

UNITED STATES, PETITIONER v. ANTOINE JONES

10-1259

SUPREME COURT OF THE UNITED STATES

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

PRIOR HISTORY: *United States v. Maynard*, 615 F.3d 544, 392 U.S. App. D.C. 291, 2010 U.S. App. LEXIS 16417 (2010)

DISPOSITION: [*1] Affirmed.

OPINION

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 [*5] 10 days.

On the 11th day, and not in the District of Columbia but in Maryland,¹ agents installed a GPS tracking device on the undercarriage of the Jeep while it was parked in a public parking lot. Over the next 28 days, the Government used the device to track the vehicle's movements, and once had to replace the device's battery when the vehicle was parked in a different public lot in Maryland. By means of signals from multiple satellites, the device established the vehicle's location within 50 to 100 feet, and communicated that location by cellular phone to a

Government computer. It relayed more than 2,000 pages of data over the 4-week period.

1 In this litigation, the Government has conceded noncompliance with the warrant and has argued only that a warrant was not required. *United States v. Maynard*, 615 F.3d 544, 566, n. (CADC, 392 U.S. App. D.C. 291 2010).

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, 392 U.S. App. D.C. 291 (2010). The D. C. Circuit denied the Government's petition for rehearing en banc, with four judges dissenting. 625 F.3d 766, 393

U.S. App. D.C. 194 (2010). We granted certiorari, 564 U. S. ___, 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, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977). We hold that the Government's installation of a GPS device on a target's vehicle,² and its use of that device to monitor the vehicle's movements, constitutes a "search."

2 [omitted]

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

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, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (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, 48 S. Ct. 564, 72 L. Ed. 944 (1928), we held that wiretaps attached to telephone wires on the public streets did not constitute a *Fourth Amendment* search because "[t]here was no entry of the houses or offices of the defendants," *id.*, at 464, 48 S. Ct. 564, 72 L. Ed. 944.

Our later cases, of course, have deviated from that exclusively property-based approach. In *Katz v. United States*, 389 U. S. 347, 351, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967), we said that "the *Fourth Amendment* protects people, not places," and 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, 88 S. Ct. 507, 19 L. Ed. 2d 576. See, e.g., *Bond v. United States*, 529 U. S. 334, 120 S. Ct. 1462, 146 L. Ed. 2d 365 (2000); *California v. Ciraolo*, 476 U. S. 207, 106 S. Ct. 1809, 90 L. Ed. 2d 210 (1986); *Smith v. Maryland*, 442 U. S. 735, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (1979).

The Government contends that the Harlan standard shows that no search occurred here, since Jones had no "reasonable expectation of privacy" in the area of the Jeep accessed by Government agents (its underbody) and in the locations of the Jeep on the public roads, which were visible to all. But we need not address the Government's contentions, because Jones's *Fourth Amendment* rights do not rise or fall with the *Katz* formulation. **At bottom, we must "assur[e] preservation of that degree of privacy against government that existed when the *Fourth Amendment* was adopted." *Kyllo, supra*, at 34, 121 S. Ct. 2038, 150 L. Ed. 2d 94. As explained, for most of our history the *Fourth Amendment* was understood to embody a particular concern for government trespass upon the areas ("persons, houses, papers, and effects") it enumerates.³ *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."⁴ *Alderman v. United States*, 394 U. S. 165, 176, 89 S. Ct. 961, 22 L. Ed. 2d 176 (1969). "[W]e [do not] believe that *Katz*, by holding that the *Fourth Amendment* protects persons and their private conversations, was intended to withdraw any of the protection which the Amendment extends to the home ... " *Id.*, at 180, 89 S. Ct. 961, 22 L. Ed. 2d 176.**

3 JUSTICE ALITO's concurrence (hereinafter concurrence) doubts the wisdom of our approach because "it is almost impossible to think of late-18th-century situations that are analogous to what took place in this case." Post, at 3 (opinion concurring in judgment). But in fact it posits a situation that is not far afield--a constable's concealing himself in the target's coach in order to track its movements. *Ibid.* There is no doubt that [*12] the information gained by that trespassory activity would be the product of an unlawful search--whether that information consisted of the conversations occurring in the coach, or of the destinations to which the coach traveled.

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.

4 [omitted]

....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, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (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, 119 S. Ct. 469, 142 L. Ed. 2d 373 (1998) (internal quotation marks omitted). *Katz* did not narrow the *Fourth Amendment's* scope.⁵

5 [omitted]

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, 103 S. Ct. 1081, 75 L. Ed. 2d 55. We said that there had been no infringement of *Knotts'* reasonable expectation of privacy since the information obtained--the location of the automobile carrying the container on public roads, and the location of the off-loaded container in open fields near *Knotts'* cabin--had been voluntarily conveyed to the public.⁶ *Id.*, at 281-282, 103 S. Ct. 1081, 75 L. Ed. 2d 55. 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, 103 S. Ct. 1081, 75 L. Ed. 2d 55. *Knotts* did not challenge that installation, and we specifically declined to consider its

effect on the *Fourth Amendment* analysis. *Id.*, at 279, 103 S. Ct. 1081, 75 L. Ed. 2d 55, 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.

6 *Knotts* noted the "limited use which the government made of the signals from this particular beeper," 460 U. S., at 284, 103 S. Ct. 1081, 75 L. Ed. 2d 55; and reserved the question whether "different constitutional principles may be applicable" to "dragnet-type law enforcement practices" of the type that GPS tracking made possible here, *ibid.*

The second "beeper" case, *United States v. Karo*, 468 U. S. 705, 104 S. Ct. 3296, 82 L. Ed. 2d 530 (1984), does not suggest a different conclusion. There we addressed the question left open by *Knotts*, whether the installation of a beeper in a container amounted to a search or seizure. 468 U. S., at 713, 104 S. Ct. 3296, 82 L. Ed. 2d 530. As in *Knotts*, at the time the beeper was installed the container belonged to a third party, and it did not come into possession of the defendant until later. 468 U. S., at 708, 104 S. Ct. 3296, 82 L. Ed. 2d 530. [*17] Thus, the specific question we considered was whether the installation "*with the consent of the original owner* constitute[d] a search or seizure ... when the container is delivered to a buyer having no knowledge of the presence of the beeper" *Id.*, at 707, 104 S. Ct. 3296, 82 L. Ed. 2d 530 (emphasis added). We held not. The Government, we said, came into physical contact with the container only before it belonged to the defendant *Karo*; and the transfer of the container with the unmonitored beeper inside did not convey any information and thus did not invade *Karo's* privacy. See *id.*, at 712, 104 S. Ct. 3296, 82 L. Ed. 2d 530. That conclusion is perfectly consistent with the one we reach here. *Karo* accepted the container as it came to him, beeper and all, and was therefore not entitled to object to the beeper's presence, even though it was used to monitor the container's location. Cf. *On Lee v. United States*, 343 U. S. 747, 751-752, 72 S. Ct. 967, 96 L. Ed. 1270 (1952) (no search or seizure where an informant, who was wearing a concealed microphone, was invited into the defendant's business). *Jones*, who possessed the *Jeep* at the time the Government trespassorily inserted the information-gathering device, is on much different footing.

The Government also points to our exposition in *New York v. Class*, 475 U. S. 106, 106 S. Ct. 960, 89 L. Ed. 2d 81 (1986), [*18] that "[t]he exterior of a car ... is thrust into the public eye, and thus to examine it does not constitute a 'search.'" *Id.*, at 114, 106 S. Ct.

960, 89 L. Ed. 2d 81. That statement is of marginal relevance here since, as the Government acknowledges, "the officers in this case did *more than* conduct a visual inspection of respondent's vehicle," Brief for United States 41 (emphasis added). By attaching the device to the Jeep, officers encroached on a protected area. In Class itself we suggested that this would make a difference, for we concluded that an officer's momentary reaching into the interior of a vehicle did constitute a search.⁷ 475 U. S., at 114-115, 106 S. Ct. 960, 89 L. Ed. 2d 81.

⁷ The Government also points to *Cardwell v. Lewis*, 417 U.S. 583, 94 S. Ct. 2464, 41 L. Ed. 2d 325 (1974), in which the Court rejected the claim that the inspection of an impounded vehicle's tire tread and the collection of paint scrapings from its exterior violated the *Fourth Amendment*. Whether the plurality said so because no search occurred or because the search was reasonable is unclear. Compare *id.*, at 591, 94 S. Ct. 2464, 41 L. Ed. 2d 325 (opinion of Blackmun, J.) ("[W]e fail to comprehend what expectation of privacy was infringed"), with *id.*, at 592, 94 S. Ct. 2464, 41 L. Ed. 2d 325 ("Under circumstances such as these, where probable cause exists, a warrantless examination of the exterior of a car is not unreasonable ...").

Finally, the Government's position gains little support from our conclusion in *Oliver v. United States*, 466 U. S. 170, 104 S. Ct. 1735, 80 L. Ed. 2d 214 (1984), that officers' information-gathering intrusion on an "open field" did not constitute a *Fourth Amendment* search even though it was a trespass at common law, *id.*, at 183, 104 S. Ct. 1735, 80 L. Ed. 2d 214. Quite simply, an open field, unlike the curtilage of a home, see *United States v. Dunn*, 480 U. S. 294, 300, 107 S. Ct. 1134, 94 L. Ed. 2d 326 (1987), is not one of those protected areas enumerated in the *Fourth Amendment*. *Oliver*, *supra*, at 176-177, 104 S. Ct. 1735, 80 L. Ed. 2d 214. See also *Hester v. United States*, 265 U. S. 57, 59, 44 S. Ct. 445, 68 L. Ed. 898 (1924). The Government's physical intrusion on such an area--unlike its intrusion on the "effect" at issue here--is of no *Fourth Amendment* significance.⁸

⁸ [omitted]

B

The concurrence begins by accusing us of applying "18th-century tort law." *Post*, at 1. That is a distortion. What we apply is an 18th-century guarantee against unreasonable searches, which we believe must provide at a *minimum* the degree of protection it afforded when it was adopted. The concurrence does not share that belief. It

would apply *exclusively* *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 9. We entirely fail to understand that point. For unlike the concurrence, which would make *Katz* the *exclusive* test, we do not make trespass the *exclusive* test. Situations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis.

In fact, it is the 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, 121 S. Ct. 2038, 150 L. Ed. 2d 94. 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, 103 S. Ct. 1081, 75 L. Ed. 2d 55. Thus, even assuming that the concurrence is correct to say that "[t]raditional surveillance" of Jones for a 4-week period "would have required a large team of agents, multiple vehicles, and perhaps aerial assistance," *post*, at 12, our cases suggest that such visual observation is constitutionally permissible. **It may be that achieving the same result through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy, but the present case does not require us to answer that question.**

And answering it affirmatively leads us needlessly into additional thorny problems. **The concurrence posits that "relatively short-term monitoring of a 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 13 (emphasis added). **That introduces yet another novelty into our jurisprudence. There is no precedent for the proposition that whether a search has occurred depends on the nature of the crime being investigated. And even accepting that novelty, it remains unexplained why a 4-week investigation is "surely" too long and why a drug-trafficking conspiracy involving substantial amounts of cash and narcotics is not an "extraordinary offens[e]" which may permit longer observation.** See *post*, at 13-14. What of a 2-day monitoring of a suspected purveyor of stolen electronics? Or of a 6-month monitoring of a suspected terrorist? We may have to grapple with these "vexing problems" in some future case where a classic trespassory search is not involved

and resort must be had to *Katz* analysis; but there is no reason for rushing forward to resolve them here.

III

The Government argues in the alternative that even if the attachment and use of the device was a search, it was reasonable--and thus lawful--under the *Fourth Amendment* because "officers had reasonable suspicion, and 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 ALITO, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE KAGAN join, concurring in the judgment.

1 [omitted]

[The Court's] 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, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984), and here there was none. Indeed, the success of the surveillance technique that the officers employed was dependent on the fact that the

GPS did not interfere in any way with the operation of the vehicle, for if any such interference had been detected, the device might have been discovered.

The Court does claim that the installation and use of the GPS constituted a search, see *ante*, at 3-4, but this conclusion is dependent on the questionable proposition that these two procedures cannot be separated for purposes of *Fourth Amendment* analysis. If these two procedures are analyzed separately, it is not at all clear from the Court's opinion why either should be regarded as a search. It is clear that the attachment of the GPS device was not itself a search; if the device had not functioned or if the officers had not used it, no information would have been obtained. And the Court does not contend that the use of the device constituted a search either. On the contrary, the Court accepts the holding in *United States v. Knotts*, 460 U. S. 276, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (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 7.

The Court argues--and I agree--that "we must 'assur[e] preservation of that degree of privacy against government that existed when the *Fourth Amendment* was adopted.'" *Ante*, at 5 (quoting *Kyllo v. United States*, 533 U. S. 27, 34, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (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? ³) 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, see Prosser & Keeton 75, but a trespass on open fields, as opposed to the "curtilage" of a home, does not fall within the scope of the *Fourth Amendment* because private property outside the curtilage is not part of a "hous[e]" within the meaning of the *Fourth Amendment*. See *Oliver v. United States*, 466 U. S. 170, 104 S. Ct. 1735, 80 L. Ed. 2d 214 (1984); *Hester v. United States*, 265 U. S. 57, 44 S. Ct. 445, 68 L. Ed. 898 (1924).

3 The [*36] Court suggests that something like this might have occurred in 1791, but this would have required either a gigantic coach, a very tiny constable, or both--not to mention a constable with incredible fortitude and patience.

B

...[T]he 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 8. 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 3, n. 2, but a bailee may sue for a trespass to chattel only if the injury occurs during the term of the bailment. See *8A Am. Jur. 2d, Bailment* §166, pp. 685-686 (2009). So if the GPS device had been installed before 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 State⁴ or a State that has adopted the Uniform Marital Property Act,⁵ respondent would likely be an owner of the vehicle, and it would not matter whether the GPS

was installed before or after his wife turned over the keys. In non-community-property States, on the other hand, the registration of the vehicle in the name of 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. 2, *Automobiles*, §1208, pp. 859-860 (2007).

4 [omitted]

5 [omitted]

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 (*SD 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, 121 S. Ct. 2038, 150 L. Ed. 2d 94, and judges are apt to confuse their own expectations of privacy with those of the hypothetical reasonable person to which the *Katz* test looks. See *Minnesota v. Carter*, 525 U. S. 83, 97, 119 S. Ct. 469, 142 L. Ed. 2d 373 (1998) (SCALIA, J., concurring). In addition, the *Katz* test rests on the assumption that this hypothetical reasonable person has a well-developed and stable set of privacy expectations. But technology can change

those expectations. Dramatic technological change may lead to periods in which popular expectations are in flux and may ultimately produce significant changes in popular attitudes. New technology may provide increased convenience or security at the expense of privacy, and many people may find the tradeoff worthwhile. And even if the public does not welcome the diminution of privacy that new technology entails, they may eventually reconcile themselves to this development as inevitable.⁶

6 [omitted]

7 [omitted]

* * *

B

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

Perhaps most significant, cell phones and other wireless devices now permit wireless carriers to track and record the location of users--and as of June 2011, it has been reported, there were more than 322 million wireless devices in use in the United States.⁸ For older phones, the accuracy of the location information depends on the 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.⁹ Similarly, phone-location-tracking services are offered as "social" tools, allowing consumers to find (or to avoid) others who enroll in these services. The availability and use of these and other new devices will continue to shape the average person's expectations about the privacy of his or her daily movements.

8 [omitted]

9 [omitted]

V

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

10 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, 75 L. Ed. 2d 55. 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, 103 S. Ct. 1081, 75 L. Ed. 2d 55.

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, 75 L. Ed. 2d 55. 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 surveillance is long enough to constitute a *Fourth Amendment* search, the police may always seek a warrant.¹¹ We also need not consider whether prolonged GPS monitoring in the context of investigations involving extraordinary offenses

would similarly intrude on a constitutionally protected sphere of privacy. In such cases, long-term tracking might have been mounted using previously available techniques.

11 [omitted]

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.