

**IN THE SUPREME COURT OF THE UNITED STATES**

United States of America, Petitioner

v.

Luis Rodriguez, Respondent

The petition for a writ of certiorari is granted. The parties are directed to brief the following question:

Whether the court of appeals correctly determined that the warrantless use of a tracking device on respondent's vehicle to monitor its movements on public streets violated the Fourth Amendment.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WEST CAROLINA**

United States of America

v.

Luis Rodriguez

**MEMORANDUM AND ORDER**

Pending before the court is the Motion of Defendant Luis Rodriguez to suppress evidence obtained from a GPS tracking device. For the reasons explained below, the motion will be granted in part and denied in part.

**BACKGROUND**

Defendant Luis Rodriguez is charged with one count of conspiracy to distribute cocaine, in violation of 21 U.S.C. § 846. According to the Government, Rodriguez and his co-conspirators obtained and sold large quantities of cocaine and cocaine base throughout West Carolina and neighboring states.

As part of their investigation into the alleged conspiracy, law enforcement agents utilized a number of investigative techniques, including installation of an electronic tracking device on Rodriguez's vehicle. The investigation ended on October 24, 2005, with searches pursuant to warrants. At that time, drugs, drug paraphernalia, firearms, and significant quantities of

cash were seized from an alleged “stash house.”

### ANALYSIS

Rodriguez has moved to suppress the data obtained from an electronic tracking device using Global Positioning System (“GPS”) technology which law enforcement agents placed on his Ford Explorer.

By order dated September 16, this Court authorized the Government’s use of the GPS device. Rodriguez asserts, however, that the Government placed the GPS device on his vehicle after this Court’s order authorizing its placement had expired. He further argues that the Government placed the GPS device on his vehicle while it was located in *East Carolina*, outside of the issuing court’s jurisdiction.

The Government does little to dispute either point, and effectively concedes that it committed what it calls “technical” violations of the September 16 order. But it argues that it had the authority to place a GPS device on Rodriguez’s vehicle even *absent* a court order because Rodriguez lacked a reasonable expectation of privacy in the whereabouts of his vehicle.

The Government is correct. It is not required to obtain a court order or search warrant to install a GPS tracking device on a vehicle. *See United States v. McIver*, 186 F.3d 1119, 1127 (9th Cir. 1999) (placement of tracking device is neither search nor seizure under the Fourth Amendment); *United*

*States v. Moran*, 349 F. Supp. 2d 425, 467 (N.D.N.Y. 2005) (no Fourth Amendment violation through installation of GPS device without a warrant because “law enforcement personnel could have conducted a visual surveillance of the vehicle as it traveled on the public highways”). In so holding, those courts relied upon the Supreme Court’s statement in *United States v. Knotts*, 460 U.S. 276 (1983), a case involving a “beeper” device installed in a container that was secreted in a vehicle, that:

A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. When [the suspect] traveled over the public streets he voluntarily conveyed to anyone who wanted to look the fact that he was traveling over particular roads in a particular direction, the fact of whatever stops he made, and the fact of his final destination when he exited from public roads onto private property.

*Id.* at 281-82.

The Government is correct only to a point, however. While it does not need a warrant with regard to data obtained from a vehicle traveling on *public* roads, it does need a warrant with regard to data obtained when a vehicle is on *private* property, such as when it is parked at a residence. That is the lesson of *United States v. Karo*, 468 U.S. 705 (1984), a case that also involved a tracking device placed on a vehicle. In *Karo*, the Court distinguished between monitoring in public spaces versus private locations, holding that although the data obtained while on *public* roads was admissible,

information that was obtained from the tracker while it was inside the *private* residence was not, because the residents had a justifiable interest in privacy in their home. *Id.* at 715.

For this reason, the data obtained from the GPS device when the Ford Explorer was parked in Rodriguez's garage must be suppressed. All other data obtained from the device is admissible.

### **CONCLUSION**

For the reasons set forth above, Rodriguez's motion is GRANTED in part and DENIED in part.

s/ Samuel A. Houston  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TWELFTH CIRCUIT**

United States of America, Appellee

v.

Luis Rodriguez, Appellant

Before JACKSON, LOPEZ and TYLER, Circuit Judges:

JACKSON, Circuit Judge:

Luis Rodriguez challenges his conviction for conspiracy to distribute cocaine. He raises a single issue on appeal: whether the district court erred when it admitted evidence obtained through the Government's warrantless use of a GPS tracking device on his vehicle. We hold that Rodriguez's conviction must be reversed because it was obtained with evidence procured in violation of the Fourth Amendment.

**I**

Luis Rodriguez is a well-known businessman in West Carolina. According to the Government, he is also a drug dealer. In 2004, the FBI — operating in conjunction with local West Carolina authorities — began investigating Rodriguez

based on a series of anonymous tips. They arrested Rodriguez on October 24, 2005. He was ultimately charged and convicted on a single count, conspiracy to distribute cocaine in violation of 21 U.S.C. § 846.

At trial, the Government relied heavily on data it obtained from its placement of a GPS tracking device on Rodriguez's vehicle. The Government concedes that it lacked a valid warrant to place the device on the vehicle. Although it had obtained a warrant from a West Carolina district court, the police placed the tracker on the vehicle at a time when it was parked in East Carolina — and the warrant had expired the day before in any event. Nonetheless, the Government argued, and the district court agreed, that a warrant was unnecessary because Rodriguez lacked a reasonable expectation of privacy in his vehicle's movements on public roads. The Government used the GPS evidence at trial to show the jury Rodriguez's travels over the course of a two-week period, thereby linking him to so-called "stash houses" and other locations where cocaine was bought, sold and stored. The question before this Court is whether Rodriguez's conviction must be set aside because this evidence was improperly admitted.

## II

The Government argues that this is not a difficult case. It directs us to *United States v. Knotts*, 460 U.S. 276, 281 (1983), where the Court held that "[a] person traveling in an automobile on public thoroughfares has no reasonable

expectation of privacy in his movements from one place to another.” In *Knotts*, the police planted a beeper in a container that was transported approximately 100 miles by car from Minnesota to a cabin in Wisconsin. The Court held that because the car’s driver “voluntarily conveyed to anyone who wanted to look” his progress and route on the public roads, he could not reasonably expect privacy in “the fact of his final destination.” *Id.* at 281.

Yet the Court limited its holding in an important way. The Court emphasized that the police were tracking the driver’s movements during a discrete, 100-mile journey: the police had not subjected him to extensive, around-the-clock surveillance. *See id.* at 283 (underscoring the Government’s “limited use” of beeper data). The Court quite clearly did not extend its holding to cases involving “twenty-four hour surveillance,” reserving that question for another day, and emphasizing that “if such dragnet-type law enforcement practices . . . should eventually occur, there will be time enough then to determine whether different constitutional principles may be applicable.” *Id.* at 283–84. Several courts have recognized the limited sweep of *Knotts*. *See, e.g., United States v. Butts*, 729 F.2d 1514, 1518 n. 4 (1984); *People v. Weaver*, 12 N.Y.3d 433, 440–44 (2009).

This case falls outside the scope of the limited tracking approved in *Knotts*. Here, the police used the GPS device not to track Rodriguez’s “movements from one place to another,” *Knotts*, 460 U.S. at 281, but rather to track Rodriguez’s

movements 24 hours a day for two weeks as he moved among dozens of locations, thereby discovering the totality and pattern of his movements from place to place to place.

We do not view the two cases cited by the Government — *United States v. Pineda–Moreno*, 591 F.3d 1212 (9th Cir. 2010) and *United States v. Garcia*, 474 F.3d 994 (7th Cir. 2007) — as supporting a different result. In neither case did the defendant argue the point Rodriguez presses here — that *Knotts* does not control whether *extended* surveillance is a search for purposes of the Fourth Amendment. Nor does *United States v. Marquez*, 605 F.3d 604 (8th Cir. 2010), support the Government, as in that case the Eighth Circuit emphasized that the Government used a GPS tracker for “a reasonable amount of time” — as opposed to the prolonged, two-week surveillance that occurred in this case.

We decline to accept the Government’s argument that, under *Knotts*, a person has no reasonable expectation of privacy any time he steps off his property. Under this approach, there would be no limit to the Government’s surveillance authority. Neither this Court nor the Constitution will tolerate the Orwellian prospect of 24-hour surveillance of a person’s public movements, 365 days a year.

### III

The conclusion that *Knotts* is not controlling does not determine whether Rodriguez had a reasonable expectation of privacy in his movements over the two-week period. See *Katz v. United States*, 389 U.S. 347 (1967); *Kyllo v. United States*, 533 U.S. 27 (2001). We now turn to that question.

The “reasonable expectation of privacy” test turns in large part on whether that expectation relates to information that has been “expose[d] to the public.” *Katz*, 389 U.S. at 351 (“What a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection.”). We believe that the information at issue here — the totality of Rodriguez’s movements in his vehicle over a two-week period — was *not* exposed to the public. Unlike one’s movements during a single journey, the whole of one’s movements over the course of a two-week period is not exposed to the public because there is no likelihood that anyone will observe all those movements. Nor is there a “constructive” exposure resulting from the exposure of each individual movement, because the whole of one’s movements reveals more — sometimes a great deal more — than does the sum of its individual parts.

## A

The Government argues that Rodriguez's movements were exposed to the public because the police could lawfully have followed him on the public roads. The Government points out that it is quite common for police to tail a drug suspect as he moves from one location to another.

These arguments miss the point. The test for whether something is exposed to the public does not turn on what another person may physically or lawfully do, but rather on what a reasonable person expects that another might do. *See California v. Greenwood*, 486 U.S. 35, 40 (1988) (“It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public”). The Supreme Court's decision in *Bond v. United States*, 529 U.S. 334 (2000), illustrates this point. In *Bond*, the defendant was a bus passenger who placed his soft luggage in an overhead storage bin. During a stop at an immigration checkpoint, the agent squeezed the luggage and felt a hard brick, which turned out to be methamphetamine. The Court held that the squeezing and search of the luggage violated the defendant's reasonable expectation of privacy. It explained that while “a bus passenger clearly expects that his bag may be handled,” he “does not expect that other passengers or bus employees will, as a matter of course, feel the bag in an exploratory manner.” *Id.* at 338–39. The test thus turns not on what a police

officer or other person *could* do, but rather on what a reasonable person expects they might *actually* do.

Under this standard, there can be little doubt that the whole of Rodriguez's movements over a two-week period was not exposed to the public, because the odds that someone would actually observe all of those movements is zero. Following a stranger while she makes a trip to the grocery store is one thing. It is something quite different to follow her day after day after day, tracking her movements until no aspect of her private routine remains unidentified.

## **B**

The Government argues, in the alternative, that the whole of Rodriguez's movements was *constructively* exposed because each of his individual movements during the two-week period was itself in public view. We do not agree.

The Court recognized the distinction between the whole and the sum of the parts in *Smith v. Maryland*, 442 U.S. 735 (1979). There, in concluding that the use of a pen register to record all the numbers dialed from a person's phone was not a search, the Court considered not just whether a reasonable person expects any given number he dials to be exposed to the phone company but also whether he expects *all* the numbers he dials to be compiled in a list. *Id.* at 742–43. The Court explained that Smith could not reasonably expect privacy in the list of numbers because that list was composed of information that he had “voluntarily conveyed to

[the company]” and that “it had facilities for recording and . . . was free to record.” *Id.* at 745. If, for the purposes of the Fourth Amendment, the privacy interest in a whole could be no greater than the privacy interest in its constituent parts, then the Supreme Court would have had no reason to consider at length whether Smith could have a reasonable expectation of privacy in the list of numbers he had called.

Here, the whole of Rodriguez’s movements over the course of the two weeks was not constructively exposed to the public because the whole reveals far more than the individual movements it comprises. The difference is not one of degree but of kind. No single journey reveals the habits and patterns that mark the distinction between a day in the life and a way of life. As with the “mosaic theory” often invoked by the Government in cases involving national security information, “[w]hat may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene.” *CIA v. Sims*, 471 U.S. 159, 178 (1985) (internal quotation marks deleted).

Prolonged surveillance reveals types of information not revealed by short-term surveillance, such as what a person does repeatedly and what he does *not* do. Repeated visits to a church, a gym, a bar, or a bookie tell a story not told by any single visit, as does one’s not visiting any of these places over the course of a month. The *sequence* of a person’s movements can reveal still more; a single trip to a gynecologist’s office tells little about a woman, but that trip followed a few

weeks later by a visit to a baby supply store tells a different story. *See People v. Weaver*, 909 N.E.2d 1195, 1199 (N.Y. 2009) (Prolonged GPS monitoring “yields . . . a highly detailed profile, not simply of where we go, but by easy inference, of our associations — political, religious, amicable and amorous, to name only a few — and of the pattern of our professional and avocational pursuits”); *State v. Jackson*, 76 P.3d 217, 224 (Wash. 2003) (en banc) (“In this age, vehicles are used to take people to a vast number of places that can reveal preferences, alignments, associations, personal ails and foibles. The GPS tracking devices record all of these travels, and thus can provide a detailed picture of one’s life.”).

A reasonable person does not expect anyone to monitor and retain a record of every time he drives his car, including his origin, route, destination, and each place he stops and how long he stays there. Rather, he expects each of those movements to remain “disconnected and anonymous,” *Nader v. Gen. Motors Corp.*, 25 N.Y.2d 560, 572 (1970) (Breitel, J., concurring).

## C

Given our determinations that Rodriguez’s movements were neither actually nor constructively exposed to the public, it is a short step to conclude that his expectation of privacy was reasonable. The Government contests this point, arguing that Rodriguez’s expectation was not reasonable because his movements

occurred on public roads rather than in his home. *See Kyllo*, 533 U.S. at 37 (“[I]n the sanctity of the home . . . all details are intimate details.”).

While the location of the activity is relevant to the reasonable-expectation analysis, it is not determinative in this case. A person does not leave his privacy behind when he walks out his front door. On the contrary, in *Katz* the Court stated that “what [one] seeks to preserve as private, *even in an area accessible to the public*, may be constitutionally protected.” 389 U.S. at 351 (emphasis added). And as we have discussed, prolonged GPS monitoring reveals an intimate picture of the subject’s life that he expects no one else to have. The intrusion such monitoring makes into the subject’s private affairs stands in stark contrast to the relatively brief intrusion at issue in *Knotts*; indeed it exceeds the intrusions occasioned by every police practice the Supreme Court has deemed a search under *Katz*, such as use of a urine test, *see Skinner v. Ry. Labor Executives’ Ass’n*, 489 U.S. 602 (1989); use of an electronic listening device to tap a payphone, *Katz*, 389 U.S. at 352; inspection of a traveler’s luggage, *Bond*, 529 U.S. at 338; or use of a thermal imaging device to discover the temperature inside a home, *Kyllo*, 533 U.S. at 37. The fact that California has made it unlawful for anyone but a law enforcement officer to “use an electronic tracking device to determine the location or movement of a person” — and has declared that “electronic tracking of a person’s location without that person’s knowledge violates that person’s

reasonable expectation of privacy” (*see* California Penal Code section 637.7) — is indicative that prolonged GPS monitoring defeats an expectation of privacy that our society recognizes as reasonable.

#### IV

We address two final points. First, we reject the Government’s argument that the warrantless search can be upheld as a reasonable application of the automobile exception to the warrant requirement. Under that exception, “[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more.” *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996). But while the automobile exception permits the police to search a car without a warrant if they have reason to believe it contains contraband, the exception does not authorize them to install a tracking device on a car without the approval of a neutral magistrate. *See Delaware v. Prouse*, 440 U.S. 648, 662–63 (1979).

Second, we reject the Government’s contention that any error in admitting evidence obtained by use of the GPS device was harmless. The Government argues that the evidence against Rodriguez was so overwhelming that the jury would have convicted absent the GPS evidence. It points out the extensive testimony establishing the existence of a conspiracy to distribute cocaine, and that the conspirators operated out of five private houses in West Carolina. But while

the Government may have introduced considerable evidence of a conspiracy, its evidence linking Rodriguez to the conspiracy — that is, evidence other than the GPS evidence — was scant. While there was evidence that Rodriguez was a social acquaintance of individuals who bought and sold drugs, the Government did not introduce evidence linking Rodriguez to any particular transaction. It built its case largely on the GPS data, which showed Rodriguez driving from one drug house to another, often in the early-morning hours.

Absent the GPS data, a jury reasonably might have inferred Rodriguez was involved in the conspiracy. But our concern is not “with whether there was sufficient evidence on which [Rodriguez] could have been convicted without the evidence complained of”; rather, our concern is with “whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.” *Fahy v. Connecticut*, 375 U.S. 85, 86–87 (1963). Under that standard, the outcome here is clear:

We REVERSE Rodriguez’s conviction because it was obtained with evidence procured in violation of the Fourth Amendment.

LOPEZ, Circuit Judge, dissenting.

In *Knotts*, the Court squarely held that “[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.” 460 U.S. at 281. The panel’s opinion is directly to the contrary. According to the panel, Rodriguez *had* a reasonable expectation of privacy when traveling in his vehicle on public thoroughfares. Because the panel’s decision cannot be reconciled with *Knotts*, I respectfully dissent.

## I

The *Knotts* Court stated that “[w]hen [the suspect] traveled over the public streets, he voluntarily conveyed to anyone who wanted to look the fact that he was traveling over particular roads in a particular direction, the fact of whatever stops he made, and the fact of his final destination when he exited from public roads onto private property.” *Id.* at 281–82. The Court further reasoned that since visual surveillance from public places along the route or adjacent to the destination would have revealed all of the same information to the police, “[t]he fact that the officers . . . relied not only on visual surveillance, but also on the use of the beeper to signal the presence of [the suspect’s] automobile to the police receiver, does not alter the situation.” *Id.* at 282. Critically, the Court stated that “[n]othing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed

upon them at birth with such enhancement as science and technology afforded them in this case.” *Id.*

Everything the Supreme Court stated in *Knotts* is fully applicable to this case. There is no material difference between tracking the movements of the *Knotts* defendant with a beeper and tracking Rodriguez with a GPS. The panel opinion distinguishes *Knotts* not on the basis that what the police *did* in that case is any different from this, but that *the volume of information* obtained is greater in the present case than in *Knotts*.

Of course, the volume of information gathered from the GPS tracking is completely irrelevant to the question whether Rodriguez’s movements were exposed to the public. The panel reasons that there is no likelihood that someone would actually track all of a stranger’s movements over the course of a two-week period. But even if this is so, it has no bearing on whether those movements were *exposed* to the public — that is, placed in public view.

The panel seems to agree that Rodriguez had no reasonable expectation of privacy in connection with a single journey, or perhaps even two or three journeys. But at some point during the two-week period — the panel does not say precisely when — a reasonable expectation of privacy sprang to life. This does not make sense. *Knotts* held that a person has *zero* expectation of privacy for a trip on a public road. It follows that the person does not suddenly acquire an interest by

making another trip, or two more trips — or one hundred more trips for that matter. Zero plus zero plus zero equals zero.

Nowhere in *Knotts* or any other Supreme Court decision has the Court ever suggested that the test of the reasonable expectation is in any way related to the amount of data obtained by the surveillance. The words “reasonable expectation of privacy” themselves suggest no such element. The expectation of privacy is on the part of the observed, not the observer.

The panel’s opinion will have harmful and far-reaching consequences for law enforcement. Although this case involves GPS surveillance, the panel’s reasoning would seem to apply to instances of prolonged *visual* surveillance as well. Police officers will be left to wonder when, at what point in their tailing a suspect, they will have crossed the panel’s invisible line separating a (presumably) permissible single-journey search from an impermissible prolonged search. What if officers follow a suspect for an entire day? Two days? A week? The panel offers no guidance.

I respectfully dissent.