The Burger Court Opinion Writing Database

United States v. Karo

468 U.S. 705 (1984)

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

June 12, 1984

Re: 83-850 - United States v. Karo

Dear Byron:

I join.

Regards,

Justice White

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1984

No. 83-850

United States v. Karo

Dear John,

I agree with much of your opinion in this case. I certainly agree that the can-owner's privacy interest is directly implicated by the attachment of the beeper to the can, but I disagree with your implication that it is only the can-owner's privacy interest that is involved. See n. 8 & p. 7. It seems to me that a homeowner has a reasonable expectation of privacy in the location of property within his home, even if he does not own the property. It follows, therefore, that the homeowner has a reasonable expectation of privacy in the presence and location of another person's container within his home, even if he has no expectation of privacy in the contents of the container. Thus, when one person's beeper-laden property is brought into the home of another, two independent expectations of privacy are violated -- that of the property owner and that of the homeowner.

Since the beeper discloses location, as oposed to contents, Rawlings v. Kentucky is not implicated here. Moreover, Rawlings is easily distinguishable from this case because it did not involve the question of the homeowner's expectation of privacy in the contents of his own home.

The position I propose is supported by Alderman v. United States, 394 U.S. 165 (1969), which held that a homeowner's reasonable expectation of privacy is violated when a wiretap is used to overhear the conversation of his house guest. In that case we stated:

> If the police make an unwaranted search of a house and seize tangible property belonging to third parties ... the homeowner may object to its use against him, not because he had an interest in the seized items as "effects" protected by the Fourth Amendment, but because they were fruits of an unauthorized search of

his house, which itself is expressly protected by the Fourth Amendment." Id., at 176-177.

Indeed, this case is stronger than Alderman in that the homeowner here shared an interest in the can of ether. Consequestly, Justice Harlan's concern is not present in this case.

At this point, I am inclined to write separately expressing agreement with Byron's view as to the rights of the homeowner and with your view as to the rights of the can-owner. But if you are inclined to broaden your opinion as I suggest, I will join you in full.

Sincerely,

Bill

Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 21, 1984

No. 83-850

United States v. Karo

Dear John,

Please join me in your dissent in the above.

Sincerely,

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 27, 1984

No. 83-850

United States v. Karo

Dear John,

Your suggestion sounds good to me.

Sincerely,

WJB by RE

Justice Stevens

Copy to Justice Marshall

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

From: **Justice White**

Circulated: MAY 25 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[May ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

In *United States* v. *Knotts*, —— U. S. —— (1983), we held that the warrantless monitoring of an electronic tracking device ("beeper")[1] 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, 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

In August 1980 Agent Rottinger of the Drug Enforcement Administration (DEA) learned that respondents James Karo, Richard Horton, and William Harley had ordered 50 gallons of ether from government informant Carl Muehlenweg of Graphic Photo Design in Albuquerque, New Mexico.

[1] "A beeper is a radio transmitter, usually battery operated, which emits periodic signals that can be picked up by a radio receiver." *United States* v. *Knotts*, —— U. S. ——, —— (1983).

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 25, 1984

MEMORANDUM TO THE CONFERENCE

Re: 83-850 - **United States v. Karo**

This draft conforms to the Conference vote that the installation of the beeper did not require a warrant but that a warrant was required for monitoring the beeper in private places not subject to visual surveillance.

How I think this conclusion and the Knotts decision apply in this case is also pursued in the draft. Arguably, at least some of this should be left for decision on remand, but I thought it would be well to put it on the table.

Also, you will note that the draft reserves the issue of reasonable suspicion versus probable cause.

Cheers

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

No. 83-850 United States v Karo

Dear Sandra,

Before leaving town for a few days, I offer two or three initial points in response to your letter of yesterday.

First, if it is the possessory interest in the can of ether that is critical, it would seem that a warrant should be required at the outset to authorize the invasion of that interest. But the vote was not to require an installation warrant and to focus on whether there were circumstances in which monitoring would require judical permission.

Second, it is true that each on the three renters of the Taos house--Horton, Harley and Steele, as well as the guest, Roth---took the risk that one of them might be an informer and had brought a bug or a beeper in his briefcase or in a can of ether. But it is another thing entirely to say that each of them also risked that the police had surreptiously bugged or beeped the briefcase or the can of ether. That is what this case is all about: must an individual in his home risk that his guest or co-tenant, unbeknownst to the latter, is carrying a beeper planted by the police. If Steele and Roth must take that risk, I would have difficulty holding that Horton and Harley enjoy any greater protection; and if the latter two are protected because of the intrusion into the house, Steele and Roth should also have standing to object. I note also that Karo had an interest in the ether but not in the house. Neither the installation nor the monitoring in the Taos residence trenched on his Fourth Amendment interests.

It is late in the term , and if the majority prefers your view, there should be an early reassignment.

Sincerely

Byron

Justice O'Connor
Copies to the Conference

Stylistic changes
and pp. 10-12

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

From: **Justice White**

Circulated: _____

Recirculated: JUN 7 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[June ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

In *United States* v. *Knotts*, —— U. S. —— (1983), we held that the warrantless monitoring of an electronic tracking device ("beeper")[1] 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, 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

In August 1980 Agent Rottinger of the Drug Enforcement Administration (DEA) learned that respondents James Karo, Richard Horton, and William Harley had ordered 50 gallons of ether from government informant Carl Muehlenweg of Graphic Photo Design in Albuquerque, New Mexico. Muehlenweg told Rottinger that the ether was to be used to

[1] "A beeper is a radio transmitter, usually battery operated, which emits periodic signals that can be picked up by a radio receiver." *United States* v. *Knotts*, —— U. S. ——, —— (1983).

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 20, 1984

Re: 83-850 - **United States v. Karo**

Dear Harry,

The offending sentence will be removed.

Sincerely yours,

Byron

Justice Blackmun

Copies to the Conference

Stylistic and pp. 1, 2, 10-12

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

From: **Justice White**

Circulated: _____

Recirculated: 6/21/84

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[June ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

In *United States* v. *Knotts*, 460 U. S. —— (1983), we held that the warrantless monitoring of an electronic tracking device ("beeper")[1] 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.

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In August 1980 Agent Rottinger of the Drug Enforcement Administration (DEA) learned that respondents James Karo, Richard Horton, and William Harley had ordered 50 gallons of ether from government informant Carl Muehlenweg

[1] "A beeper is a radio transmitter, usually battery operated, which emits periodic signals that can be picked up by a radio receiver." *United States* v. *Knotts*, 460 U. S. ——, —— (1983).

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[June ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

In *United States* v. *Knotts*, 460 U. S. —— (1983), we held that the warrantless monitoring of an electronic tracking device ("beeper")[1] 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.

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[1] "A beeper is a radio transmitter, usually battery operated, which emits periodic signals that can be picked up by a radio receiver." *United States* v. *Knotts*, 460 U. S. ——, —— (1983).

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

From: **Justice White**

Circulated: _____

Recirculated: JUN 28 1984

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[June ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

In *United States* v. *Knotts*, 460 U. S. 276 (1983), we held that the warrantless monitoring of an electronic tracking device ("beeper")[1] 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.

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In August 1980 Agent Rottinger of the Drug Enforcement Administration (DEA) learned that respondents James Karo, Richard Horton, and William Harley had ordered 50 gallons of ether from government informant Carl Muehlenweg

[1] "A beeper is a radio transmitter, usually battery operated, which emits periodic signals that can be picked up by a radio receiver." *United States* v. *Knotts*, 460 U. S. 276, 277 (1983).

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

July 3, 1984

MEMORANDUM TO THE CONFERENCE

RE: Case held for **United States v. Karo, No. 83-850**

United States v. Cassity, No. 83-1393.

This case involves a fact pattern similar to that in Karo. DEA agents obtained a search warrant to install a beeper in some chemicals and laboratory equipment. The respondents are Cassity, Sword, and Lenk. The description of the surveillance from the CA6 opinion is as follows:

> "Agent Graetz delivered the first beeper on July 11, 1977. By monitoring the beeper's signals, DEA agents traced the chemicals to defendant Cassity's home at 2803 Stair Street in Detroit. On July 15, the beeper's signals indicated the chemicals had been moved to defendant Sword's home at 1494 Calvary in Detroit. On July 28, Agent Graetz delivered the other two beepers, which also were monitored to Sword's home. On August 11, 1977, all three beepers were located in the basement of defendant Dean's home at 6344 Hanson in Detroit.
>
> DEA agents monitored the beepers' signals until August 17. They observed all five defendants and Cody enter and leave the house at 6344 Hanson at various times during the monitoring. On three occasions during the beeper surveillance, Cody delivered samples of amphetamine allegedly produced by the conspirators."

DEA agents then executed a search warrant and uncovered a laboratory. Respondents' suppression motion was denied, and they were ultimately convicted on drug charges. On appeal, CA6 vacated the convictions. It concluded that no warrant was necessary for installation of the beeper, but, relying on its earlier case of United States v. Bailey, 628 F. 2d 938 (1980), it held that a warrant was required for surveillance that invades an individual's legitimate expectations of privacy. It also concluded that a warrant without a time limitation was invalid under the Fourth Amendment. The CA then remanded the case so that the DC could determine whether respondents' legitimate

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 21, 1984

Re: No. 83-850-U.S. v. Karo

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

Justice Stevens

cc: The Conference

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

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

'84 JUN 20 P3:33

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 20, 1984

Re: No. 83-850, United States v. Karo

Dear Byron:

The last sentence of the paragraph that ends on page 11 of your opinion states: "We hold only that when possible a warrant must be obtained." For me, that sentence is bothersome. If you could see fit to omit it, you have my joinder.

Sincerely,

Harry

Justice White

cc: The Conference

April 26, 1984

83-850 United States v. Karo

(Used at Conference)

Dear Byron:

Following our conversation this morning, I asked my clerk David Charny to take a look at cases where warrants have been obtained. I enclose a copy of his brief memo.

Apparently, warrants have been upheld where they specify the object to be monitored, the duration of the monitoring, and the persons and criminal activities subject to the investigation. David states that none of these cases has suggested any "place" requirement in the warrant.

My concern may have been based on a misunderstanding. I have thought that CA10's opinion could be read as saying - or at least implying - that a warrant would have to specify the places to be monitored - a virtually impossibility. There will be situations where identifying all of the persons subject to the investigation will be difficult. The government is unlikely to initiate the type of broad investigation we see in this case without being able to identify some of the suspects.

I am now inclined, subject to your views and the Conference discussion, to affirm in this case but make clear that a warrant would be valid, authorizing ongoing monitoring, where it specified the container or other object, the duration of the monitoring, and one or more of the persons - and their suspected criminal activities - that are the subject of the investigation.

The SG would prefer that "reasonable suspicion", rather than "probable cause", be the standard for issuance of the warrant. Perhaps we could leave this open, at least to be considered in exceptional circumstances.

Sincerely,

Justice White

lfp/ss

May 29, 1984

83-850 United States v. Karo

Dear Byron:

Although I am in agreement with your basic analysis, I have two suggestions.

First, as your opinion discusses, a difficulty with a warrant requirement in "beeper" cases is that often it will be impossible to describe the "places" to be searched. Your opinion states: "[I]t 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."

Shouldn't we make it explicitly clear that this information is all that is needed to support issuance of a valid warrant. This could be accomplished by adding at the end of the second full paragraph on p. 11: "In our view, this information will suffice to permit issuance of a warrant authorizing beeper installation and surveillance."

Also, although I agree with your analysis in part IV of the opinion, I would be inclined to leave these questions to the courts below to decide in the first instance - as you indicated was an alternative.

Sincerely,

Justice White

lfp/ss

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

June 8, 1984

83-850 United States v. Karo

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 1, 1984

Re: No. 83-850 United States v. Karo

Dear Byron:

I have been sufficiently interested in the exchange of views between you and Sandra on the "standing" question to hope that one or both of you would further amplify the matter. I agree with your treatment of the installation of the "beeper," and if nothing more is forthcoming I will of course vote on the basis of what we now have.

Sincerely,

WHR

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 7, 1984

Re: No. 83-850 United States v. Karo

Dear Sandra:

Please join me in your concurring opinion.

Sincerely,

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 29, 1984

Re: 83-850 - United States v. Karo

Dear Byron:

Because I am still inclined to the view that I expressed at Conference that the transfer of a container containing a concealed beeper is itself a violation of the Fourth Amendment unless authorized by a warrant, I do not expect to join your opinion. Since I am not sure that anyone else shared my view, apparently it will be necessary for me to write separately.

Although it may be appropriate to analyze the case primarily as a "search" case, I am inclined to think there is a meaningful interference with an individual's possessory interest in a container when a beeper is attached to it. If it would be a seizure to put the attachment on the can after it has been delivered to the customer, it would seem to me equally plausible to apply the same label to the beeper when it is concealed in a can without the purchaser's knowledge. An individual's possessory interest in property is surely quite different when a beeper is attached to it than when one is not.

In all events, this means that I would probably focus on the container--rather than the places to which it is transported--for purposes of determining standing to file a motion to suppress. In this case, I am inclined to think all four of the defendants had a sufficient interest in the can of ether to give them standing. I therefore am inclined to agree with your conclusion on standing, although for a different reason.

Respectfully,

Justice White

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: JUN 12 19

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[June ——, 1984]

JUSTICE STEVENS, dissenting.

The beeper is a specie of radio transmitter. As JUSTICE O'CONNOR notes: "A beeper mounted inside a container has much in common with a microphone mounted on a person." *Ante*, at 2. It reveals the location of the item to which it is attached—the functional equivalent of a radio transmission saying "Now I am at ——."

The threshold question in this case is whether the beeper invaded any interest protected by the Fourth Amendment. As we wrote earlier this Term, the Fourth Amendment

> protects two kinds of expectations, one involving 'searches,' the other 'seizures.' A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. 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. ——, —— (1984) (footnotes omitted).

In my opinion the surreptitious use of a radio transmitter—whether it contains a microphone or merely a signalling device—on an individual's personal property is both a seizure and a search within the meaning of the Fourth Amendment.

5, 7, 8

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

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 19 19

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[June ——, 1984]

JUSTICE STEVENS, dissenting.

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In my opinion the surreptitious use of a radio transmitter—whether it contains a microphone or merely a signalling device—on an individual's personal property is both a seizure and a search within the meaning of the Fourth Amendment.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 27, 1984

Re: 83-850 - United States v. Karo

Dear Bill and Thurgood:

After some reflection, I have concluded that it really would be constructive if the three of us could join Part III of Byron's opinion. I would therefore like to know whether you would approve of the changes in our Karo dissent on the attached copy. I will not circulate it generally until I have heard from both of you.

Respectfully,

Justice Brennan
Justice Marshall

Enclosure

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

From: Justice Stevens

Circulated: JUN 27 84

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 83–850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[June 29, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in part and dissenting in part.

The beeper is a species of radio transmitter. As JUSTICE O'CONNOR notes: "A beeper mounted inside a container has much in common with a microphone mounted on a person." *Ante*, at 2. It reveals the location of the item to which it is attached—the functional equivalent of a radio transmission saying "Now I am at ——."

The threshold question in this case is whether the beeper invaded any interest protected by the Fourth Amendment. As we wrote earlier this Term, the Fourth Amendment

> "protects two kinds of expectations, one involving 'searches,' the other 'seizures.' A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. 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. ——, —— (1984) (footnotes omitted).

In my opinion the surreptitious use of a radio transmitter—whether it contains a microphone or merely a signalling device—on an individual's personal property is both a seizure and a search within the meaning of the Fourth Amendment.

STYLISTIC CHANGES THROUGHOUT
SEE PAGES: 1-3, 5-7, 9

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL
'84 JUN 28 P1:08

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

From: Justice Stevens

Circulated: _____

Recirculated: JUN 2[illegible]

SUPREME COURT OF THE UNITED STATES

No. 83-850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[July 3, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in part and dissenting in part.

The beeper is a species of radio transmitter. Mounted inside a container, it has much in common with a microphone mounted on a person. It reveals the location of the item to which it is attached—the functional equivalent of a radio transmission saying "Now I am at ——."

The threshold question in this case is whether the beeper invaded any interest protected by the Fourth Amendment. As we wrote earlier this Term, the Fourth Amendment

> "protects two kinds of expectations, one involving 'searches,' the other 'seizures.' A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. 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. ——, —— (1984) (footnotes omitted).

In my opinion the surreptitious use of a radio transmitter—whether it contains a microphone or merely a signalling device—on an individual's personal property is both a seizure and a search within the meaning of the Fourth Amendment. Part III of the opinion of the Court correctly concludes that

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 25, 1984

No. 83-850 United States v. Karo

Dear Byron,

I expect to be able to join your opinion in this case. I do however have one reservation that I hope you will be able to address.

You take the position in Part III of your draft that all who have a privacy interest in the house into which the bugged can is brought may, in general, suppress evidence obtained from a warrantless tracking. In this case, for example, the beeper evidence would be inadmissible against Horton, Harley, Steele, or Roth, but for your warrant discussion in Part IV. This seems to me to be a bit too generous.

A person with a privacy interest only in the house, not in the container with the beeper, can have no reasonable expectation that the movements of the container to and from the house will not be tracked, since the owner of the container may have consented to the installation of a beeper. Surely if the owner of a container consented to the installation of a beeper, and then brought the container into another's house, those in the house who consented to the entry of the container could not suppress the beeper evidence on the ground that they did not independently consent to the entry of the beeper. What I am suggesting, in effect, is a beeper analogue to the bugged informant rule developed in United States v. White, 401 U.S. 745 (1971). Your plurality opinion in White, you will recall, approved the wiring of an informant with a concealed microphone even though he entered another's home without consent to the microphone, though with consent to his live presence.

By analogy with White, it seems we should limit "standing" to object to the beeper evidence to those who have a privacy interest not only in the house into which the container is carried, but also in the container itself. In this case that would appear to be only Karo, Horton, and Harley.

I think such an approach is most consistent with Knotts, which assumes that visual observation can always trace large objects to and from a home, and also with Rawlings v. Kentucky, 448 U.S. 98 (1980). A person without a privacy interest in the container itself bears the risk that the movements of the container will be reported either by its live owner, or by a beeper inside the container.

If you could see your way to incorporating this modification in your circulating draft I would be pleased to join. In any event, I would be most interested in hearing your views, and those of others, on this suggestion.

Sincerely,

Justice White

Copies to the Conference

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN -4 A9:52

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 1, 1984

No. 83-850 United States v. Karo

Dear Byron,

Inasmuch as you are not inclined toward modifying the position expressed in your draft on the "standing" question, I will plan to circulate something as soon as possible concurring in part and concurring in the judgment.

Sincerely,

Sandra

Justice White

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Conn

Circulated: 6/5

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[June ——, 1984]

JUSTICE O'CONNOR, concurring in part and concurring in the judgment. I join parts I, II, and IV of the Court's opinion, and agree with substantial portions of part III as well.

I agree with the Court that the installation of a beeper in a container with the consent of the container's present owner implicates no Fourth Amendment concerns. The subsequent transfer of the container, with the unactivated beeper, to one who is unaware of the beeper's presence is also unobjectionable. It is when the beeper is activated to track the movements of the container that privacy interests are implicated.

In my view, however, these privacy interests are unusually narrow—narrower than is suggested by the Court in part III of its opinion. If the container is moved on the public highways, or in other places where the container's owner has no reasonable expectation that its movements will not be tracked without his consent, activation of the beeper infringes on no reasonable expectation of privacy. *United States* v. *Knotts*, —— U. S. —— (1983). In this situation the location of the container defeats any expectation that its movements will not be tracked.

In addition, one who lacks a privacy interest in the container itself can have no reasonable expectation that the movements of the container will not be reported by the owner, or tracked by a beeper installed with the owner's con-

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Conn

Circulated: _____

Recirculated: JUN 7 198

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-850

UNITED STATES, PETITIONER *v.*
JAMES CONNORS KARO ET AL.

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

[June ——, 1984]

JUSTICE O'CONNOR, concurring in part and concurring in the judgment. I join parts I, II, and IV of the Court's opinion, and agree with substantial portions of part III as well.

I agree with the Court that the installation of a beeper in a container with the consent of the container's present owner implicates no Fourth Amendment concerns. The subsequent transfer of the container, with the unactivated beeper, to one who is unaware of the beeper's presence is also unobjectionable. It is when the beeper is activated to track the movements of the container that privacy interests are implicated.

In my view, however, these privacy interests are unusually narrow—narrower than is suggested by the Court in part III of its opinion. If the container is moved on the public highways, or in other places where the container's owner has no reasonable expectation that its movements will not be tracked without his consent, activation of the beeper infringes on no reasonable expectation of privacy. *United States* v. *Knotts*, —— U. S. —— (1983). In this situation the location of the container defeats any expectation that its movements will not be tracked.

In addition, one who lacks a privacy interest in the container itself can have no reasonable expectation that the movements of the container will not be reported by the owner, or tracked by a beeper installed with the owner's con-

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Washington, D. C. 20543

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SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN -8 A9 :49

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 7, 1984

No. 83-850 United States v. Karo

MEMORANDUM TO THE CONFERENCE

Enclosed is a rough draft of changes which have been sent to the printer in response to Byron's new footnote. I will circulate the printed version as soon as it is available.

Sincerely,

Sandra

Substantially reorganized and rewritten.

PP 2-6

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Conn

Circulated: _____

Recirculated: JUN 22 19

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-850

UNITED STATES, PETITIONER *v.* JAMES CONNORS KARO ET AL.

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

[June ——, 1984]

JUSTICE O'CONNOR, with whom JUSTICE REHNQUIST joins, concurring in part and concurring in the judgment.

I join Parts I, II, and IV of the Court's opinion, and agree with substantial portions of Part III as well.

I agree with the Court that the installation of a beeper in a container with the consent of the container's present owner implicates no Fourth Amendment concerns. The subsequent transfer of the container, with the unactivated beeper, to one who is unaware of the beeper's presence is also unobjectionable. It is when the beeper is activated to track the movements of the container that privacy interests are implicated.

In my view, however, these privacy interests are unusually narrow—narrower than is suggested by the Court in Part III of its opinion. If the container is moved on the public highways, or in other places where the container's owner has no reasonable expectation that its movements will not be tracked without his consent, activation of the beeper infringes on no reasonable expectation of privacy. *United States* v. *Knotts*, 460 U. S. 276 (1983). In this situation the location of the container defeats any expectation that its movements will not be tracked.

In addition, one who lacks ownership of the container itself or the power to move the container at will, can have no reasonable expectation that the movements of the container will