

THE 4TH AMENDMENT IN THE 21ST CENTURY: WHAT IS AN “UNREASONABLE SEARCH AND SEIZURE” IN THE DIGITAL AGE?

“For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.” - Associate Justice Potter Stewart

The Fourth Amendment is one of the most essential and controversial rights in the twenty-first century. The Constitution of the United States of America states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Court precedents demonstrate that these protections, although the Founders might not have anticipated it, extends to technological boundaries.

In the landmark case of *Katz v. United States* (1967), the Supreme Court established “reasonable expectation of privacy,” which ruled that conversation was protected regardless of location from unreasonable searches or seizures. Charles Katz, who was suspected for transmitting gambling information to clients in other states, was arrested after law enforcement agents attached an eavesdropping and recording device outside a telephone booth he used. Katz challenged his conviction on appeal that those recordings were unconstitutional and therefore cannot be used against him, but were rejected. The Supreme Court, however, ruled that Katz was protected by the Fourth Amendment even when no physical intrusion were involved. Supreme court justice Potter Stewart wrote that the Constitution protects people, not places. This became the basic precedent of the Fourth Amendment protection on digital boundaries.

Then what is “reasonable expectation of privacy”? Justice Harlan created the Reasonable Expectation of Privacy Test in his concurring opinion--(1) an individual has exhibited an actual (subjective) expectation of privacy, and (2) the expectation is one that society is prepared to recognize as reasonable. This meant that as long as the individual and public reasonably expected privacy, in place or action, then the government agents had no rights to invade that privacy without a warrant of probable cause. In this case, Katz were

protected by the Fourth Amendment because he met these requirements--he had been eavesdropped inside a public phone booth, which not many would expect to be heard by someone else. This case ruling protected citizens' privacy of phone conversation.

In another case, of *United States v. Jones* (2012), Antoine Jones were arrested for drug possession after police attached a tracker on Jones' vehicle to follow him around for around a month. They did not have a warrant nor any judicial approval, so jury in trial found him not guilty for his charges. The U.S Court of Appeals for the D.C Circuit ruled that the warrantless use of GPS tracking device on Jones' arrest was not justified for 24-hour surveillance, and the Supreme Court affirmed this decision unanimously stating that the installation of tracking device on Jones' vehicle constituted unlawful search under the Fourth Amendment. Not only was this an invasion of reasonable expectation of privacy, but it was also a trespass on personal property for which the Fourth Amendment offered protection. This case was what protected citizens from being unlawfully followed around by the government--people could move wherever they want without worrying about being stalked by the police.

In the case of *Riley v. United States* (2014), the Supreme Court unanimously decided that digital data seized from warrantless search of cell phones violated the Fourth Amendment, and could not be admitted as evidence in trial. They ruled that digital data did not fit the warrantless search exception--digital data could not be used as weapon to harm an arresting officer, nor could it be so urgent that the officer could not wait for a warrant, specifically because officers have the ability to preserve evidence by disconnecting the phone from the network. They held that the importance of cell phones and the amount of private information in it could not be compared to traditional items, and that cell phone seizures are so intrusive that it cannot be made without a probable, or at least reasonable, cause. The massive amount of information inside a cell phone made the Court concern not only property interests but reasonable expectation of privacy as well.

In the recent case of *Carpenter v. United States* (2018), the Supreme Court ruled that warrantless government acquisition of Carpenter's cell-site records violated his right against unreasonable searches and seizures. Carpenter had been charged for aiding and abetting robbery that affected interstate commerce. The government had obtained transactional records of location, date, and time of calls made in Carpenter's cell phones through connections of cell towers--cell-site records. Carpenter argued that the FBI needed a warrant with probable cause to use his records as evidence, and the Supreme Court affirmed. They disregarded "third party doctrine" in this case--legal theory that voluntary disclosure of

information to third parties, such as banks, phone companies, and internet service providers, have no “reasonable expectation of privacy”--since the extensive data of cell-site records outweigh the doctrine and happens without any affirmative act of the user. This case made law enforcement agents to obtain a warrant before acquiring cell-site records.

What do all these cases have in common? Cell phone conversations, vehicle locations, cell phones, and cell-site records all hold massive informations, and are associated with government surveillance. Government surveillance is different from private surveillance. Unlike civilians, government agents have the power to effect and invade a person’s reasonably expected privacy. Technological advance have become so rapid that the information stored in a person’s device is staggering, and the impact of having those informations encroached will be so as well. That’s why the judicial branch’s role in preventing and protecting has become extensively important in modern society.

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