

104 S.Ct. 3296
Supreme Court of the United States

UNITED STATES, Petitioner,
v.
James Connors KARO et al.

No. 83-850.

Argued April 25, 1984.

Decided July 3, 1984.

Rehearing Denied Sept. 18, 1984.

See [468 U.S. 1250](#), [105 S.Ct. 51](#).

Synopsis

Motion by defendants to suppress evidence was granted by the United States District Court for the District of New Mexico, and the Court of Appeals, Tenth Circuit, [710 F.2d 1433](#), though reversing as to one defendant, affirmed the judgment in all other respects. Certiorari was granted on the Government's petition, and the Supreme Court, Justice White, held that: (1) Government is not completely free to determine by means of electric device, without warrant and without probable cause or reasonable suspicion, whether particular article or person is in an individual's home at particular time; (2) Government is not free to do so without warrant even if there is requisite justification in facts for believing that crime is being or will be committed and that monitoring beeper wherever it goes is likely to produce evidence of criminal activity; but (3) where such monitoring revealed nothing about contents of locker that two respondents had rented, there was no "search" of that locker, which was identified only when agents traversing public parts of facility found that smell of ether was coming from specific locker; and (4) search warrant affidavit, after striking of facts about monitoring of beeper while it was in residence, contained sufficient untainted information to furnish probable cause for subsequent issuance of search warrant.

Reversed.

Justice O'Connor filed opinion concurring in part and concurring in the judgment, in which opinion Justice Rehnquist joined.

Justice Stevens filed opinion concurring in part and dissenting in part, in which opinion Justice Brennan and Justice Marshall joined.

West Headnotes (11)

[1] **Telecommunications** → Acts Constituting
Interception or Disclosure

Where ten cans of ether had been ordered from government informant, mere installation of

electronic beeper by Drug Enforcement Administration into can of its own to be included as part of shipment by such government informant did not violate any one's Fourth Amendment rights, but, rather, any impairment of privacy interests that might have occurred was occasioned by monitoring of the beeper. [U.S.C.A. Const.Amend. 4](#); Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), 406, [21 U.S.C.A. §§ 841\(a\)\(1\), 846](#).

[119 Cases that cite this headnote](#)

[2] **Telecommunications** → Acts Constituting
Interception or Disclosure

Government is not completely free from constraints of Fourth Amendment to determine by means of electric device, without warrant and without probable cause or reasonable suspicion, whether particular article, or person for that matter, is in an individual's home at particular time. [U.S.C.A. Const.Amend. 4](#).

[89 Cases that cite this headnote](#)

[3] **Telecommunications** → Wiretapping in general

Homeowner takes risk that his guest will cooperate with the Government but not risk that trustworthy friend has been bugged by Government without his knowledge or consent. [U.S.C.A. Const.Amend. 4](#).

[27 Cases that cite this headnote](#)

[4] **Telecommunications** → Necessity for judicial
approval; emergency interception
Telecommunications → Transponders or
"beepers" in general; warrantless proceedings

Government is not free to monitor beepers in private residences without warrant even if there is requisite justification in facts for believing that crime is being or will be committed and that monitoring beeper wherever it goes is likely to produce evidence of criminal activity. [U.S.C.A. Const.Amend. 4](#).

[83 Cases that cite this headnote](#)

[5] **Searches and Seizures** → Necessity of and preference for warrant, and exceptions in general

Warrantless searches are presumptively unreasonable, though a few limited exceptions to such general rule have been recognized. [U.S.C.A. Const.Amend. 4](#).
[122 Cases that cite this headnote](#)

[6] **Controlled Substances** → Issuance, Requisites, and Validity of Warrant in General
Searches and Seizures → Impartial magistrate requirement

Primary reason for search warrant requirement is to interpose neutral and detached magistrate between citizen and officer engaged in often competitive enterprise of ferreting out crime, and those suspected of drug offenses are no less entitled to that protection than those suspected of nondrug offenses. [U.S.C.A. Const.Amend. 4](#); Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), 406, [21 U.S.C.A. §§ 841\(a\)\(1\), 846](#).
[33 Cases that cite this headnote](#)

[7] **Searches and Seizures** → Emergencies and Exigent Circumstances; Opportunity to Obtain Warrant

If truly exigent circumstances exist, no warrant is required under general Fourth Amendment principles. [U.S.C.A. Const.Amend. 4](#).
[67 Cases that cite this headnote](#)

[8] **Telecommunications** → Application or Affidavit
Telecommunications → Warrants or judicial authorization

Description of object in which electronic beeper is to be placed, circumstances that lead agents to wish to install it and length of time for which beeper surveillance is requested will suffice to permit issuance of warrant authorizing beeper installation and surveillance. [U.S.C.A. Const.Amend. 4](#).
[52 Cases that cite this headnote](#)

[9] **Criminal Law** → Electronic surveillance;

telecommunications

Where, by maintaining beeper, agents verified that ether was actually located in house and that it remained there while warrant was sought, the information was obtained without warrant and would be inadmissible at trial against those with privacy interests in the house. [U.S.C.A. Const.Amend. 4](#).
[25 Cases that cite this headnote](#)

[10] **Searches and Seizures** → Use of electronic devices; tracking devices or “beepers.”

Where monitoring of beeper revealed nothing about contents of locker that two respondents had rented, there was no “search” of that locker, which was identified only when agents traversing public parts of facility found that smell of ether was coming from specific locker. [U.S.C.A. Const.Amend. 4](#); Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), 406, [21 U.S.C.A. §§ 841\(a\)\(1\), 846](#).
[49 Cases that cite this headnote](#)

[11] **Telecommunications** → Probable cause
Telecommunications → Warrants or judicial authorization

Search warrant affidavit, after striking of facts about monitoring of beeper while it was in residence, contained sufficient untainted information to furnish probable cause for issuance of search warrant, and evidence seized pursuant to the warrant should not have been suppressed with respect to any of the respondents. [U.S.C.A. Const.Amend. 4](#).
[172 Cases that cite this headnote](#)

Opinion

Justice WHITE delivered the opinion of the Court.

In [United States v. Knotts](#), [460 U.S. 276](#), [103 S.Ct. 1081](#), [75 L.Ed.2d 55](#) (1983), we held that the warrantless monitoring of an electronic tracking device (“beeper”) inside a container of chemicals did not violate the Fourth Amendment when it revealed no information that could not have been obtained through visual surveillance. In this case, we are called upon to address two questions left unresolved in *Knotts*: (1) whether installation of a beeper in a container of chemicals with the consent of the original owner constitutes a search or seizure within the meaning of the Fourth Amendment when the container is

delivered to a buyer having no knowledge of the presence of the beeper, and (2) whether monitoring of a beeper falls within the ambit of the Fourth Amendment when it reveals information that could not have been obtained through visual surveillance.

I

[Federal Drug Agents learned from a government informant that 50 gallons of ether had been ordered by drug trafficking suspects. The ether was to be used to extract cocaine from clothing that had been imported into the United States. The Government obtained a court order authorizing the installation and monitoring of a beeper in one of the cans of ether. [The can then was transferred to a variety of locations, the police following it using visual and beeper information. At one point, the can went missing, and the police tracked it down using the beeper information to a private house. Eventually a warrant to search the house was issued based solely upon the information obtained from the beeper.]

* * * * *

In *United States v. Knotts*, 460 U.S. 276, 103 S.Ct. 1081, 75 L.Ed.2d 55 (1983), law enforcement officials, with the consent of the seller, installed a beeper in a 5-gallon can of chloroform and monitored the beeper after delivery of the can to the buyer in Minneapolis, Minn. Although there was partial visual surveillance as the automobile containing the can moved along the public highways, the beeper enabled the officers to locate the can in the area of a cabin near Shell Lake, Wis., and it was this information that provided the basis for the issuance of a search warrant. As the case came to us, the installation of the beeper was not challenged; only the monitoring was at issue. The Court held that since the movements of the automobile and the arrival of the can containing the beeper in the area of the cabin could have been observed by the naked eye, no Fourth Amendment violation was committed by monitoring the beeper during the trip to the cabin. In *Knotts*, the record did not show that the beeper was monitored while the can containing it was inside the cabin, and we therefore had no occasion to consider whether a constitutional violation would have occurred had the fact been otherwise.

Here, there is no gainsaying that the beeper was used to locate the ether in a specific house in Taos, N.M., and that that information was in turn used to secure a warrant for the search of the house. The affidavit supporting the application for a search warrant recited that the ether arrived at the residence in a motor vehicle that later departed and that:

“For fear of detection, we did not maintain tight surveillance of the residence.... Using the ‘beeper’ locator, I positively determined that the ‘beeper’ can (5-gallon can of ether, described earlier in this affidavit) was now inside the above-described premises to be searched because the ‘beeper’ locator (direction finder) pinpointed the beeper signal as emanating from the above-described premises.... Again, later on Saturday (now in the daytime), 7 February 1981, my ‘beeper’ locator still shows a strong ‘beeper’

signal emanating from inside the above-described residence.” App. 57–58.

This case thus presents the question whether the monitoring of a beeper in a private residence, a location not open to visual surveillance, violates the Fourth Amendment rights of those who have a justifiable interest in the privacy of the residence. Contrary to the submission of the United States, we think that it does.

At the risk of belaboring the obvious, private residences are places in which the individual normally expects privacy free of governmental intrusion not authorized by a warrant, and that expectation is plainly one that society is prepared to recognize as justifiable. Our cases have not deviated from this basic Fourth Amendment principle. Searches and seizures inside a home without a warrant are presumptively unreasonable absent exigent circumstances. *Welsh v. Wisconsin*, 466 U.S. 740, 748–749, 104 S.Ct. 2091, 2097, 80 L.Ed.2d 732 (1984); *Steagald v. United States*, 451 U.S. 204, 211–212, 101 S.Ct. 1642, 1647–1648, 68 L.Ed.2d 38 (1981); *Payton v. New York*, 445 U.S. 573, 586, 100 S.Ct. 1371, 1380, 63 L.Ed.2d 639 (1980). In this case, had a DEA agent thought it useful to enter the Taos residence to verify that the ether was actually in the house and had he done so surreptitiously and without a warrant, there is little doubt that he would have engaged in an unreasonable search within the meaning of the Fourth Amendment. For purposes of the Amendment, the result is the same where, without a warrant, the Government surreptitiously employs an electronic device to obtain information that it could not have obtained by observation from outside the curtilage of the house. The beeper tells the agent that a particular article is actually located at a particular time in the private residence and is in the possession of the person or persons whose residence is being watched. Even if visual surveillance has revealed that the article to which the beeper is attached has entered the house, the later monitoring not only verifies the officers’ observations but also establishes that the article remains on the premises. Here, for example, the beeper was monitored for a significant period after the arrival of the ether in Taos and before the application for a warrant to search.

^[2] ^[3] The monitoring of an electronic device such as a beeper is, of course, less intrusive than a full-scale search, but it does reveal a critical fact about the interior of the premises that the Government is extremely interested in knowing and that it could not have otherwise obtained without a warrant. The case is thus not like *Knotts*, for there the beeper told the authorities nothing about the interior of *Knotts*’ cabin. The information obtained in *Knotts* was “voluntarily conveyed to anyone who wanted to look ...,” 460 U.S., at 281, 103 S.Ct., at 1085; here, as we have said, the monitoring indicated that the beeper was inside the house, a fact that could not have been visually verified.

We cannot accept the Government’s contention that it should be completely free from the constraints of the Fourth Amendment to determine by means of an electronic device, without a warrant and without probable

cause or reasonable suspicion, whether a particular article—or a person, for that matter—is in an individual’s home at a particular time. Indiscriminate monitoring of property that has been withdrawn from public view would present far too serious a threat to privacy interests in the home to escape entirely some sort of Fourth Amendment oversight.⁴

^[4] ^[5] ^[6] ^[7] We also reject the Government’s contention that it should be able to monitor beepers in private residences without a warrant if there is the requisite justification in the facts for believing that a crime is being or will be committed and that monitoring the beeper wherever it goes is likely to produce evidence of criminal activity. Warrantless searches are presumptively unreasonable, though the Court has recognized a few limited exceptions to this general rule. See, e.g., *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) (automobiles); *Schneekloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) (consent); *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967) (exigent circumstances). The Government’s contention that warrantless beeper searches should be deemed reasonable is based upon its deprecation of the benefits and exaggeration of the difficulties associated with procurement of a warrant. The Government argues that the traditional justifications for the warrant requirement are inapplicable in beeper cases, but to a large extent that argument is based upon the contention, rejected above, that the beeper constitutes only a minuscule intrusion on protected privacy interests. The primary reason for the warrant requirement is to interpose a “neutral and detached magistrate” between the citizen and “the officer engaged in the often competitive enterprise of ferreting out crime.” *Johnson v. United States*, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948). Those suspected of drug offenses are no less entitled to that protection than those suspected of nondrug offenses. Requiring a warrant will have the salutary effect of ensuring that use of beepers is not abused, by imposing upon agents the

requirement that they demonstrate in advance their justification for the desired search. This is not to say that there are no exceptions to the warrant rule, because if truly exigent circumstances exist no warrant is required under general Fourth Amendment principles.

If agents are required to obtain warrants prior to monitoring a beeper when it has been withdrawn from public view, the Government argues, for all practical purposes they will be forced to obtain warrants in every case in which they seek to use a beeper, because they have no way of knowing in advance whether the beeper will be transmitting its signals from inside private premises. The argument that a warrant requirement would oblige the Government to obtain warrants in a large number of cases is hardly a compelling argument against the requirement. It is worthy of note that, in any event, this is not a particularly attractive case in which to argue that it is impractical to obtain a warrant, since a warrant was in fact obtained in this case, seemingly on probable cause.

^[8] We are also unpersuaded by the argument that a warrant should not be required because of the difficulty in satisfying the particularity requirement of the Fourth Amendment. The Government contends that it would be impossible to describe the “place” to be searched, because the location of the place is precisely what is sought to be discovered through the search. Brief for United States 42. However true that may be, it will still be possible to describe the object into which the beeper is to be placed, the circumstances that led agents to wish to install the beeper, and the length of time for which beeper surveillance is requested. In our view, this information will suffice to permit issuance of a warrant authorizing beeper installation and surveillance.

In sum, we discern no reason for deviating from the general rule that a search of a house should be conducted pursuant to a warrant.⁵

Reversed.