Supreme Court of the United States

UNITED STATES, Petitioner
v.
Antoine JONES.

Decided Jan. 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 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 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, 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 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 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 Amendment. *United States v. Maynard,* 615 F.3d 544 (2010). The D.C. Circuit denied the Government's petition for rehearing en banc, with four judges dissenting. 625 F.3d 766 (2010). We granted certiorari, 564 U.S. ——, 131 S.Ct. 3064, 180 L.Ed.2d 885 (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. We hold that the Government's installation of a GPS device on a target's vehicle, 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) . 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, 48 S.Ct. 564.

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.

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 "assur[e] 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.[FN3] *Katz* did not repudiate that 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." *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.

> FN3. 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 958 (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 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.
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> 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 Fourth Amendment. Where, as here, the Government obtains information by physically intruding on a constitutionally protected area,

such a search has undoubtedly occurred.

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 "snuf[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 Amendment's scope.[FN5]

> FN5. 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 960 (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 958 (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.
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> 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. 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.

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. 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 Karo's 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 beeper's presence, even though it was used to monitor the container's location. 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 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 reaching into the interior of a vehicle did constitute a search. 475 U.S., at 114–115.

Finally, the Government's 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. The Government's physical intrusion on such an area—unlike its intrusion on the "effect" at issue here—is of no Fourth Amendment significance.[FN8]

> FN8. Thus, our theory is *not* that the Fourth Amendment is concerned with "*any* technical trespass that led to the gathering of evidence." *Post,* at 958 (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," but not one "in the constitutional sense." 466 U.S., at 170, 183.

B

The concurrence begins by accusing us of applying "18th-century tort law." *Post,* at 957. 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 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 962. 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 concurrence's 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 963, 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 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 964 (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 offens[e]" which may permit longer observation. See *post,* at 964. 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 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 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.

Justice SOTOMAYOR, concurring.

I join the Court's opinion because I agree that a search within the meaning of the Fourth Amendment occurs, at a minimum, "[w]here, as here, the Government obtains information by physically intruding on a constitutionally protected area." *Ante,* at 950, n. 3. In this case, the Government installed a Global Positioning System (GPS) tracking device on respondent Antoine Jones' Jeep without a valid warrant and without Jones' consent, then used that device to monitor the Jeep's movements over the course of four weeks. The Government usurped Jones' property for the purpose of conducting surveillance on him, thereby invading privacy interests long afforded, and undoubtedly entitled to, Fourth Amendment protection.

Of course, the Fourth Amendment is not concerned only with trespassory intrusions on property. See, *e.g., Kyllo v. United States,* 533 U.S. 27, 31–33 (2001). Rather, even in the absence of a trespass, "a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Id.,* at 33. In *Katz,* this Court enlarged its then-prevailing focus on property rights by announcing that the reach of the Fourth Amendment does not "turn upon the presence or absence of a physical intrusion." *Id.,* at 353. As the majority's opinion makes clear, however, *Katz* 's reasonable-expectation-of-privacy test augmented, but did not displace or diminish, the common-law trespassory test that preceded it. *Ante,* at 951. Thus, "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." *United States v. Knotts,* 460 U.S. 276, 286 (1983) (Brennan, J., concurring in judgment). Justice ALITO's approach, which discounts altogether the constitutional relevance of the Government's physical intrusion on Jones' Jeep, erodes that longstanding protection for privacy expectations inherent in items of property that people possess or control. See *post,* at 959 – 961 (opinion concurring in judgment). By contrast, the trespassory test applied in the majority's opinion reflects an irreducible constitutional minimum: When the Government physically invades personal property to gather information, a search occurs. The reaffirmation of that principle suffices to decide this case.

Nonetheless, as Justice ALITO notes, physical intrusion is now unnecessary to many forms of surveillance. *Post,* at 961 – 963. With increasing regularity, the Government will be capable of duplicating the monitoring undertaken in this case by enlisting factory- or owner-installed vehicle tracking devices or GPS-enabled smartphones. See *United States v. Pineda–Moreno,* 617 F.3d 1120, 1125 (C.A.9 2010) (Kozinski, C.J., dissenting from denial of rehearing en banc). In cases of electronic or other novel modes of surveillance that do not depend upon a physical invasion on property, the majority opinion's trespassory test may provide little guidance. But "[s]ituations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis." *Ante,* at 953. As Justice ALITO incisively observes, the same technological advances that have made possible nontrespassory surveillance techniques will also affect the *Katz* test by shaping the evolution of societal privacy expectations. *Post,* at 962 – 963. Under that rubric, I agree with Justice ALITO that, at the very least, "longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy." *Post,* at 964.

In cases involving even short-term monitoring, some unique attributes of GPS surveillance relevant to the *Katz* analysis will require particular attention. GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. See, *e.g., People v. Weaver,* 12 N.Y.3d 433, 441–442 (2009) ("Disclosed in [GPS] data ... will be trips the indisputably private nature of which takes little imagination to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on"). The Government can store such records and efficiently mine them for information years into the future. *Pineda–Moreno,* 617 F.3d, at 1124 (opinion of Kozinski, C.J.). And because GPS monitoring is cheap in comparison to conventional surveillance techniques and, by design, proceeds surreptitiously, it evades the ordinary checks that constrain abusive law enforcement practices: "limited police resources and community hostility." *Illinois v. Lidster,* 540 U.S. 419, 426 (2004).

Awareness that the Government may be watching chills associational and expressive freedoms. And the Government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse. The net result is that GPS monitoring—by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the Government, in its unfettered discretion, chooses to track—may "alter the relationship between citizen and government in a way that is inimical to democratic society." *United States v. Cuevas–Perez,* 640 F.3d 272, 285 (C.A.7 2011) (Flaum, J., concurring).

I would take these attributes of GPS monitoring into account when considering the existence of a reasonable societal expectation of privacy in the sum of one's public movements. I would ask whether people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on. I do not regard as dispositive the fact that the Government might obtain the fruits of GPS monitoring through lawful conventional surveillance techniques. See *Kyllo,* 533 U.S., at 35, n. 2; *ante,* at 954 (leaving open the possibility that duplicating traditional surveillance "through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy"). I would also consider the appropriateness of entrusting to the Executive, in the absence of any oversight from a coordinate branch, a tool so amenable to misuse, especially in light of the Fourth Amendment's goal to curb arbitrary exercises of police power to and prevent "a too permeating police surveillance," *United States v. Di Re,* 332 U.S. 581, 595 (1948).

More fundamentally, it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. *E.g., Smith,* 442 U.S., at 742; *United States v. Miller,* 425 U.S. 435, 443 (1976). This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks. People disclose the phone numbers that they dial or text to their cellular providers; the URLs that they visit and the e-mail addresses with which they correspond to their Internet service providers; and the books, groceries, and medications they purchase to online retailers. Perhaps, as Justice ALITO notes, some people may find the "tradeoff" of privacy for convenience "worthwhile," or come to accept this "diminution of privacy" as "inevitable," *post,* at 962, and perhaps not. I for one doubt that people would accept without complaint the warrantless disclosure to the Government of a list of every Web site they had visited in the last week, or month, or year. But whatever the societal expectations, they can attain constitutionally protected status only if our Fourth Amendment jurisprudence ceases to treat secrecy as a prerequisite for privacy. I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection. See *Smith,* 442 U.S., at 749(Marshall, J., dissenting) ("Privacy is not a discrete commodity, possessed absolutely or not at all. Those who disclose certain facts to a bank or phone company for a limited business purpose need not assume that this information will be released to other persons for other purposes"); see also *Katz,* 389 U.S., at 351–352 ("[W]hat [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected").

Resolution of these difficult questions in this case is unnecessary, however, because the Government's physical intrusion on Jones' Jeep supplies a narrower basis for decision. I therefore join the majority's opinion.

Justice ALITO, with whom Justice GINSBURG,

Justice BREYER, and Justice KAGAN join, concurring in the judgment.

This case requires us to apply the Fourth Amendment's prohibition of unreasonable searches and seizures to a 21st-century surveillance technique, the use of a Global Positioning System (GPS) device to monitor a vehicle's movements 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 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. And for this reason, the Court concludes, the installation and use of the GPS device constituted a search. *Ante,* at 948 – 949.

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 respondent's 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 948 – 949, 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 vehicle's movements on public roads did not amount to a search. See *ante,* at 951.

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 950 (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 coach's owner?) The Court's theory seems to be that the concept of a search, as originally understood, comprehended any technical trespass that led to the gathering of evidence, but we know that this is incorrect. At common law, any unauthorized intrusion on private property was actionable, 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).

B

The Court's reasoning in this case is very similar to that in the Court's 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 defendant's 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 one's home or office no longer requires physical entry, for science has brought forth far more effective devices for the invasion of a person's 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 target's 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 "capacity 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 person's 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; *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.'"

Oliver, 466 U.S. at 183.

II

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 owner's 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 society's explicit recognition of a person's authority to act as he wishes in certain areas, and therefore should be considered in determining whether an individual's 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 Court's approach in this case.

I will briefly note four others. First, the Court's 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 car's 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 Court's 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 Court's theory would provide no protection.

Second, the Court's 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 Court's 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 respondent's wife, to whom the car was registered, turned it over to respondent for his exclusive use. See *ante,* at 951. But if the GPS had been attached prior to that time, the Court's 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 949, 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 respondent's wife gave him the keys, respondent would have no claim for trespass—and, presumably, no Fourth Amendment claim either.

Third, under the Court's 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 or a State that has adopted the Uniform Marital Property Act, 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 respondent's 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 Court's 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 (S.D.Ohio 1997); *Thrifty–Tel, Inc. v. Bezenek,* 46 Cal.App.4th 1559, 1566, n. 6, 54 Cal.Rptr.2d 468 (1996). But may such decisions be followed in applying the Court's trespass theory? Assuming that what matters under the Court's 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. 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.

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. 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, 48 S.Ct. 564, 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. For older phones, the accuracy of the location information depends on the density 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 phone's 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.[FN9] 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 person's 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.[FN10] 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.

FN10. Even with a radio transmitter like those used in *United States v. Knotts*, 460 U.S. 276, 103 S.Ct. 1081, 75 L.Ed.2d 55 (1983), or *United States v. Karo*, 468 U.S. 705, 104 S.Ct. 3296, 82 L.Ed.2d 530 (1984), 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, 103 S.Ct. 1081. 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.

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 person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable. See *Knotts*, 460 U.S., at 281–282, 103 S.Ct. 1081. But the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy. For such offenses, society's 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 individual's 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 surveil lance is long enough to constitute a Fourth Amendment search, the police may always seek a warrant. 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.

Supreme Court of the United States

Danny Lee KYLLO, Petitioner,
v.
UNITED STATES.

Decided June 11, 2001

Justice SCALIA delivered the opinion of the Court.

This case presents the question whether the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat within the home constitutes a "search" within the meaning of the Fourth Amendment.

I

In 1991 Agent William Elliott of the United States Department of the Interior came to suspect that marijuana was being grown in the home belonging to petitioner Danny Kyllo, part of a triplex on Rhododendron Drive in Florence, Oregon. Indoor marijuana growth typically requires high-intensity lamps. In order to determine whether an amount of heat was emanating from petitioner's home consistent with the use of such lamps, at 3:20 a.m. on January 16, 1992, Agent Elliott and Dan Haas used an Agema Thermovision 210 thermal imager to scan the triplex. Thermal imagers detect infrared radiation, which virtually all objects emit but which is not visible to the naked eye. The imager converts radiation into images based on relative warmth—black is cool, white is hot, shades of gray connote relative differences; in that respect, it operates somewhat like a video camera showing heat images. The scan of Kyllo's home took only a few minutes and was performed from the passenger seat of Agent Elliott's vehicle across the street from the front of the house and also from the street in back of the house. The scan showed that the roof over the garage and a side wall of petitioner's home were relatively hot compared to the rest of the home and substantially warmer than neighboring homes in the triplex. Agent Elliott concluded that petitioner was using halide lights to grow marijuana in his house, which indeed he was. Based on tips from informants, utility bills, and the thermal imaging, a Federal Magistrate Judge issued a warrant authorizing a search of petitioner's home, and the agents found an indoor growing operation involving more than 100 plants. Petitioner was indicted on one count of manufacturing marijuana, in violation of 21 U.S.C. § 841(a)(1). He unsuccessfully moved to suppress the evidence seized from his home and then entered a conditional guilty plea.

* * *

III

The Fourth Amendment provides 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." "At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States,* 365 U.S. 505, 511. With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.

On the other hand, the antecedent question whether or not a Fourth Amendment "search" has occurred is not so simple under our precedent. The permissibility of ordinary visual surveillance of a home used to be clear because, well into the 20th century, our Fourth Amendment jurisprudence was tied to common-law trespass. Visual surveillance was unquestionably lawful because " 'the eye cannot by the laws of England be guilty of a trespass.' " *Boyd v. United States,* 116 U.S. 616, 62 (1886) (quoting *Entick v. Carrington,* 19 How. St. Tr. 1029, 95 Eng. Rep. 807 (K.B.1765)). We have since decoupled violation of a person's Fourth Amendment rights from trespassory violation of his property, see *Rakas v. Illinois,* 439 U.S. 128, 143 (1978), but the lawfulness of warrantless visual surveillance of a home has still been preserved. As we observed in *California v. Ciraolo,* 476 U.S. 207, 213 (1986), "[t]he Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares."

One might think that the new validating rationale would be that examining the portion of a house that is in plain public view, while it is a "search" despite the absence of trespass, is not an "unreasonable" one under the Fourth Amendment. See *Minnesota v. Carter,* 525 U.S. 83, 104 (1998) (BREYER, J., concurring in judgment). But in fact we have held that visual observation is no "search" at all—perhaps in order to preserve somewhat more intact our doctrine that warrantless searches are presumptively unconstitutional. In assessing when a search is not a search, we have applied somewhat in reverse the principle first enunciated in *Katz v. United States,* 389 U.S. 347 (1967). *Katz* involved eavesdropping by means of an electronic listening device placed on the outside of a telephone booth—a location not within the catalog ("persons, houses, papers, and effects") that the Fourth Amendment protects against unreasonable searches.

We held that the Fourth Amendment nonetheless protected Katz from the warrantless eavesdropping because he "justifiably relied" upon the privacy of the telephone booth. *Id.,* at 353. As Justice Harlan's oft-quoted concurrence described it, a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable. See *id.,* at 361. We have subsequently applied this principle to hold that a Fourth Amendment search does *not* occur—even when the explicitly protected location of a *house* is concerned—unless "the individual manifested a subjective expectation of privacy in the object of the challenged search," and "society [is] willing to recognize that expectation as reasonable." *Ciraolo, supra,* at 211. We have applied this test in holding that it is not a search for the police to use a pen register at the phone company to determine what numbers were dialed in a private home, *Smith v. Maryland,* 442 U.S. 735, 743–744 (1979), and we have applied the test on two different occasions in holding that aerial surveillance of private homes and surrounding areas does not constitute a search, *Ciraolo, supra; Florida v. Riley,* 488 U.S. 445 (1989).

The present case involves officers on a public street engaged in more than naked-eye surveillance of a home. We have previously reserved judgment as to how much technological enhancement of ordinary perception from such a vantage point, if any, is too much. While we upheld enhanced aerial photography of an industrial complex in *Dow Chemical,* we noted that we found "it important that this is *not* an area immediately adjacent to a private home, where privacy expectations are most heightened," 476 U.S., at 237, n. 4 (emphasis in original).

III

It would be foolish to contend that the degree of privacy secured to citizens by the Fourth Amendment has been entirely unaffected by the advance of technology. For example, as the cases discussed above make clear, the technology enabling human flight has exposed to public view (and hence, we have said, to official observation) uncovered portions of the house and its curtilage that once were private. See *Ciraolo, supra,* at 215. The question we confront today is what limits there are upon this power of technology to shrink the realm of guaranteed privacy.

The *Katz* test—whether the individual has an expectation of privacy that society is prepared to recognize as reasonable—has often been criticized as circular, and hence subjective and unpredictable. While it may be difficult to refine *Katz* when the search of areas such as telephone booths, automobiles, or even the curtilage and uncovered portions of residences is at issue, in the case of the search of the interior of homes—the prototypical and hence most commonly litigated area of protected privacy—there is a ready criterion, with roots deep in the common law, of the minimal expectation of privacy that *exists,* and that is acknowledged to be *reasonable.* To withdraw protection of this minimum expectation would be to permit police technology to erode the privacy guaranteed by the Fourth Amendment. We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical "intrusion into a constitutionally protected area," *Silverman,* 365 U.S., at 512, constitutes a search—at least where (as here) the technology in question is not in general public use. This assures preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted. On the basis of this criterion, the information obtained by the thermal imager in this case was the product of a search.[FN2]

FN2. The dissent's repeated assertion that the thermal imaging did not obtain information regarding the interior of the home, *post,* at 2048 (opinion of STEVENS, J.), is simply inaccurate. A thermal imager reveals the relative heat of various rooms in the home. The dissent may not find that information particularly private or important, see *post,* at 2048, 2049, 2051, but there is no basis for saying it is not information regarding the interior of the home. The dissent's comparison of the thermal imaging to various circumstances in which outside observers might be able to perceive, without technology, the heat of the home—for example, by observing snowmelt on the roof, *post,* at 2048—is quite irrelevant. The fact that equivalent information could sometimes be obtained by other means does not make lawful the use of means that violate the Fourth Amendment. The police might, for example, learn how many people are in a particular house by setting up year-round surveillance; but that does not make breaking and entering to find out the same information lawful. In any event, on the night of January 16, 1992, no outside observer could have discerned the relative heat of Kyllo's home without thermal imaging.

The Government maintains, however, that the thermal imaging must be upheld because it detected

"only heat radiating from the external surface of the house," Brief for United States 26. The dissent makes this its leading point, see *post,* at 2047, contending that there is a fundamental difference between what it calls "off-the-wall" observations and "through-the-wall surveillance." But just as a thermal imager captures only heat emanating from a house, so also a powerful directional microphone picks up only sound emanating from a house-and a satellite capable of scanning from many miles away would pick up only visible light emanating from a house. We rejected such a mechanical interpretation of the Fourth Amendment in *Katz,* where the eavesdropping device picked up only sound waves that reached the exterior of the phone booth. Reversing that approach would leave the homeowner at the mercy of advancing technology—including imaging technology that could discern all human activity in the home. While the technology used in the present case was relatively crude, the rule we adopt must take account of more sophisticated systems that are already in use or in development.

The dissent's reliance on the distinction between "off-the-wall" and "through-the-wall" observation is entirely incompatible with the dissent's belief, which we discuss below, that thermal-imaging observations of the intimate details of a home are impermissible. The most sophisticated thermal-imaging devices continue to measure heat "off-the-wall" rather than "through-the-wall"; the dissent's disapproval of those more sophisticated thermal-imaging devices, see *post,* at 2051, is an acknowledgement that there is no substance to this distinction. As for the dissent's extraordinary assertion that anything learned through "an inference" cannot be a search, see *post,* at 2048–2049, that would validate even the "through-the-wall" technologies that the dissent purports to disapprove. Surely the dissent does not believe that the through-the-wall radar or ultrasound technology produces an 8–by–10 Kodak glossy that needs no analysis (*i.e.,* the making of inferences). And, of course, the novel proposition that inference insulates a search is blatantly contrary to *United States v. Karo,* 468 U.S. 705 (1984), where the police "inferred" from the activation of a beeper that a certain can of ether was in the home. The police activity was held to be a search, and the search was held unlawful.

The Government also contends that the thermal imaging was constitutional because it did not "detect private activities occurring in private areas," Brief for United States 22. It points out that in *Dow Chemical* we observed that the enhanced aerial photography did not reveal any "intimate details." 476 U.S., at 238. *Dow Chemical,* however, involved enhanced aerial photography of an industrial complex, which does not share the Fourth Amendment sanctity of the home. The Fourth Amendment's protection of the home has never been tied to measurement of the quality or quantity of information obtained. In *Silverman,* for example, we made clear that any physical invasion of the structure of the home, "by even a fraction of an inch," was too much, 365 U.S., at 512, and there is certainly no exception to the warrant requirement for the officer who barely cracks open the front door and sees nothing but the nonintimate rug on the vestibule floor. In the home, our cases show, *all* details are intimate details, because the entire area is held safe from prying government eyes. Thus, in *Karo, supra,* the only thing detected was a can of ether in the home; and in *Arizona v. Hicks,* 480 U.S. 321 (1987), the only thing detected by a physical search that went beyond what officers lawfully present could observe in "plain view" was the registration number of a phonograph turntable. These were intimate details because they were details of the home, just as was the detail of how warm—or even how relatively warm—Kyllo was heating his residence.

Limiting the prohibition of thermal imaging to "intimate details" would not only be wrong in principle; it would be impractical in application, failing to provide "a workable accommodation between the needs of law enforcement and the interests protected by the Fourth Amendment," *Oliver v. United States,* 466 U.S. 170, 181 (1984). To begin with, there is no necessary connection between the sophistication of the surveillance equipment and the "intimacy" of the details that it observes—which means that one cannot say (and the police cannot be assured) that use of the relatively crude equipment at issue here will always be lawful. The Agema Thermovision 210 might disclose, for example, at what hour each night the lady of the house takes her daily sauna and bath—a detail that many would consider "intimate"; and a much more sophisticated system might detect nothing more intimate than the fact that someone left a closet light on. We could not, in other words, develop a rule approving only that through-the-wall surveillance which identifies objects no smaller than 36 by 36 inches, but would have to develop a jurisprudence specifying which home activities are "intimate" and which are not. And even when (if ever) that jurisprudence were fully developed, no police officer would be able to know *in advance* whether his through-the-wall surveillance picks up "intimate" details—and thus would be unable to know in advance whether it is constitutional.

The dissent's proposed standard—whether the technology offers the "functional equivalent of actual

presence in the area being searched," *post,* at 2050—would seem quite similar to our own at first blush. The dissent concludes that *Katz* was such a case, but then inexplicably asserts that if the same listening device only revealed the volume of the conversation, the surveillance would be permissible, *post,* at 2051. Yet if, without technology, the police could not discern volume without being actually present in the phone booth, Justice STEVENS should conclude a search has occurred. Cf. *Karo,* 468 U.S., at 735, 104 S.Ct. 3296 (STEVENS, J., concurring in part and dissenting in part) ("I find little comfort in the Court's notion that no invasion of privacy occurs until a listener obtains some significant information by use of the device .... A bathtub is a less private area when the plumber is present even if his back is turned"). The same should hold for the interior heat of the home if only a person present in the home could discern the heat. Thus the driving force of the dissent, despite its recitation of the above standard, appears to be a distinction among different types of information—whether the "homeowner would even care if anybody noticed," *post,* at 2051. The dissent offers no practical guidance for the application of this standard, and for reasons already discussed, we believe there can be none. The people in their houses, as well as the police, deserve more precision.[FN6]

> FN6. The dissent argues that we have injected potential uncertainty into the constitutional analysis by noting that whether or not the technology is in general public use may be a factor. See *post,* at 2050. That quarrel, however, is not with us but with this Court's precedent. See *Ciraolo, supra,* at 215, ("In an age where private and commercial flight in the public airways is routine, it is unreasonable for respondent to expect that his marijuana plants were constitutionally protected from being observed with the naked eye from an altitude of 1,000 feet"). Given that we can quite confidently say that thermal imaging is not "routine," we decline in this case to reexamine that factor.

We have said that the Fourth Amendment draws "a firm line at the entrance to the house," *Payton,* 445 U.S., at 590. That line, we think, must be not only firm but also bright—which requires clear specification of those methods of surveillance that require a warrant. While it is certainly possible to conclude from the videotape of the thermal imaging that occurred in this case that no "significant" compromise of the homeowner's privacy has occurred, we must take the long view, from the original meaning of the Fourth Amendment forward.

> "The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." *Carroll v. United States,* 267 U.S. 132, 149, 45 S.Ct. 280, 69 L.Ed. 543 (1925).

Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a "search" and is presumptively unreasonable without a warrant.

Since we hold the Thermovision imaging to have been an unlawful search, it will remain for the District Court to determine whether, without the evidence it provided, the search warrant issued in this case was supported by probable cause—and if not, whether there is any other basis for supporting admission of the evidence that the search pursuant to the warrant produced.

* * *

The judgment of the Court of Appeals is reversed; the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice STEVENS, with whom THE CHIEF JUSTICE, Justice O'CONNOR, and Justice KENNEDY join, dissenting.

There is, in my judgment, a distinction of constitutional magnitude between "through-the-wall surveillance" that gives the observer or listener direct access to information in a private area, on the one hand, and the thought processes used to draw inferences from information in the public domain, on the other hand. The Court has crafted a rule that purports to deal with direct observations of the inside of the home, but the case before us merely involves indirect deductions from "off-the-wall" surveillance, that is, observations of the exterior of the home. Those observations were made with a fairly primitive thermal imager that gathered data exposed on the outside of petitioner's home but did not invade any constitutionally protected interest in privacy. Moreover, I believe that the supposedly "bright-line" rule the Court has created in response to its concerns about future tech-

nological developments is unnecessary, unwise, and inconsistent with the Fourth Amendment.

I

There is no need for the Court to craft a new rule to decide this case, as it is controlled by established principles from our Fourth Amendment jurisprudence. One of those core principles, of course, is that "searches and seizures *inside a home* without a warrant are presumptively unreasonable." *Payton v. New York,* 445 U.S. 573, 586 (1980) (emphasis added). But it is equally well settled that searches and seizures of property in plain view are presumptively reasonable. Whether that property is residential or commercial, the basic principle is the same: " 'What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.' " *California v. Ciraolo,* 476 U.S. 207, 213 (1986). That is the principle implicated here.

While the Court "take[s] the long view" and decides this case based largely on the potential of yet-to-be-developed technology that might allow "through-the-wall surveillance," this case involves nothing more than off-the-wall surveillance by law enforcement officers to gather information exposed to the general public from the outside of petitioner's home. All that the infrared camera did in this case was passively measure heat emitted from the exterior surfaces of petitioner's home; all that those measurements showed were relative differences in emission levels, vaguely indicating that some areas of the roof and outside walls were warmer than others. As still images from the infrared scans show, see Appendix, *infra,* no details regarding the interior of petitioner's home were revealed. Unlike an x-ray scan, or other possible "through-the-wall" techniques, the detection of infrared radiation emanating from the home did not accomplish "an unauthorized physical penetration into the premises," *Silverman v. United States,* 365 U.S. 505, 509 (1961), nor did it "obtain information that it could not have obtained by observation from outside the curtilage of the house," *United States v. Karo,* 468 U.S. 705, 715 (1984).

Indeed, the ordinary use of the senses might enable a neighbor or passerby to notice the heat emanating from a building, particularly if it is vented, as was the case here. Additionally, any member of the public might notice that one part of a house is warmer than another part or a nearby building if, for example, rainwater evaporates or snow melts at different rates across its surfaces. Such use of the senses would not convert into an unreasonable search if, instead, an adjoining neighbor allowed an officer onto her property to verify her perceptions with a sensitive thermometer. Nor, in my view, does such observation become an unreasonable search if made from a distance with the aid of a device that merely discloses that the exterior of one house, or one area of the house, is much warmer than another. Nothing more occurred in this case.

Thus, the notion that heat emissions from the outside of a dwelling are a private matter implicating the protections of the Fourth Amendment (the text of which guarantees the right of people "to be secure *in* their ... houses" against unreasonable searches and seizures (emphasis added)) is not only unprecedented but also quite difficult to take seriously. Heat waves, like aromas that are generated in a kitchen, or in a laboratory or opium den, enter the public domain if and when they leave a building. A subjective expectation that they would remain private is not only implausible but also surely not "one that society is prepared to recognize as 'reasonable.' " *Katz,* 389 U.S., at 361 (Harlan, J., concurring).

To be sure, the homeowner has a reasonable expectation of privacy concerning what takes place within the home, and the Fourth Amendment's protection against physical invasions of the home should apply to their functional equivalent. But the equipment in this case did not penetrate the walls of petitioner's home, and while it did pick up "details of the home" that were exposed to the public, *ante,* at 2045, it did not obtain "any information regarding the *interior* of the home," *ante,* at 2043 (emphasis added). In the Court's own words, based on what the thermal imager "showed" regarding the outside of petitioner's home, the officers "concluded" that petitioner was engaging in illegal activity inside the home. *Ante,* at 2041. It would be quite absurd to characterize their thought processes as "searches," regardless of whether they inferred (rightly) that petitioner was growing marijuana in his house, or (wrongly) that "the lady of the house [was taking] her daily sauna and bath." *Ante,* at 2045. In either case, the only conclusions the officers reached concerning the interior of the home were at least as indirect as those that might have been inferred from the contents of discarded garbage, see *California v. Greenwood,* 486 U.S. 35 (1988), or pen register data, see *Smith v. Maryland,* 442 U.S. 735 (1979), or, as in this case, subpoenaed utility records, see 190 F.3d 1041, 1043 (C.A.9 1999). For the first time in its history, the Court assumes that an inference can amount to a Fourth Amendment violation. See *ante,* at 2044–2045.

Notwithstanding the implications of today's de-

cision, there is a strong public interest in avoiding constitutional litigation over the monitoring of emissions from homes, and over the inferences drawn from such monitoring. Just as "the police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public," *Greenwood,* 486 U.S., at 41, so too public officials should not have to avert their senses or their equipment from detecting emissions in the public domain such as excessive heat, traces of smoke, suspicious odors, odorless gases, airborne particulates, or radioactive emissions, any of which could identify hazards to the community. In my judgment, monitoring such emissions with "sense-enhancing technology," *ante,* at 2043, and drawing useful conclusions from such monitoring, is an entirely reasonable public service.

On the other hand, the countervailing privacy interest is at best trivial. After all, homes generally are insulated to keep heat in, rather than to prevent the detection of heat going out, and it does not seem to me that society will suffer from a rule requiring the rare homeowner who both intends to engage in uncommon activities that produce extraordinary amounts of heat, and wishes to conceal that production from outsiders, to make sure that the surrounding area is well insulated. Cf. *United States v. Jacobsen,* 466 U.S. 109 (1984) ("The concept of an interest in privacy that society is prepared to recognize as reasonable is, by its very nature, critically different from the mere expectation, however well justified, that certain facts will not come to the attention of the authorities"). The interest in concealing the heat escaping from one's house pales in significance to "the chief evil against which the wording of the Fourth Amendment is directed," the "physical entry of the home," *United States v. United States Dist. Court for Eastern Dist. of Mich.,* 407 U.S. 297, 313 (1972), and it is hard to believe that it is an interest the Framers sought to protect in our Constitution.

Since what was involved in this case was nothing more than drawing inferences from off-the-wall surveillance, rather than any "through-the-wall" surveillance, the officers' conduct did not amount to a search and was perfectly reasonable.

II

Instead of trying to answer the question whether the use of the thermal imager in this case was even arguably unreasonable, the Court has fashioned a rule that is intended to provide essential guidance for the day when "more sophisticated systems" gain the "ability to 'see' through walls and other opaque barriers." *Ante,* at 2044, and n. 3. The newly minted rule encompasses "obtaining [1] by sense-enhancing technology [2] any information regarding the interior of the home [3] that could not otherwise have been obtained without physical intrusion into a constitutionally protected area ... [4] at least where (as here) the technology in question is not in general public use." *Ante,* at 2043 (internal quotation marks omitted). In my judgment, theCourt's new rule is at once too broad and too narrow, and is not justified by the Court's explanation for its adoption. As I have suggested, I would not erect a constitutional impediment to the use of sense-enhancing technology unless it provides its user with the functional equivalent of actual presence in the area being searched.

Despite the Court's attempt to draw a line that is "not only firm but also bright," *ante,* at 2046, the contours of its new rule are uncertain because its protection apparently dissipates as soon as the relevant technology is "in general public use," *ante,* at 2043. Yet how much use is general public use is not even hinted at by the Court's opinion, which makes the somewhat doubtful assumption that the thermal imager used in this case does not satisfy that criterion.[FN5] In any event, putting aside its lack of clarity, this criterion is somewhat perverse because it seems likely that the threat to privacy will grow, rather than recede, as the use of intrusive equipment becomes more readily available.

> FN5. The record describes a device that numbers close to a thousand manufactured units; that has a predecessor numbering in the neighborhood of 4,000 to 5,000 units; that competes with a similar product numbering from 5,000 to 6,000 units; and that is "readily available to the public" for commercial, personal, or law enforcement purposes, and is just an 800–number away from being rented from "half a dozen national companies" by anyone who wants one. App. 18. Since, by virtue of the Court's new rule, the issue is one of first impression, perhaps it should order an evidentiary hearing to determine whether these facts suffice to establish "general public use."

It is clear, however, that the category of "sense-enhancing technology" covered by the new rule, *ibid.,* is far too broad. It would, for example, embrace potential mechanical substitutes for dogs trained to react when they sniff narcotics. But in *United States v. Place,* 462 U.S. 696, 707 (1983), we held that a dog sniff that "discloses only the presence

or absence of narcotics" does "not constitute a 'search' within the meaning of the Fourth Amendment," and it must follow that sense-enhancing equipment that identifies nothing but illegal activity is not a search either. Nevertheless, the use of such a device would be unconstitutional under the Court's rule, as would the use of other new devices that might detect the odor of deadly bacteria or chemicals for making a new type of high explosive, even if the devices (like the dog sniffs) are "so limited both in the manner in which" they obtain information and "in the content of the information" they reveal. *Ibid.* If nothing more than that sort of information could be obtained by using the devices in a public place to monitor emissions from a house, then their use would be no more objectionable than the use of the thermal imager in this case.

The application of the Court's new rule to "any information regarding the interior of the home," *ante,* at 2043, is also unnecessarily broad. If it takes sensitive equipment to detect an odor that identifies criminal conduct and nothing else, the fact that the odor emanates from the interior of a home should not provide it with constitutional protection. See *supra,* at 2050 and this page. The criterion, moreover, is too sweeping in that information "regarding" the interior of a home apparently is not just information obtained through its walls, but also information concerning the outside of the building that could lead to (however many) inferences "regarding" what might be inside. Under that expansive view, I suppose, an officer using an infrared camera to observe a man silently entering the side door of a house at night carrying a pizza might conclude that its interior is now occupied by someone who likes pizza, and by doing so the officer would be guilty of conducting an unconstitutional "search" of the home.

Because the new rule applies to information regarding the "interior" of the home, it is too narrow as well as too broad. Clearly, a rule that is designed to protect individuals from the overly intrusive use of sense-enhancing equipment should not be limited to a home. If such equipment did provide its user with the functional equivalent of access to a private place—such as, for example, the telephone booth involved in *Katz,* or an office building—then the rule should apply to such an area as well as to a home. See *Katz,* 389 U.S., at 351 ("[T]he Fourth Amendment protects people, not places").

The final requirement of the Court's new rule, that the information "could not otherwise have been obtained without physical intrusion into a constitutionally protected area," *ante,* at 2043 (internal quotation marks omitted), also extends too far as the Court applies it. As noted, the Court effectively treats the mental process of analyzing data obtained from external sources as the equivalent of a physical intrusion into the home. See *supra,* at 2048–2049. As I have explained, however, the process of drawing inferences from data in the public domain should not be characterized as a search.

The two reasons advanced by the Court as justifications for the adoption of its new rule are both unpersuasive. First, the Court suggests that its rule is compelled by our holding in *Katz,* because in that case, as in this, the surveillance consisted of nothing more than the monitoring of waves emanating from a private area into the public domain. See *ante,* at 2044. Yet there are critical differences between the cases. In *Katz,* the electronic listening device attached to the outside of the phone booth allowed the officers to pick up the content of the conversation inside the booth, making them the functional equivalent of intruders because they gathered information that was otherwise available only to someone inside the private area; it would be as if, in this case, the thermal imager presented a view of the heat-generating activity inside petitioner's home. By contrast, the thermal imager here disclosed only the relative amounts of heat radiating from the house; it would be as if, in *Katz,* the listening device disclosed only the relative volume of sound leaving the booth, which presumably was discernible in the public domain. Surely, there is a significant difference between the general and well-settled expectation that strangers will not have direct access to the contents of private communications, on the one hand, and the rather theoretical expectation that an occasional homeowner would even care if anybody noticed the relative amounts of heat emanating from the walls of his house, on the other. It is pure hyperbole for the Court to suggest that refusing to extend the holding of *Katz* to this case would leave the homeowner at the mercy of "technology that could discern all human activity in the home." *Ante,* at 2044.

Second, the Court argues that the permissibility of "through-the-wall surveillance" cannot depend on a distinction between observing "intimate details" such as "the lady of the house [taking] her daily sauna and bath," and noticing only "the nonintimate rug on the vestibule floor" or "objects no smaller than 36 by 36 inches." *Ante,* at 2045–2046. This entire argument assumes, of course, that the thermal imager in this case could or did perform "through-the-wall surveillance" that could identify any detail "that would previously have been unknowable without physical intrusion." *Ante,* at 2046. In fact, the device could not, see n. 1,

supra, and did not, see Appendix, *infra*, enable its user to identify either the lady of the house, the rug on the vestibule floor, or anything else inside the house, whether smaller or larger than 36 by 36 inches. Indeed, the vague thermal images of petitioner's home that are reproduced in the Appendix were submitted by him to the District Court as part of an expert report raising the question whether the device could even take "accurate, consistent infrared images" of the *outside* of his house. Defendant's Exh. 107, p. 4. But even if the device could reliably show extraordinary differences in the amounts of heat leaving his home, drawing the inference that there was something suspicious occurring inside the residence—a conclusion that officers far less gifted than Sherlock Holmes would readily draw—does not qualify as "through-the-wall surveillance," much less a Fourth Amendment violation.

III

Although the Court is properly and commendably concerned about the threats to privacy that may flow from advances in the technology available to the law enforcement profession, it has unfortunately failed to heed the tried and true counsel of judicial restraint. Instead of concentrating on the rather mundane issue that is actually presented by the case before it, the Court has endeavored to craft an all-encompassing rule for the future. It would be far wiser to give legislators an unimpeded opportunity to grapple with these emerging issues rather than to shackle them with prematurely devised constitutional constraints.

I respectfully dissent.

* * * * *

Supreme Court of the United States

ILLINOIS, Petitioner,
v.
Roy I. CABALLES.

Decided Jan. 24, 2005.

Justice STEVENS delivered the opinion of the Court.

Illinois State Trooper Daniel Gillette stopped respondent for speeding on an interstate highway. When Gillette radioed the police dispatcher to report the stop, a second trooper, Craig Graham, a member of the Illinois State Police Drug Interdiction Team, overheard the transmission and immediately headed for the scene with his narcotics-detection dog. When they arrived, respondent's car was on the shoulder of the road and respondent was in Gillette's vehicle. While Gillette was in the process of writing a warning ticket, Graham walked his dog around respondent's car. The dog alerted at the trunk. Based on that alert, the officers searched the trunk, found marijuana, and arrested respondent. The entire incident lasted less than 10 minutes.

Respondent was convicted of a narcotics offense and sentenced to 12 years' imprisonment and a $256,136 fine. The trial judge denied his motion to suppress the seized evidence and to quash his arrest. He held that the officers had not unnecessarily prolonged the stop and that the dog alert was sufficiently reliable to provide probable cause to conduct the search. Although the Appellate Court affirmed, the Illinois Supreme Court reversed, concluding that because the canine sniff was performed without any " 'specific and articulable facts' " to suggest drug activity, the use of the dog "unjustifiably enlarg[ed] the scope of a routine traffic stop into a drug investigation." 207 Ill.2d 504, 510, 280 Ill.Dec. 277, 802 N.E.2d 202, 205 (2003).

The question on which we granted certiorari, 541 U.S. 972, 124 S.Ct. 1875, 158 L.Ed.2d 466 (2004), is narrow: "Whether the Fourth Amendment requires reasonable, articulable suspicion to justify using a drug-detection dog to sniff a vehicle during a legitimate traffic stop." Thus, we proceed on the assumption that the officer conducting the dog sniff had no information about respondent except that he had been stopped for speeding; accordingly, we have omitted any reference to facts about respondent that might have triggered a modicum of suspicion.

Here, the initial seizure of respondent when he was stopped on the highway was based on probable cause and was concededly lawful. It is nevertheless clear that a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution. *United States v. Jacobsen*, 466 U.S. 109, 124, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984). A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission. In an earlier case involving a dog sniff that occurred during an unreasonably prolonged traffic stop, the Illinois Supreme Court held that use of the dog and the subsequent discovery of contraband were the product of an unconstitutional seizure. *People v. Cox*, 202 Ill.2d 462, 270 Ill.Dec. 81, 782 N.E.2d 275 (2002). We may assume that a similar result would be warranted in this case if the dog sniff had been conducted while respondent was being unlawfully detained.

In the state-court proceedings, however, the judges carefully reviewed the details of Officer Gillette's conversations with respondent and the precise timing of his radio transmissions to the dispatcher to determine whether he had improperly extended the duration of the stop to enable the dog sniff to occur. We have not recounted those details because we accept the state court's conclusion that the duration of the stop in this case was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop.

Despite this conclusion, the Illinois Supreme Court held that the initially lawful traffic stop became an unlawful seizure solely as a result of the canine sniff that occurred outside respondent's stopped car. That is, the court characterized the dog sniff as the cause rather than the consequence of a constitutional violation. In its view, the use of the dog converted the citizen-police encounter from a lawful traffic stop into a drug investigation, and because the shift in purpose was not supported by any reasonable suspicion that respondent possessed narcotics, it was unlawful. In our view, conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner, unless the dog sniff itself infringed respondent's constitutionally protected interest in privacy. Our cases hold that it did not.

Official conduct that does not "compromise any legitimate interest in privacy" is not a search subject to the Fourth Amendment. *Jacobsen*, 466 U.S., at 123,

104 S.Ct. 1652. We have held that any interest in possessing contraband cannot be deemed "legitimate," and thus, governmental conduct that *only* reveals the possession of contraband "compromises no legitimate privacy interest." *Ibid.* This is because the expectation "that certain facts will not come to the attention of the authorities" is not the same as an interest in "privacy that society is prepared to consider reasonable." *Id.*, at 122, 104 S.Ct. 1652 (punctuation omitted). In *United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983), we treated a canine sniff by a well-trained narcotics-detection dog as "*sui generis* " because it "discloses only the presence or absence of narcotics, a contraband item." *Id.*, at 707, 103 S.Ct. 2637; see also *Indianapolis v. Edmond*, 531 U.S. 32, 40, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000). Respondent likewise concedes that "drug sniffs are designed, and if properly conducted are generally likely, to reveal only the presence of contraband." Brief for Respondent 17. Although respondent argues that the error rates, particularly the existence of false positives, call into question the premise that drug-detection dogs alert only to contraband, the record contains no evidence or findings that support his argument. Moreover, respondent does not suggest that an erroneous alert, in and of itself, reveals any legitimate private information, and, in this case, the trial judge found that the dog sniff was sufficiently reliable to establish probable cause to conduct a full-blown search of the trunk.

Accordingly, the use of a well-trained narcotics-detection dog—one that "does not expose noncontraband items that otherwise would remain hidden from public view," *Place*, 462 U.S., at 707, 103 S.Ct. 2637—during a lawful traffic stop, generally does not implicate legitimate privacy interests. In this case, the dog sniff was performed on the exterior of respondent's car while he was lawfully seized for a traffic violation. Any intrusion on respondent's privacy expectations does not rise to the level of a constitutionally cognizable infringement.

This conclusion is entirely consistent with our recent decision that the use of a thermal-imaging device to detect the growth of marijuana in a home constituted an unlawful search. *Kyllo v. United States*, 533 U.S. 27, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001). Critical to that decision was the fact that the device was capable of detecting lawful activity—in that case, intimate details in a home, such as "at what hour each night the lady of the house takes her daily sauna and bath." *Id.*, at 38, 121 S.Ct. 2038. The legitimate expectation that information about perfectly lawful activity will remain private is categorically distinguishable from respondent's hopes or expectations concerning the nondetection of contraband in the trunk of his car. A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment.

The judgment of the Illinois Supreme Court is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice SOUTER, dissenting.

I would hold that using the dog for the purposes of determining the presence of marijuana in the car's trunk was a search unauthorized as an incident of the speeding stop and unjustified on any other ground. I would accordingly affirm the judgment of the Supreme Court of Illinois, and I respectfully dissent.

In *United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983), we categorized the sniff of the narcotics-seeking dog as *"sui generis"* under the Fourth Amendment and held it was not a search. *Id.*, at 707, 103 S.Ct. 2637. The classification rests not only upon the limited nature of the intrusion, but on a further premise that experience has shown to be untenable, the assumption that trained sniffing dogs do not err. What we have learned about the fallibility of dogs in the years since *Place* was decided would itself be reason to call for reconsidering *Place's* decision against treating the intentional use of a trained dog as a search. The portent of this very case, however, adds insistence to the call, for an uncritical adherence to *Place* would render the Fourth Amendment indifferent to suspicionless and indiscriminate sweeps of cars in parking garages and pedestrians on sidewalks; if a sniff is not preceded by a seizure subject to Fourth Amendment notice, it escapes Fourth Amendment review entirely unless it is treated as a search. We should not wait for these developments to occur before rethinking *Place's* analysis, which invites such untoward consequences.* * *

At the heart both of *Place* and the Court's opinion today is the proposition that sniffs by a trained dog are *sui generis* because a reaction by the dog in going alert is a response to nothing but the presence of contraband. See *ibid.* ("[T]he sniff discloses only the presence or absence of narcotics, a contraband item"); *ante*, at 838 (assuming that "a canine sniff by a well-trained narcotics-detection dog" will only reveal

" 'the presence or absence of narcotics, a contraband item' " (quoting *Place, supra,* at 707, 103 S.Ct. 2637)). Hence, the argument goes, because the sniff can only reveal the presence of items devoid of any legal use, the sniff "does not implicate legitimate privacy interests" and is not to be treated as a search. *Ante,* at 838.* * *

The infallible dog, however, is a creature of legal fiction. Although the Supreme Court of Illinois did not get into the sniffing averages of drug dogs, their supposed infallibility is belied by judicial opinions describing well-trained animals sniffing and alerting with less than perfect accuracy, whether owing to errors by their handlers, the limitations of the dogs themselves, or even the pervasive contamination of currency by cocaine. See, *e.g., United States v. Kennedy,* 131 F.3d 1371, 1378 (C.A.10 1997) (describing a dog that had a 71% accuracy rate); *United States v. Scarborough,* 128 F.3d 1373, 1378, n. 3 (C.A.10 1997) (describing a dog that erroneously alerted 4 times out of 19 while working for the postal service and 8% of the time over its entire career); *United States v. Limares,* 269 F.3d 794, 797 (C.A.7 2001) (accepting as reliable a dog that gave false positives between 7% and 38% of the time); *Laime v. State,* 347 Ark. 142, 159, 60 S.W.3d 464, 476 (2001) (speaking of a dog that made between 10 and 50 errors); *United States v. $242,484.00,* 351 F.3d 499, 511 (C.A.11 2003) (noting that because as much as 80% of all currency in circulation contains drug residue, a dog alert "is of little value"), vacated on other grounds by rehearing en banc, 357 F.3d 1225 (C.A.11 2004); *United States v. Carr,* 25 F.3d 1194, 1214–1217 (C.A.3 1994) (Becker, J., concurring in part and dissenting in part) ("[A] substantial portion of United States currency ... is tainted with sufficient traces of controlled substances to cause a trained canine to alert to their presence"). Indeed, a study cited by Illinois in this case for the proposition that dog sniffs are "generally reliable" shows that dogs in artificial testing situations return false positives anywhere from 12.5% to 60% of the time, depending on the length of the search. See Reply Brief for Petitioner 13; Federal Aviation Admin., K. Garner et al., Duty Cycle of the Detector Dog: A Baseline Study 12 (Apr.2001) (prepared by Auburn U. Inst. for Biological Detection Systems). In practical terms, the evidence is clear that the dog that alerts hundreds of times will be wrong dozens of times.

Once the dog's fallibility is recognized, however, that ends the justification claimed in *Place* for treating the sniff as *sui generis* under the Fourth Amendment: the sniff alert does not necessarily signal hidden contraband, and opening the container or enclosed space whose emanations the dog has sensed will not necessarily reveal contraband or any other evidence of crime. This is not, of course, to deny that a dog's reaction may provide reasonable suspicion, or probable cause, to search the container or enclosure; the Fourth Amendment does not demand certainty of success to justify a search for evidence or contraband. The point is simply that the sniff and alert cannot claim the certainty that *Place* assumed, both in treating the deliberate use of sniffing dogs as *sui generis* and then taking that characterization as a reason to say they are not searches subject to Fourth Amendment scrutiny. And when that aura of uniqueness disappears, there is no basis in *Place's* reasoning, and no good reason otherwise, to ignore the actual function that dog sniffs perform. They are conducted to obtain information about the contents of private spaces beyond anything that human senses could perceive, even when conventionally enhanced. The information is not provided by independent third parties beyond the reach of constitutional limitations, but gathered by the government's own officers in order to justify searches of the traditional sort, which may or may not reveal evidence of crime but will disclose anything meant to be kept private in the area searched. Thus in practice the government's use of a trained narcotics dog functions as a limited search to reveal undisclosed facts about private enclosures, to be used to justify a further and complete search of the enclosed area. And given the fallibility of the dog, the sniff is the first step in a process that may disclose "intimate details" without revealing contraband, just as a thermal-imaging device might do, as described in *Kyllo v. United States,* 533 U.S. 27, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001).[FN3]

> FN3. *Kyllo* was concerned with whether a search occurred when the police used a thermal-imaging device on a house to detect heat emanations associated with high-powered marijuana-growing lamps. In concluding that using the device was a search, the Court stressed that the "Government [may not] us[e] a device ... to explore details of the home that would previously have been unknowable without physical intrusion." 533 U.S., at 40, 121 S.Ct. 2038. Any difference between the dwelling in *Kyllo* and the trunk of the car here may go to the issue of the reasonableness of the respective searches, but it has no bearing on the question of search or no search. Nor is it significant that *Kyllo's* imaging device would disclose personal details immediately, whereas they would be revealed only in the further

> step of opening the enclosed space following the dog's alert reaction; in practical terms the same values protected by the Fourth Amendment are at stake in each case. The justifications required by the Fourth Amendment may or may not differ as between the two practices, but if constitutional scrutiny is in order for the imager, it is in order for the dog.

It makes sense, then, to treat a sniff as the search that it amounts to in practice, and to rely on the body of our Fourth Amendment cases, including *Kyllo*, in deciding whether such a search is reasonable. As a general proposition, using a dog to sniff for drugs is subject to the rule that the object of enforcing criminal laws does not, without more, justify suspicionless Fourth Amendment intrusions. See *Indianapolis v. Edmond*, 531 U.S. 32, 41–42, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000). Since the police claim to have had no particular suspicion that Caballes was violating any drug law, this sniff search must stand or fall on its being ancillary to the traffic stop that led up to it. It is true that the police had probable cause to stop the car for an offense committed in the officer's presence, which Caballes concedes could have justified his arrest. See Brief for Respondent 31. There is no occasion to consider authority incident to arrest, however, see *Knowles v. Iowa*, 525 U.S. 113, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998), for the police did nothing more than detain Caballes long enough to check his record and write a ticket. As a consequence, the reasonableness of the search must be assessed in relation to the actual delay the police chose to impose, and as Justice GINSBURG points out in her opinion, *post*, at 844, the Fourth Amendment consequences of stopping for a traffic citation are settled law.

In *Berkemer v. McCarty*, 468 U.S. 420, 439–440, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984), followed in *Knowles, supra*, at 117, 119 S.Ct. 484, we held that the analogue of the common traffic stop was the limited detention for investigation authorized by *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). While *Terry* authorized a restricted incidental search for weapons when reasonable suspicion warrants such a safety measure, *id.*, at 25–26, 88 S.Ct. 1868, the Court took care to keep a *Terry* stop from automatically becoming a foot in the door for all investigatory purposes; the permissible intrusion was bounded by the justification for the detention, *id.*, at 29–30, 88 S.Ct. 1868. Although facts disclosed by enquiry within this limit might give grounds to go further, the government could not otherwise take advantage of a suspect's immobility to search for evidence unrelated to the reason for the detention. That has to be the rule unless *Terry* is going to become an open sesame for general searches, and that rule requires holding that the police do not have reasonable grounds to conduct sniff searches for drugs simply because they have stopped someone to receive a ticket for a highway offense. Since the police had no indication of illegal activity beyond the speed of the car in this case, the sniff search should be held unreasonable under the Fourth Amendment and its fruits should be suppressed.

Nothing in the case relied upon by the Court, *United States v. Jacobsen*, 466 U.S. 109, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984), unsettled the limit of reasonable enquiry adopted in *Terry*. In *Jacobsen*, the Court found that no Fourth Amendment search occurred when federal agents analyzed powder they had already lawfully obtained. The Court noted that because the test could only reveal whether the powder was cocaine, the owner had no legitimate privacy interest at stake. 466 U.S., at 123, 104 S.Ct. 1652. As already explained, however, the use of a sniffing dog in cases like this is significantly different and properly treated as a search that does indeed implicate Fourth Amendment protection.

In *Jacobsen*, once the powder was analyzed, that was effectively the end of the matter: either the powder was cocaine, a fact the owner had no legitimate interest in concealing, or it was not cocaine, in which case the test revealed nothing about the powder or anything else that was not already legitimately obvious to the police. But in the case of the dog sniff, the dog does not smell the disclosed contraband; it smells a closed container. An affirmative reaction therefore does not identify a substance the police already legitimately possess, but informs the police instead merely of a reasonable chance of finding contraband they have yet to put their hands on. The police will then open the container and discover whatever lies within, be it marijuana or the owner's private papers. Thus, while *Jacobsen* could rely on the assumption that the enquiry in question would either show with certainty that a known substance was contraband or would reveal nothing more, both the certainty and the limit on disclosure that may follow are missing when the dog sniffs the car.[FN6]

> FN6. It would also be error to claim that some variant of the plain-view doctrine excuses the lack of justification for the dog sniff in this case. When an officer observes an object left by its owner in plain view, no search occurs because the owner has exhib-

> ited "no intention to keep [the object] to himself." *Katz v. United States*, 389 U.S. 347, 361, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (Harlan, J., concurring). In contrast, when an individual conceals his possessions from the world, he has grounds to expect some degree of privacy. While plain view may be enhanced somewhat by technology, see, *e.g., Dow Chemical Co. v. United States*, 476 U.S. 227, 106 S.Ct. 1819, 90 L.Ed.2d 226 (1986) (allowing for aerial surveillance of an industrial complex), there are limits. As *Kyllo v. United States*, 533 U.S. 27, 33, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001), explained in treating the thermal-imaging device as outside the plain-view doctrine, "[w]e have previously reserved judgment as to how much technological enhancement of ordinary perception" turns mere observation into a Fourth Amendment search. While *Kyllo* laid special emphasis on the heightened privacy expectations that surround the home, closed car trunks are accorded some level of privacy protection. See, *e.g., New York v. Belton*, 453 U.S. 454, 460, n. 4, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981) (holding that even a search incident to arrest in a vehicle does not itself permit a search of the trunk). As a result, if Fourth Amendment protections are to have meaning in the face of superhuman, yet fallible, techniques like the use of trained dogs, those techniques must be justified on the basis of their reasonableness, lest everything be deemed in plain view.

The Court today does not go so far as to say explicitly that sniff searches by dogs trained to sense contraband always get a free pass under the Fourth Amendment, since it reserves judgment on the constitutional significance of sniffs assumed to be more intrusive than a dog's walk around a stopped car, *ante*, at 838. For this reason, I do not take the Court's reliance on *Jacobsen* as actually signaling recognition of a broad authority to conduct suspicionless sniffs for drugs in any parked car, * * *, or on the person of any pedestrian minding his own business on a sidewalk. But the Court's stated reasoning provides no apparent stopping point short of such excesses. For the sake of providing a workable framework to analyze cases on facts like these, which are certain to come along, I would treat the dog sniff as the familiar search it is in fact, subject to scrutiny under the Fourth Amendment.

* * *

Supreme Court of the United States

Charles KATZ, Petitioner,
v.
UNITED STATES.

Decided Dec. 18, 1967.

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioner was convicted in the District Court for the Southern District of California under an eight-count indictment charging him with transmitting wagering information by telephone from Los Angeles to Miami and Boston in violation of a federal statute. At trial the Government was permitted, over the petitioner's objection, to introduce evidence of the petitioner's end of telephone coversations, overheard by FBI agents who had attached an electronic listening and recording device to the outside of the public telephone booth from which he had placed his calls. In affirming his conviction, the Court of Appeals rejected the contention that the recordings had been obtained in violation of the Fourth Amendment, because '(t)here was no physical entrance into the area occupied by, (the petitioner). We granted certiorari in order to consider the constitutional questions thus presented.

The petitioner had phrased those questions as follows:

'A. Whether a public telephone booth is a constitutionally protected area so that evidence obtained by attaching an electronic listening recording device to the top of such a booth is obtained in violation of the right to privacy of the user of the booth.

'B. Whether physical penetration of a constitutionally protected area is necessary before a search and seizure can be said to be violative of the Fourth Amendment to the United States Constitution.'

We decline to adopt this formulation of the issues. In the first place the correct solution of Fourth Amendment problems is not necessarily promoted by incantation of the phrase 'constitutionally protected area.' Secondly, the Fourth Amendment cannot be translated into a general constitutional 'right to privacy.' That Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all.[FN4] Other provisions of the Constitution protect personal privacy from other forms of governmental invasion.[FN5] But the protection of a person's general right to privacy-his right to be let alone by other people-is, like the protection of his property and of his very life, left largely to the law of the individual States.

FN4. 'The average man would very likely not have his feelings soothed any more by having his property seized openly than by having it seized privately and by stealth. * * * And a person can be just as much, if not more, irritated, annoyed and injured by an unceremonious public arrest by a policeman as he is by a seizure in the privacy of his office or home.' Griswold v. State of Connecticut, 381 U.S. 479, 509 (dissenting opinion of MR. JUSTICE BLACK).

FN5. The First Amendment, for example, imposes limitations upon govermental abridgment of 'freedom to associate and privacy in one's associations.' NAACP v. State of Alabama, 357 U.S. 449, 462. The Third Amendment's prohibition against the unconsented peacetime quartering of soldiers protects another aspect of privacy from governmental intrusion. To some extent, the Fifth Amendment too 'reflects the Constitution's concern for * * * '* * * the right of each individual 'to a private enclave where he may lead a private life. "' Tehan v. United States ex rel. Shott, 382 U.S. 406, 416. Virtually every governmental action interferes with personal privacy to some degree. The question in each case is whether that interference violates a command of the United States Constitution.

Because of the misleading way the issues have been formulated, the parties have attached great significance to the characterization of the telephone booth from which the petitioner placed his calls. The petitioner has strenuously argued that the booth was a 'constitutionally protected area.' The Government has maintained with equal vigor that it was not. But this effort to decide whether or not a given 'area,' viewed in the abstract, is 'constitutionally protected' deflects attention from the problem presented by this case. For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. See Lewis v. United States, 385 U.S. 206, 210; United States v. Lee, 274 U.S. 559, 563. But what he seeks to preserve as private, even in an area accessible to the public, may be constitution-

ally protected.

The Government stresses the fact that the telephone booth from which the petitioner made his calls was constructed partly of glass, so that he was as visible after he entered it as he would have been if he had remained outside. But what he sought to exclude when he entered the booth was not the intruding eye-it was the uninvited ear. He did not shed his right to do so simply because he made his calls from a place where he might be seen. No less than an individual in a business office, in a friend's apartment, or in a taxicab, a person in a telephone booth may rely upon the protection of the Fourth Amendment. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world. To read the Constitution more narrowly is to ignore the vital role that the public telephone has come to play in private communication.

The Government contends, however, tha the activities of its agents in this case should not be tested by Fourth Amendment requirements, for the surveillance technique they employed involved no physical penetration of the telephone booth from which the petitioner placed his calls. It is true that the absence of such penetration was at one time thought to foreclose further Fourth Amendment inquiry, Olmstead v. United States, 277 U.S. 438, 457, 464 for that Amendment was thought to limit only searches and seizures of tangible property. But '(t)he premise that property interests control the right of the Government to search and seize has been discredited.' Thus, although a closely divided Court supposed in Olmstead that surveillance without any trespass and without the seizure of any material object fell outside the ambit of the Constitution, we have since departed from the narrow view on which that decision rested. Indeed, we have expressly held that the Fourth Amendment governs not only the seizure of tangible items, but extends as well to the recording of oral statements overheard without any 'technical trespass under * * * local property law.' Silverman v. United States, 365 U.S. 505, 511. Once this much is acknowledged, and once it is recognized that the Fourth Amendment protects people-and not simply 'areas'-against unreasonable searches and seizures it becomes clear that the reach of that Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure.

We conclude that the underpinnings of Olmstead and Goldman have been so eroded by our subsequent decisions that the 'trespass' doctrine there enunciated can no longer be regarded as controlling. The Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment. The fact that the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance.

The question remaining for decision, then, is whether the search and seizure conducted in this case complied with constitutional standards. In that regard, the Government's position is that its agents acted in an entirely defensible manner: They did not begin their electronic surveillance until investigation of the petitioner's activities had established a strong probability that he was using the telephone in question to transmit gambling information to persons in other States, in violation of federal law. Moreover, the surveillance was limited, both in scope and in duration, to the specific purpose of establishing the contents of the petitioner's unlawful telephonic communications. The agents confined their surveillance to the brief periods during which he used the telephone booth, and they took great care to overhear only the conversations of the petitioner himself.

Accepting this account of the Government's actions as acccurate, it is clear that this surveillance was so narrowly circumscribed that a duly authorized magistrate, properly notified of the need for such investigation, specifically informed of the basis on which it was to proceed, and clearly apprised of the precise intrusion it would entail, could constitutionally have authorized, with appropriate safeguards, the very limited search and seizure that the Government asserts in fact took place. Only last Term we sustained the validity of such an authorization, holding that, under sufficiently 'precise and discriminate circumstances,' a federal court may empower government agents to employ a concealed electronic device 'for the narrow and particularized purpose of ascertaining the truth of the * * * allegations' of a 'detailed factual affidavit alleging the commission of a specific criminal offense.' Osborn v. United States, 385 U.S. 323, 329-330. Discussing that holding, the Court in Berger v. State of New York, 388 U.S. 41, said that 'the order authorizing the use of the electronic device' in Osborn 'afforded similar protections to those * * * of conventional warrants authorizing the seizure of tangible evidence.' Through those protections, 'no greater invasion of privacy was permitted than was necessary under the circumstances.' Id., at 57. Here, too, a similar judicial order could have accommodated 'the

legitimate needs of law enforcement' by authorizing the carefully limited use of electronic surveillance.

The Government urges that, because its agents relied upon the decisions in Olmstead and Goldman, and because they did no more here than they might properly have done with prior judicial sanction, we should retroactively validate their conduct. That we cannot do. It is apparent that the agents in this case acted with restraint. Yet the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer. They were not required, before commencing the search, to present their estimate of probable cause for detached scrutiny by a neutral magistrate. They were not compelled, during the conduct of the search itself, to observe precise limits established in advance by a specific court order. Nor were they directed, after the search had been completed, to notify the authorizing magistrate in detail of all that had been seized. In the absence of such safeguards, this Court has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end. Searches conducted without warrants have been held unlawful 'notwithstanding facts unquestionably showing probable cause,' Agnello v. United States, 269 U.S. 20, 33, for the Constitution requires 'that the deliberate, impartial judgment of a judicial officer * * * be interposed between the citizen and the police * * *.' Wong Sun v. United States, 371 U.S. 471. 'Over and again this Court has emphasized that the mandate of the (Fourth) Amendment requires adherence to judicial processes,' United States v. Jeffers, 342 U.S. 48, 51, and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -subject only to a few specifically established and well-delineated exceptions.

It is difficult to imagine how any of those exceptions could ever apply to the sort of search and seizure involved in this case. Even electronic surveillance substantially contemporaneous with an individual's arrest could hardly be deemed an 'incident' of that arrest. Nor could the use of electronic surveillance without prior autorization be justified on grounds of 'hot pursuit.' And, of course, the very nature of electronic surveillance precludes its use pursuant to the suspect's consent.

* * *

The Government does not question these basic principles. Rather, it urges the creation of a new exception to cover this case. It argues that surveillance of a telephone booth should be exempted from the usual requirement of advance authorization by a magistrate upon a showing of probable cause. We cannot agree. Omission of such authorization

'bypasses the safeguards provided by an objective predetermination of probable cause, and substitutes instead the far less reliable procedure of an after-the-event justification for the * * * search, too likely to be subtly influenced by the familiar shortcomings of hindsight judgment.' Beck v. State of Ohio, 379 U.S. 89, 96. And bypassing a neutral predetermination of the scope of a search leaves individuals secure from Fourth Amendmentviolations 'only in the discretion of the police.' Id., at 97.

These considerations do not vanish when the search in question is transferred from the setting of a home, an office, or a hotel room to that of a telephone booth. Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures. The government agents here ignored 'the procedure of antecedent justification * * * that is central to the Fourth Amendment,' a procedure that we hold to be a constitutional precondition of the kind of electronic surveillance involved in this case. Because the surveillance here failed to meet that condition, and because it led to the petitioner's conviction, the judgment must be reversed.

It is so ordered.

Judgment reversed.

* * * * *

Mr. Justice HARLAN, concurring.

I join the opinion of the Court, which I read to hold only (a) that an enclosed telephone booth is an area where, like a home, Weeks v. United States, 232 U.S. 383, and unlike a field, Hester v. United States, 265 U.S. 57, a person has a constitutionally protected reasonable expectation of privacy; (b) that electronic as well as physical intrusion into a place that is in this sense private may constitute a violation of the Fourth Amendment; and (c) that the invasion of a constitutionally protected area by federal authorities is, as the Court has long held, presumptively unreasonable in the absence of a search warrant.

As the Court's opinion states, 'the Fourth

Amendment protects people, not places.' The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a 'place.' My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.' Thus a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the 'plain view' of outsiders are not 'protected' because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable. Cf. Hester v. United States, supra.

The critical fact in this case is that '(o)ne who occupies it, (a telephone booth) shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume' that his conversation is not being intercepted. Ante, at 511. The point is not that the booth is 'accessible to the public' at other times, ante, at 511, but that it is a temporarily private place whose momentary occupants' expectations of freedom from intrusion are recognized as reasonable.

In Silverman v. United States, 365 U.S. 505, we held that eavesdropping accomplished by means of an electronic device that penetrated the premises occupied by petitioner was a violation of the Fourth Amendment. That case established that interception of conversations reasonably intended to be private could constitute a 'search and seizure,' and that the examination or taking of physical property was not required. This view of the Fourth Amendment was followed in Wong Sun v.United States, 371 U.S. 471, at 485, and Berger v. State of New York, 388 U.S. 41, at 51. In Silverman we found it unnecessary to re-examine Goldman v. United States, 316 U.S. 129, which had held that electronic surveillance accomplished without the physical penetration of petitioner's premises by a tangible object did not violate the Fourth Amendment. This case requires us to reconsider Goldman, and I agree that it should now be overruled. Its limitation on Fourth Amendment protection is, in the present day, bad physics as well as bad law, for reasonable expectations of privacy may be defeated by electronic as well as physical invasion.

Finally, I do not read the Court's opinion to declare that no interception of a conversation one-half of which occurs in a public telephone booth can be reasonable in the absence of a warrant. As elsewhere under the Fourth Amendment, warrants are the general rule, to which the legitimate needs of law enforcement may demand specific exceptios. It will be time enough to consider any such exceptions when an appropriate occasion presents itself, and I agree with the Court that this is not one.

* * * * * *

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Supreme Court of the United States

BRINEGAR
v.
UNITED STATES.

Decided June 27, 1949.

Mr. Justice RUTLEDGE delivered the opinion of the Court.

Brinegar was convicted of importing intoxicating liquor into Oklahoma from Missouri in violation of the federal statute which forbids such importation contrary to the laws of any state. His conviction was based in part on the use in evidence against him of liquor seized from his automobile in the course of the alleged unlawful importation.

The Court of Appeals affirmed the conviction, 10 Cir., 165 F.2d 512, and certiorari was sought solely on the ground that the search and seizure contravened the Fourth Amendment and therefore the use of the liquor in evidence vitiated the conviction. We granted the writ to determine this question.

The facts are substantially undisputed. At about six o'clock on the evening of March 3, 1947, Malsed, an investigator of the Alcohol Tax Unit, and Creehan, a special investigator, were parked in a car beside a highway near the Quapaw Bridge in northeastern Oklahoma. The point was about five miles west of the Missouri-Oklahoma line. Brinegar drove past headed west in his Ford coupe. Malsed had arrested him about five months earlier for illegally transporting liquor; had seen him loading liquor into a car or truck in Joplin, Missouri, on at least two occasions during the preceding six months; and knew him to have a reputation for hauling liquor. As Brinegar passed, Malsed recognized both him and the Ford. He told Creehan, who was driving the officers' car, that ***163** Brinegar was the driver of the passing car. Both agents later testified that the car, but not especially its rear end, appeared to be 'heavily loaded' and 'weighted down with something.' Brinegar increased his speed as he passed the officers. They gave chase. After pursuing him for about a mile at top speed, they gained on him as his car skidded on a curve, sounded their siren, overtook him, and crowded his car to the side of the road by pulling across in front of it. The highway was one leading from Joplin, Missouri, toward Vinita, Oklahoma, Brinegar's home.

As the agents got out of their car and walked back toward petitioner, Malsed said, 'Hello, Brinegar, how much liquor have you got in the car?' or 'How much liquor have you got in the car this time?' Petitioner replied, 'Not too much,' or 'Not so much.' After further questioning he admitted that he had twelve cases in the car. Malsed testified that one case, which was on the front seat, was visible from outside the car, but petitioner testified that it was covered by a lap robe. Twelve more cases were found under and behind the front seat. The agents then placed Brinegar under arrest and seized the liquor.

The district judge, after a hearing on the motion to suppress at which the facts stated above appeared in evidence, was of the opinion that 'the mere fact that the agents knew that this defendant was engaged in hauling whiskey, even coupled with the statement that the car appeared to be weighted, would not be probable cause for the search of this car.' Therefore, he thought, there was no probable cause when the agents began the chase. He held, however, that the voluntary admission made by petitioner after his car had been stopped constituted probable cause for a search, regardless of the legality of the arrest and detention, and that therefore the evidence was admissible. At the trial, as has been said, the court overruled petitioner's renewal of the objection.

The Court of Appeals, one judge dissenting, took essentially the view held by the District Court. The dissenting judge thought that the search was unlawful and therefore statements made during its course could not justify the search.

The crucial question is whether there was probable cause for Brinegar's arrest, in the light of prior adjudications on this problem, more particularly *Carroll v. United States*, 267 U.S. 132, which on its face most closely approximates the situation presented here.

The *Carroll* decision held that, under the Fourth Amendment, a valid search of a vehicle moving on a public highway may be had without a warrant, but only if probable cause for the search exists. The court then went on to rule that the facts presented amounted to probable cause for the search of the automobile there involved. 267 U.S. 132, 160.

In the *Carroll* case three federal prohibition agents and a state officer stopped and searched the defendants' car on a highway leading from Detroit to Grand Rapids, Michigan, and seized a quantity of liquor discovered in the search. About three months before the search, the two defendants and another man

called on two of the agents at an apartment in Grand Rapids and, unaware that they were dealing with federal agents, agreed to sell one of the agents three cases of liquor. Both agents noticed the Oldsmobile roadster in which the three men came to the apartment and its license number. Presumably because the official capacity of the proposed purchaser was suspected by the defendants, the liquor was never delivered.

About a week later the same two agents, while patrolling the road between Grand Rapids and Detroit on the lookout for violations of the National Prohibition Act, were passed by the defendants, who were proceeding in a direction from Grand Rapids toward Detroit in the same Oldsmobile roadster. The agents followed the defendants for some distance but lost trace of them. Still later, on the occasion of the search, while the officers were patrolling the same highway, they met and passed the defendants, who were in the same roadster, going in a direction from Detroit toward Grand Rapids. Recognizing the defendants, the agents turned around, pursued them, stopped them about sixteen miles outside Grand Rapids, searched their car and seized the liquor it carried.

This Court ruled that the information held by the agents, together with the judicially noticed fact that Detroit was 'one of the most active centers for introducing illegally into this country spirituous liquors for distribution into the interior,' 267 U.S. at page 160, 45 S.Ct. at page 287, constituted probable cause for the search.

I.

Obviously the basic facts held to constitute probable cause in the *Carroll* case were very similar to the basic facts here. In each case the search was of an automobile moving on a public highway and was made without a warrant by federal officers charged with enforcing federal statutes outlawing the transportation of intoxicating liquors (except under conditions not complied with). In each instance the officers were patrolling the highway in the discharge of their duty. And in each before stopping the car or starting to pursue it they recognized both the driver and the car, from recent personal contact and observation, as having been lately engaged in illicit liquor dealings. Finally, each driver was proceeding in his identified car in a direction from a known source of liquor supply toward a probable illegal market, under circumstances indicating no other probable purpose than to carry on his illegal adventure.

These are the ultimate facts. Necessarily the concrete, subordinate facts on which they were grounded in the two cases differed somewhat in detail. The more important of the variations in details of the proof are as follows:

In *Carroll* the agent's knowledge of the primary and ultimate fact that the accused were engaged in liquor running was derived from the defendants' offer to sell liquor to the agents some three months prior to the search, while here that knowledge was derived largely from Malsed's personal observation, reinforced by hearsay; the officers when they bargained for the liquor in *Carroll* saw the number of the defendants' car, whereas no such fact is shown in this record; and in *Carroll* the Court took judicial notice that Detroit was on the international boundary and an active center for illegal importation of spirituous liquors for distribution into the interior, while in this case the facts that Joplin, Missouri, was a ready source of supply for liquor and Oklahoma a place of likely illegal market were known to the agent Malsed from his personal observation and experience as well as from facts of common knowledge.

Treating first the two latter and less important matters, in view of the positive and undisputed evidence concerning Malsed's identification of Brinegar's Ford, we think no significance whatever attaches, for purposes of distinguishing the cases, to the fact that in the *Carroll* case the officers saw and recalled the license number of the offending car while this record discloses no like recollection.

Likewise it is impossible to distinguish the *Carroll* case with reference to the proof relating to the source of supply, the place of probable destination and illegal market, and consequently the probability that the known liquor operators were using the connecting highway for the purposes of their unlawful business.

There were of course some legal as well as some factual differences in the two situations. Under the statute in review in *Carroll* the whole nation was legally dry. Not only the manufacture, but the importation, transportation and sale of intoxicating liquors were prohibited throughout the country. Under the statute now in question only the importation of such liquors contrary to the law of the state into which they are brought and in which they were seized is forbidden.

In the *Carroll* case the Court judicially noticed that Detroit was located on the international boundary with Canada and had become an active center for illegally bringing liquor into the country for distribution into the interior. This was pertinent in connection

with other circumstances, for showing the probability under which the agents acted that use of the highway connecting Detroit and Grand Rapids by the known operators in liquor was for the purpose of carrying on their unlawful traffic.

In this case, the record shows that Brinegar had used Joplin, Missouri, to Malsed's personal knowledge derived from direct observation, not merely from hearsay as seems to be suggested, as a source of supply on other occasions within the preceding six months. It also discloses that Brinegar's home was in Vinita, Oklahoma, and that Brinegar when apprehended was traveling in a direction leading from Joplin to Vinita, at a point about four or five miles west of the Missouri-Oklahoma line.

Joplin, like Detroit in the *Carroll* case, was a ready source of supply. But unlike Detroit it was not an illegal source. So far as appears, Brinegar's purchases there were entirely legal. And so, we may assume for present purposes, was his transportation of the liquor in Missouri, until he reached and crossed the state line into Oklahoma.

This difference, however, is insubstantial. For the important thing here is not whether Joplin was an illegal source of a supply; it is rather that Joplin was a ready, convenient and probable one for persons disposed to violate the Oklahoma and federal statutes. That fact was demonstrated fully, not only by the geographic facts, but by Malsed's direct and undisputed testimony of his personal observation of Brinegar's use of liquor dispensing establishments in Joplin for procuring his whiskey. Such direct evidence was lacking in *Carroll* as to Detroit, and for that reason the Court resorted to judicial notice of the commonly known facts to supply that deficiency. Malsed's direct testimony, based on his personal observation, dispensed with that necessity in this case.

The situation relating to the probable place of market, as bearing on the probability of unlawful importation, is somewhat different. Broadly on the facts this may well have been taken to be the State of Oklahoma as a whole or its populous northeastern region. From the facts of record we know, as the agents knew, that Oklahoma was a ‘dry’ state. At the time of the search, its law forbade the importation of intoxicating liquors from other states, except under a permit not generally procurable and which there is no pretense Brinegar had secured or attempted to secure. This fact, taken in connection with the known ‘wet’ status of Missouri and the location of Joplin close to the Oklahoma line, affords a very natural situation for persons inclined to violate the Oklahoma and federal statutes to ply their trade. The proof therefore concerning the source of supply, the place of probable destination and illegal market, and hence the probability that Brinegar was using the highway for the forbidden transportation, was certainly no less strong than the showing in these respects in the *Carroll* case.

Finally, as for the most important potential distinction, namely, that concerning the primary and ultimate fact that the petitioner was engaging in liquor running, Malsed's personal observation of Brinegar's recent activities established that he was so engaged quite as effectively as did the agent's prior bargaining with the defendants in the *Carroll* case. He saw Brinegar loading liquor, in larger quantities than would be normal for personal consumption, into a car or a truck in Joplin on other occasions during the six months prior to the search. He saw the car Brinegar was using in this case in use by him at least once in Joplin within that period and followed it. And several months prior to the search he had arrested Brinegar for unlawful transportation of liquor and this arrest had resulted in an indictment which was pending at the time of this trial. Moreover Malsed instantly recognized Brinegar's Ford coupe and Brinegar as the driver when he passed the parked police car. And at that time Brinegar was moving in a direction from Joplin toward Vinita only a short distance inside Oklahoma from the state line.

All these facts are undisputed. Wholly apart from Malsed's knowledge that Brinegar bore the general reputation of being engaged in liquor running, they constitute positive and convincing evidence that Brinegar was engaged in that activity, no less convincing than the evidence in *Carroll* that the defendants had offered to sell liquor to the officers. The evidence here is undisputed, is admissible on the issue of probable cause, and clearly establishes that the agent had good ground for believing that Brinegar was engaged regularly throughout the period in illicit liquor running and dealing.

Notwithstanding the variations in detail, therefore, we think the proof in this case furnishes support quite as strong as that made in the *Carroll* case, indeed stronger in some respects, to sustain the ultimate facts there held in the aggregate to constitute probable cause for a search identical in all substantial and material respects with the one made here. Nothing in the variations of detail affords a substantial basis for undermining here any of the ultimate facts held to be sufficient in *Carroll* or for distinguishing the cases. Each of the ultimate facts found in *Carroll* to constitute

probable cause, when taken together, is present in this case and is fully substantiated by the proof. Accordingly the *Carroll* decision must be taken to control this situation, unless it is now to be overruled.

This is true, although the trial court and the Court of Appeals, including the dissenting judge, were of the opinion, as stated by the latter court, 'that the facts within the knowledge of the investigators and of which they had reasonable trustworthy information prior to the time the incriminating statements were made by Brinegar were not sufficient to lead a reasonable discreet and prudent man to believe that intoxicating liquor was being transported in the coupe, and did not constitute probable cause for a search.' 165 F.2d at page 514. If, as we think, the *Carroll* case is indistinguishable from this one on the material facts, and that decision is to continue in force, it necessarily follows that the quoted 'finding' or 'conclusion' was erroneous. In the absence of any significant difference in the facts, it cannot be that the Fourth Amendment's incidence turns on whether different trial judges draw general conclusions that the facts are sufficient or insufficient to constitute probable cause.

II.

It remains to consider one further asserted difference between this case and the *Carroll* case, having to do with the admissibility or inadmissibility at the trial of the evidence on which the agents acted in making the search, particularly the evidence concerning their knowledge that the defendants were engaging in illicit liquor running.

It is argued first that this case can be distinguished from *Carroll* because Malsed's knowledge of this primary and ultimate fact rested wholly or largely on surmise or hearsay. This argument is disproved by the facts of record which we have set forth above. There was hearsay, but there was much more. Indeed, as we have emphasized, the facts derived from Malsed's personal observations were sufficient in themselves, without the hearsay concerning general reputation, to sustain his conclusion concerning the illegal character of Brinegar's operations.

But a further distinction based upon inadmissibility of the evidence is asserted. It is said that, while in *Carroll* the defendants' offer to sell liquor to the agents was admissible and was admitted at the trial, here the evidence that Malsed had arrested Brinegar for illegal transportation of liquor several months before the search, though admitted on the hearing on the motion to suppress, was excluded at the trial. The inference seems to be that the evidence concerning the prior arrest should not have been received at the hearing on the motion. In any event the conclusion is drawn that the factors relating to inadmissibility of the evidence here, for purposes of proving guilt at the trial, deprive the evidence as a whole of sufficiency to show probable cause for the search and therefore distinguish this case from the *Carroll* case.

Apart from its failure to take account of the facts disclosed by Malsed's direct and personal observation, even if his testimony concerning the prior arrest were excluded, the so-called distinction places a wholly unwarranted emphasis upon the criterion of admissibility in evidence, to prove the accused's guilt, of the facts relied upon to show probable cause. That emphasis, we think, goes much too far in confusing and disregarding the difference between that is required to prove guilt in a criminal case and what is required to show probable cause for arrest or search. It approaches requiring (if it does not in practical effect require) proof sufficient to establish guilt in order to substantiate the existence of probable cause. There is a large difference between the two things to be proved, as well as between the tribunals which determine them, and therefore a like difference in the quanta and modes of proof required to establish them.

For a variety of reasons elating not only to probative value and trustworthiness, but also to possible prejudicial effect upon a trial jury and the absence of opportunity for cross-examination, the generally accepted rules of evidence throw many exclusionary protections about one who is charged with and standing trial for crime. Much evidence of real and substantial probative value goes out on considerations irrelevant to its probative weight but relevant to possible misunderstanding or misuse by the jury.

Thus, in this case, the trial court properly excluded from the record at the trial, Malsed's testimony that he had arrested Brinegar several months earlier for illegal transportation of liquor and that the resulting indictment was pending in another court at the time of the trial of this case. This certainly was not done on the basis that the testimony concerning arrest, or perhaps even the indictment, was surmise or hearsay or that it was without probative value. Yet the same court admitted the testimony at the hearing on the motion to suppress the evidence seized in the search, where the issue was not guilt but probable cause and was determined by the court without a jury.

The court's rulings, one admitting, the other excluding the identical testimony, were neither incon-

sistent nor improper. They illustrate the difference in standards and latitude allowed in passing upon the distinct issues of probable cause and guilt. Guilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.

However, if those standards were to be made applicable in determining probable cause for an arrest or for search and seizure, more especially in cases such as this involving moving vehicles used in the commission of crime, few indeed would be the situations in which an officer, charged with protecting the public interest by enforcing the law, could take effective action toward that end. Those standards have seldom been so applied.

In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.

"The substance of all the definitions' of probable cause 'is a reasonable ground for belief of guilt." *McCarthy v. De Armit*, 99 Pa. 63, 69, quoted with approval in the *Carroll* opinion. 267 U.S. at page 161. And this 'means less than evidence which would justify condemnation' or conviction, as Marshall, C.J., said for the Court more than a century ago in *Locke v. United States*, 7 Cranch 339, 348, 3 L.Ed. 364. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where 'the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed. *Carroll v. United States*, 267 U.S. 132, 162.

These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

The troublesome line posed by the facts in the *Carroll* case and this case is one between mere suspicion and probable cause. That line necessarily must be drawn by an act of judgment formed in the light of the particular situation and with account taken of all the circumstances. No problem of searching the home or any other place of privacy was presented either in *Carroll* or here. Both cases involve freedom to use public highways in swiftly moving vehicles for dealing in contraband, and to be unmolested by investigation and search in those movements. In such a case the citizen who has given no good cause for believing he is engaged in that sort of activity is entitled to proceed on his way without interference. But one who recently and repeatedly has given substantial ground for believing that he is engaging in the forbidden transportation in the area of his usual operations has no such immunity, if the officer who intercepts him in that region knows that fact at the time he makes the interception and the circumstances under which it is made are not such as to indicate the suspect going about legitimate affairs.

This does not mean, as seems to be assumed, that every traveler along the public highways may be stopped and searched at the officers' whim, caprice or mere suspicion. The question presented in the *Carroll* case lay on the border between suspicion and probable cause. But the Court carefully considered that problem and resolved it by concluding that the facts within the officers' knowledge when they intercepted the *Carroll* defendants amounted to more than mere suspicion and constituted probable cause for their action. We cannot say this conclusion was wrong, or was so lacking in reason and consistency with the Fourth Amendment's purposes that it should now be overridden. Nor, as we have said, can we find in the present facts any substantial basis for distinguishing this case from the *Carroll* case.

Accordingly the judgment is affirmed.

Affirmed.