 417 U.S. 583, 94 S. Ct. 2464, 41 L. Ed. 2d 325 (1974), in which the Court rejected the claim that the inspection of an impounded vehicle's tire tread and the

it was adopted. The concurrence does not share that belief. It would apply *exclusively* *Katz*'s 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 _____, 181 L. Ed. 2d, at 931. We entirely fail to understand that point. For unlike the concurrence, which would make *Katz* the *exclusive* test, HNI3[☞] LEdHN|13[☞] [13] we do not make trespass the exclusive test. Situations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis.

[*412] In fact, it is the concurrence's insistence on the exclusivity of the *Katz* test that needlessly leads us into “particularly vexing problems” in the present case. HNI4[☞] LEdHN|14[☞] [14] This Court has to date [****21] not deviated from the understanding that mere visual observation does not constitute a search. See *Kyllo*, 533 U.S., at 31-32, 121 S. Ct. 2038, 150 L. Ed. 2d 94. We accordingly held in *Knotts* that “[a] person [***923] 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, 103 S. Ct. 1081, 75 L. Ed. 2d 55. 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 _____, 181 L. Ed. 2d, at 933, our cases suggest that such visual observation is constitutionally [**954] 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

person's 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 _____, 181 L. Ed. 2d, at 934 (emphasis added). That introduces yet another [****22] 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 offens[e]” which may permit longer observation. See *post*, at _____, 181 L. Ed. 2d, at 934. 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 [*413] 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 indeed 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 [****23] 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, 56, n. 4, 123 S. Ct. 518, 154 L. Ed. 2d 466 (2002).

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

It is so ordered.