

The Burger Court Opinion Writing Database

United States v. Knotts

460 U.S. 276 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

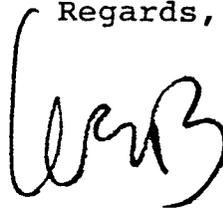
January 17, 1983

Re: No. 81-1802, U.S. v. Knotts

Dear Bill:

I join.

Regards,

A handwritten signature in cursive script, appearing to read "WB", is written below the typed word "Regards,".

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 17, 1983

Re: No. 81-1802 -- United States v. Knotts

Dear Bill:

Need we in this case express any views on the "open fields" doctrine, in light of our decision at last Friday's Conference to explore that issue in another case? I do not think anything would be lost from your opinion if, on p. 6, you ended the last sentence in the middle paragraph with the words "leaving a public highway," and if, on p. 9, you entirely deleted the last sentence of the middle paragraph.

If you can see your way to making these changes, I would be prepared to join, though I do plan to circulate a short concurrence explaining why I think this would be a much more difficult case if the original installation of the beeper were at issue.

Sincerely,

WJB
WJB, Jr.

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 25, 1983

67 1 25 83 86'

RE: No. 81-1802 United States v. Knotts

Dear Harry:

Please join me in your concurring in the judgment
in the above.

Sincerely,



Justice Blackmun

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 25, 1983

RE: No. 81-1802 United States v. Knotts

Dear John:

Please join me in your concurrence in the above.

Sincerely,



Justice Stevens

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: JAN 25 1983

Recirculated: _____

WJB
Please join me in
concurring opinion
M

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1802

UNITED STATES, PETITIONER *v.*
LEROY CARLTON KNOTTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[January —, 1983]

JUSTICE BRENNAN, concurring in the judgment.

I join JUSTICE BLACKMUN'S and JUSTICE STEVENS'S opinions concurring in the judgment. I should add, however, that I think this would have been a much more difficult case if respondent had challenged, not merely certain aspects of the monitoring of the beeper installed in the chloroform container purchased by respondent's compatriot, but also its original installation. See *ante*, at 3, n. *. *Katz v. United States*, 389 U. S. 347 (1967), made quite clear that the Fourth Amendment protects against governmental invasions of a person's reasonable "expectation[s] of privacy," even when those invasions are not accompanied by physical intrusions. Cases such as *Silverman v. United States*, 365 U. S. 505, 509-512 (1961), however, hold 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 even if the same information could have been obtained by other means. I do not believe that *Katz*, or its progeny, have eroded that principle. Cf. The Supreme Court, 1979 Term, 94 Harv. L. Rev. 75, 203-204 (1980).

I am also entirely unconvinced by the Court of Appeals's footnote disposing of the installation issue with the statement "we hold that the consent of the owner [of the chloroform

Join

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To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: _____
Recirculated: FEB 15 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1802

UNITED STATES, PETITIONER *v.*
LEROY CARLTON KNOTTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[February —, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,
concurring in the judgment.

I join JUSTICE BLACKMUN's and JUSTICE STEVENS' opinions concurring in the judgment. I should add, however, that I think this would have been a much more difficult case if respondent had challenged, not merely certain aspects of the monitoring of the beeper installed in the chloroform container purchased by respondent's compatriot, but also its original installation. See *ante*, at 3, n. *. *Katz v. United States*, 389 U. S. 347 (1967), made quite clear that the Fourth Amendment protects against governmental invasions of a person's reasonable "expectation[s] of privacy," even when those invasions are not accompanied by physical intrusions. Cases such as *Silverman v. United States*, 365 U. S. 505, 509-512 (1961), however, hold 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 even if the same information could have been obtained by other means. I do not believe that *Katz*, or its progeny, have eroded that principle. Cf. The Supreme Court, 1979 Term, 94 Harv. L. Rev. 75, 203-204 (1980).

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 12, 1983

Re: 81-1802 - United States v. Knotts

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference

cpm

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 9, 1983

Re: No. 81-1802 - United States v. Knotts

Dear Bill:

Please join me in your concurring opinion.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 17, 1983

Re: No. 81-1802 - United States v. Knotts

Dear Bill:

I would like very much to be able to join your opinion. I am certainly with you in the judgment. One thing, however, bothers me. On page 6, first full paragraph, next to the last line, could you see your way clear to end the sentence with the word "cabin" and eliminate the citation of the Hester case?

I do not regard the Knotts case as an open fields one. Further, we shall probably take an open fields case for argument, and I, for one, am a little reluctant to lay the ground work here for a decision in whatever case we take. Hester, of course, is also cited on page 9 of your opinion. I wish we could eliminate that citation, too.

Sincerely,



Justice Rehnquist

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 18, 1983

Re: No. 81-1802 - United States v. Knotts

Dear Bill:

Evidently, you and I are thinking generally along the same lines in this case, with similar results, so far as Bill Rehnquist is concerned. Inasmuch as he is not withdrawing the references and citations, I propose to write separately along the lines of the enclosure. I just wanted you to know.

Sincerely,



Justice Brennan

1/18/83

No. 81-1802 - United States v. Knotts

JUSTICE BLACKMUN, concurring in the judgment.

I would join the Court's opinion were it not for its references to the "open fields" doctrine and for its two citations of Hester v. United States, 265 U.S. 57 (1924). Ante, at 6 and 9. For me, the present case does not concern the open fields doctrine, and I find these references and citations totally unnecessary for the Court's decision. Furthermore, and most important, an open fields case has been accepted by the Court for argument and plenary consideration.

I do not wish to provide either side in that forthcoming litigation with support, directly or by implication, for its position in the case that is to be argued, and I surely do not wish to decide that case in this one. Were the present case one that concerned open fields, I, of course, would have no objection to the references and the citations. But, as noted, this is not such a case. I would defer our comments about open fields to a case that concerns that subject and where we have the benefit of

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 24, 1983

Re: No. 81-1802 - United States v. Knotts

Dear John:

I had the enclosed printed up about a week ago but withheld circulating it until we acted on the open fields cases at last Friday's conference. I now have revised it to reflect the action taken at that time. While this is largely repetitive of your own concurrence, I circulate it for what it may be worth.

Sincerely,



Justice Stevens

cc: The Conference

LIBRARY OF CONGRESS
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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: JAN 24 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1802

UNITED STATES, PETITIONER *v.*
LEROY CARLTON KNOTTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[January —, 1983]

JUSTICE BLACKMUN, concurring in the judgment.

I would join the Court's opinion were it not for its references to the "open fields" doctrine and for its two citations of *Hester v. United States*, 265 U. S. 57 (1924). *Ante*, at 6 and 9. For me, the present case does not concern the open fields doctrine, and I regard these references and citations as unnecessary for the Court's decision. Furthermore, and most important, cases concerning the open fields doctrine have been accepted by the Court for argument and plenary consideration. *Florida v. Brady*, cert. granted, 459 U. S. — (1982); *Oliver v. United States*, cert. granted, — U. S. — (1983). See also *United States v. Dunn*, 674 F. 2d 1093 (CA5 1982), cert. pending, No. 82-508.

I do not wish to provide either side in these granted cases with support, directly or by implication, for its position, and I surely do not wish to decide those cases in this one. I would defer comments about open fields to a case that concerns that subject and in which we have the benefit of briefs and oral argument.

I therefore do not join the Court's opinion. I concur only in the result it reaches.

HAB

February 7, 1983

Re: No. 81-1802 - United States v. Knotts

Dear John:

I am revising somewhat my brief separate concurrence in the judgment in this case. I hope that you do not mind too much if I borrow from you one phrase which appears in your separate opinion. The new draft should be around by tomorrow.

Sincerely,

HAB

Justice Stevens

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: FEB 7 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1802

UNITED STATES, PETITIONER *v.*
LEROY CARLTON KNOTTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[February —, 1983]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN joins,
concurring in the judgment.

The Court's opinion gratuitously refers to the "open fields" doctrine and twice cites *Hester v. United States*, 265 U. S. 57 (1924). *Ante*, at 6 and 9. For me, the present case does not concern the open fields doctrine, and I regard these references and citations as unnecessary for the Court's decision. Furthermore, and most important, cases concerning the open fields doctrine have been accepted by the Court for argument and plenary consideration. *Florida v. Brady*, cert. granted, 459 U. S. — (1982); *Oliver v. United States*, cert. granted, — U. S. — (1983). See also *United States v. Dunn*, 674 F. 2d 1093 (CA5 1982), cert. pending, No. 82-508.

It would be unfortunate to provide either side in these granted cases with support, directly or by implication, for its position, and I surely do not wish to decide those cases in this one. Although the Court does not indicate its view on how such cases should be decided, I would defer all comments about open fields to a case that concerns that subject and in which we have the benefit of briefs and oral argument.

I therefore do not join the Court's opinion. I concur only in the result it reaches.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 13, 1983

81-1802 United States v. Knotts

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

JAN 11 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1802

UNITED STATES, PETITIONER *v.*
LEROY CARLTON KNOTTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[January —, 1983]

JUSTICE REHNQUIST delivered the Opinion of the Court

A beeper is a radio transmitter, usually battery operated, which emits periodic signals that can be picked up by a radio receiver. In this case, a beeper was placed in a five gallon drum containing chloroform purchased by one of respondent's codefendants. By monitoring the progress of a car carrying the chloroform Minnesota law enforcement agents were able to trace the can of chloroform from its place of purchase in Minneapolis, Minnesota to respondent's secluded cabin near Shell Lake, Wisconsin. The issue presented by the case is whether such use of a beeper violated respondent's rights secured by the Fourth Amendment to the United States Constitution.

I

Respondent and two codefendants were charged in the United States District Court for the District of Minnesota with conspiracy to manufacture controlled substances, including but not limited to methamphetamine, in violation of 21 U. S. C. § 846 (1976). One of the codefendants, Darryl Petschen, was tried jointly with respondent; the other codefendant, Tristan Armstrong, pleaded guilty and testified for the government at trial.

Suspicion attached to this trio when the 3M Company,

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 13, 1983

Re: No. 81-1802 United States v. Knotts

Dear John:

I agree with some of your observations with respect to the circulating opinion in this case, and disagree with others.

Insofar as your example of a family leaving for a vacation in a car which is driven on a public thoroughfare, I stand by the statement in the circulating draft that there is no reasonable expectation of privacy in their movements along the highway.

I agree that any citizen, whether Knotts or anyone else, is entitled to the protections of the Fourth Amendment; but insofar as travel in a licensed vehicle along a public highway is concerned, I do not think that he or any citizen suffers any deprivation of Fourth Amendment rights when he is visually observed by the police.

I agree with your suggestion that the language which you refer to on page 6 might be taken to reach devices which would enable officers to overhear private conversations that take place within an automobile, though it is certainly not intended to pass judgment on such devices. Accordingly, I will change the sentence beginning "Nothing in the Fourth Amendment" on page 6 so as to read:

"Nothing in the Fourth Amendment prohibited the police from augmenting the sensory faculties

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bestowed upon them at birth with such enhancement as science and technology afforded them in this case."

Sincerely,

Wm

Justice Stevens

cc: The Conference

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pp. 3, 6-8

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JAN 14 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1802

**UNITED STATES, PETITIONER *v.*
LEROY CARLTON KNOTTS**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT**

[January —, 1983]

JUSTICE REHNQUIST delivered the Opinion of the Court

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I

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Suspicion attached to this trio when the 3M Company,

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 18, 1983

Re: No. 81-1802 United States v. Knotts

Dear Harry:

Since I now have a Court for my circulating opinion in this case, I believe I will leave it as it is.

Sincerely,



Justice Blackmun

cc: The Conference

THE HOUSE OF REPRESENTATIVES
COMMISSION OF THE MANUSCRIPTS DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 18, 1983

Re: No. 81-1802 United States v. Knotts

Dear Bill:

You have probably seen my letter to Harry, responding to a request similar to that contained in your letter of January 17th. The only reason I voted to grant certiorari in Florida v. Brady, which was an opinion of the Supreme Court of Florida expressing the view that United States v. Hester was no longer the law, was because I felt there was no warrant in this Court's cases for the conclusion reached by the Supreme Court of Florida. The present draft of my opinion in this case conforms to what I believe to be the state of the law on this subject.

Sincerely,



Justice Brennan

cc: The Conference

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STYLISTIC CHANGES THROUGHOUT

Pg 1, 2, 5, 6

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: _____

Recirculated: FEB 4 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1802

UNITED STATES, PETITIONER *v.*
LEROY CARLTON KNOTTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[February —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

A beeper is a radio transmitter, usually battery operated, which emits periodic signals that can be picked up by a radio receiver. In this case, a beeper was placed in a five gallon drum containing chloroform purchased by one of respondent's codefendants. By monitoring the progress of a car carrying the chloroform Minnesota law enforcement agents were able to trace the can of chloroform from its place of purchase in Minneapolis, Minnesota to respondent's secluded cabin near Shell Lake, Wisconsin. The issue presented by the case is whether such use of a beeper violated respondent's rights secured by the Fourth Amendment to the United States Constitution.

I

Respondent and two codefendants were charged in the United States District Court for the District of Minnesota with conspiracy to manufacture controlled substances, including but not limited to methamphetamine, in violation of 21 U. S. C. § 846 (1976). One of the codefendants, Darryl Petschen, was tried jointly with respondent; the other codefendant, Tristan Armstrong, pleaded guilty and testified for the government at trial.

Suspicion attached to this trio when the 3M Company,

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 1, 1983

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 81-1802, United States v. Knotts

1. No. 81-6922, Brock v. United States. The facts of this case are very similar to Knotts. Police officers placed a beeper in a container of methylamine, a precursor chemical for methamphetamine. Through visual surveillance and use of the beeper, police officers were able to locate an illegal drug factory. Judge Sneed, writing for the Ninth Circuit, concluded that the monitoring of the beeper was not a search within the meaning of the Fourth Amendment. This is consistent with our decision in Knotts. I recommend that the petition be denied.

2. No. 82-5459, Devorce v. United States. In this case, police officers, acting pursuant to a warrant, attached a beeper to a rented car. Petitioners then used the car in a bank robbery; by monitoring the beeper, police officers were able to apprehend petitioners. Petitioners argued that the warrant was not supported by probable cause and therefore the installation of the beeper violated the Fourth Amendment. The Second Circuit did not reach this issue, finding instead that the beeper was installed with the consent of the rental car company. While we did not reach the installation question in Knotts, it is my opinion that the Second Circuit correctly decided the consent issue. Bill Brennan in his opinion concurring in judgment, which Thurgood joined, expressed a contrary view. If we are to resolve this issue, I would await a clear conflict among the Circuits.

Although the court approved the use of the beeper in apprehending petitioners, it did not specifically address whether the mere monitoring of the beeper constituted a

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 13, 1983

Re: 81-1802 - United States v. Knotts

Dear Bill:

While I agree with your conclusion, I am inclined to think that some of the statements in your opinion are broader than necessary. Let me identify those that trouble me.

On page 6, you state that a person travelling in an automobile on public thoroughfares has "no" reasonable expectation of privacy in his movements from one place to another. It seems to me that that statement is somewhat exaggerated. When one of us takes his family on a vacation, leaving early in the morning for an unannounced destination, I think we do not expect the general public to know where we are going or why. The fact that a detective might successfully follow us without our knowledge does not, it seems to me, totally foreclose the expectation that a private vacation would normally be a private matter.

Later on page 6, you state that nothing in the Fourth Amendment prohibits the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology may afford. But if sophisticated listening devices would enable officers to overhear private conversations that take place within an automobile, it seems rather clear that the Fourth Amendment might be violated. Indeed, isn't that what Katz holds?

On page 7, you suggest that respondent was not just "any citizen," but I should have thought he was entitled to the protections of any other citizen until the police had probable cause to conduct a search.

Toward the bottom of page 7, you make the statement, similar to the one on page 6, that the use

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of scientific devices to make the police more effective in detecting crime does not give rise to any constitutional problem. Again, as in the case of sophisticated listening devices, I do not believe I can agree. (There is a similar overstatement toward the bottom of page 8 about "scientific enhancement" raising no constitutional issues that visual surveillance would not also raise.)

Finally, in your concluding sentence you state that there was neither a "search" nor a "seizure." It would seem to me that the more correct analysis is that even if surveillance, whether visual or electronic, constitutes a search, the intrusion associated with following a car on the public roads is virtually always reasonable within the meaning of the Fourth Amendment. In this case I would say that even if there may have been a search--after all, the police did spend about an hour trying to locate the missing car--that it was perfectly reasonable, especially since there is no question about the legitimacy of the installation of the beeper itself.

Respectfully,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: JAN 24 '83

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1802

UNITED STATES, PETITIONER *v.*
LEROY CARLTON KNOTTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[January —, 1983]

JUSTICE STEVENS, concurring.

Since the respondent in this case has never questioned the installation of the radio transmitter in the chloroform drum, see *ante*, at 3 n.*, I agree that it was entirely reasonable for the police officers to make use of the information received over the airwaves when they were trying to ascertain the ultimate destination of the chloroform. I do not join the Court's opinion, however, because it contains two unnecessarily broad dicta: one distorts the record in this case, and both may prove confusing to courts that must apply this decision in the future.

First, the Court quite gratuitously implies that the the chloroform drum was parading in "open fields" outside of the cabin, in a manner tantamount to its public display on the highways. See *ante*, at 6. The record does not support that implication. I realize that the lower courts have not taken a uniform approach to deciding what sorts of visual and physical intrusions into "open fields" are prohibited by the Fourth Amendment.* But since this case does not pose any such

*See, e. g., *Florida v. Brady*, 406 So. 2d 1093 (Fla. 1981), *cert. granted*, — U. S. — (May 24, 1982, No. 81-1636); *United States v. Oliver*, 686 F. 2d 356 (CA6 1982)(en banc), *cert. granted*, — U. S. — (January 24, 1983, No. 82-15); *United States v. Dunn*, 674 F. 2d 1093 (CA5 1982), *petn. for cert. pending*, No. 82-508.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 15, 1983

Re: 81-1802 - United States v. Knotts

Dear Harry:

My apologies for being so slow in responding to your note of February 7, 1983. I think your modest changes have improved your separate opinion; in fact, I would be pleased if you would show me as joining it. I will modify my separate writing to make only the briefest reference to the open fields point, but I still intend to file that opinion because it makes the Katz point which you omit.

If any of this troubles you, please do not hesitate to let me know.

Respectfully,



Justice Blackmun

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: FEB 17 '83

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1802

UNITED STATES, PETITIONER *v.*
LEROY CARLTON KNOTTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[February —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,
concurring.

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First, the Court implies that the the chloroform drum was parading in "open fields" outside of the cabin, in a manner tantamount to its public display on the highways. See *ante*, at 6. The record does not support that implication. As JUSTICE BLACKMUN points out, this case does not pose any "open fields" issue.

Second, the Court suggests that the Fourth Amendment does not inhibit "the police from augmenting the sensory facilities bestowed upon them at birth with such enhancement as science and technology afforded them." *Ante*, at 7. But the Court held to the contrary in *Katz v. United States*, 389 U. S. 347 (1967). Although the augmentation in this case

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 18, 1983

Re: 81-1802 - United States v. Knotts

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

SUPREME COURT OF THE UNITED STATES

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No. 81-1802

UNITED STATES, PETITIONER *v.*
LEROY CARLTON KNOTTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[March 2, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN, and
JUSTICE MARSHALL join, concurring in the judgment.

Since the respondent in this case has never questioned the installation of the radio transmitter in the chloroform drum, see *ante*, at 3 n.*, I agree that it was entirely reasonable for the police officers to make use of the information received over the airwaves when they were trying to ascertain the ultimate destination of the chloroform. I do not join the Court's opinion, however, because it contains two unnecessarily broad dicta: one distorts the record in this case, and both may prove confusing to courts that must apply this decision in the future.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 14, 1983

Re: No. 81-1802 United States v. Knotts

Dear Bill,

Please join me in your second draft.

Sincerely,



Justice Rehnquist

Copies to the Conference