

For this post, I'll be discussing a case that is before the Supreme Court of the United States ("SCOTUS").

In November, SCOTUS heard arguments on a case that may change our rights under the Fourth Amendment, *U.S. v. Jones*. The Fourth Amendment provides protection by requiring the government to obtain a warrant, by demonstrating enough probable cause to a magistrate, in order to search or seize property or a person. The argument in this case, is whether or not attaching a GPS tracking device to a car, in order to discover where the suspect drove for over a month, required a search warrant.

Throughout the intervening centuries since its creation, the Fourth Amendment has been molded and changed by the courts to arrive at the modern definition. At its simplest, the modern definition states that the Fourth Amendment protects a citizen's expectation of privacy. If a person expects a piece of property, an area of space or a conversation to be private, then the government will be required to obtain a search warrant in order to seize, search or listen. Now, there are exceptions to the rule of requiring a warrant. (Some say these exceptions are some numerous as to be larger than the rule.) One such exception is being in public. If a person commits an act, or goes to a location, the government is not required to obtain a warrant in tracking a suspect's movement. It's a simple rationale; if everyone can see you do something, why does the government have to jump through hoops to see what everyone else can? SCOTUS has tackled question of police observing of criminal suspects many times before, and has usually ruled in favor of the police.

In the car tracking context, SCOTUS has dealt with this issue before in 1983, in *U.S. v Knotts*. The issue in *Knotts* was the use of a beeper. Police attached a beeper device to Knott's car, who was criminal suspect, without a warrant. The police could, at any time, activate the beeper and determine its location, and the location of the suspect's car. Knott's claimed that attaching a device that could announce his location at any time to the police was a violation of the Fourth Amendment. The government claimed that since the car was in public, the beeper performed the same function as a patrolman assigned to following the car. SCOTUS agreed with the government and issued this ruling which has been precedent ever since: "A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another."

Now comes *Jones*. The basic facts are the same: the police attached a tracking device to a car that moved in public. However, during oral arguments, SCOTUS reacted differently. When Deputy U.S. Solicitor General Michael R. Dreeben, the government's attorney, presented his case, he was hammered by questions from the Justices. The first questions came from Chief Justice Roberts, who questioned the continued use of the *Knotts* precedent. Roberts stated that *Knotts* is almost thirty years old, and the upgrades in technology allow more information to be collected by a GPS than a beeper. Roberts worried that the current GPS could not only display the current position, like the old beeper, but could also show all movements over for the previous

month. Roberts wondered with the ever changing world of technology, what the police of the future could collect. Dreeben countered that these actions take place in public and thus, there is no expectation of privacy. Justice Kennedy then asked if the police could attach a GPS to a coat without a warrant, since the coat is worn in public. Justice Alito said that the issue is that technology allows for more intrusion into citizens' lives than ever before. Justice Breyer stated that if the government won the case, the government could monitor the movements of every person in the country twenty four hours a day, which sounds like *1984*. Justice Sotomayor stated that the Fourth Amendment was drafted to prevent the use of general warrants, which allowed the government to indiscriminately investigate on mere suspicion. She did not see how using a GPS was any different.

Stephen C. Leckar, the attorney defending Jones, began his argument that the attachment of the device was a trespass. The Justices were not impressed by this argument, and suggested that there were larger constitutional issues at stake. Leckar came around by the end of his presentation and stated that the GPS was a complete robotic substitute for human surveillance.

I have to say that I'm surprised at the Court's possible leanings during oral arguments. The Court was questioning a thirty year precedent that actions in public are not protected by the Fourth Amendment. Of course, observed leanings during oral arguments is no predictor of the actual ruling. But, the fact that the Court would question an established precedent is a surprise in itself. We'll just have to wait and see what happens later this next year.