**Kyllo v. United States**

**553 U.S. 27 (2001); June 11, 2001**

*Police used thermal imaging scanners to detect heat signatures, consistent with marijuana heat lamps, emanating from a house. Danny Kyllo, convicted of growing marijuana in the resulting investigation, argued that this constituted a warrantless search in violation of the Fourth Amendment. A previous case,* Dow Chemical v. United States *(1986) held that aerial surveillance of an industrial facility by plane did not constitute a search.*

JUSTICE SCALIA delivered the opinion of the Court, joined by SOUTER, THOMAS, GINSBURG, and BREYER.

At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion. With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.

On the other hand, the antecedent question of whether or not a Fourth Amendment “search” has occurred is not so simple under our precedent. The permissibility of ordinary visual surveillance of a home used to be clear because, well into the 20th century, our Fourth Amendment jurisprudence was tied to common-law trespass. Visual surveillance was unquestionably lawful because “ ‘the eye cannot by the laws of England be guilty of a trespass.’ We have since decoupled violation of a person’s Fourth Amendment rights from trespassory violation of his property but the lawfulness of warrantless visual surveillance of a home has still been preserved.

…As Justice Harlan’s oft-quoted *Katz* concurrence described it, a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable. We have subsequently applied this principle to hold that a Fourth Amendment search does *not* occur–even when the explicitly protected location of a *house* is concerned–unless “the individual manifested a subjective expectation of privacy in the object of the challenged search,” and “society [is] willing to recognize that expectation as reasonable.”

 The present case involves officers on a public street engaged in more than naked-eye surveillance of a home. We have previously reserved judgment as to how much technological enhancement of ordinary perception from such a vantage point, if any, is too much. While we upheld enhanced aerial photography of an industrial complex in *Dow Chemical*, we noted that we found “it important that this is *not* an area immediately adjacent to a private home, where privacy expectations are most heightened.

 It would be foolish to contend that the degree of privacy secured to citizens by the Fourth Amendment has been entirely unaffected by the advance of technology. For example, as the cases discussed above make clear, the technology enabling human flight has exposed to public view (and hence, we have said, to official observation) uncovered portions of the house and its curtilage that once were private. The question we confront today is what limits there are upon this power of technology to shrink the realm of guaranteed privacy.

The *Katz* test–whether the individual has an expectation of privacy that society is prepared to recognize as reasonable–has often been criticized as circular, and hence subjective and unpredictable…While it may be difficult to refine *Katz* when the search of areas such as telephone booths, automobiles, or even the curtilage and uncovered portions of residences are at issue, in the case of the search of the interior of homes–the prototypical and hence most commonly litigated area of protected privacy–there is a ready criterion, with roots deep in the common law, of the minimal expectation of privacy that *exists*, and that is acknowledged to be *reasonable*. To withdraw protection of this minimum expectation would be to permit police technology to erode the privacy guaranteed by the Fourth Amendment.

 The Government maintains, however, that the thermal imaging must be upheld because it detected “only heat radiating from the external surface of the house…But just as a thermal imager captures only heat emanating from a house, so also a powerful directional microphone picks up only sound emanating from a house—and a satellite capable of scanning from many miles away would pick up only visible light emanating from a house. We rejected such a mechanical interpretation of the Fourth Amendment in *Katz*, where the eavesdropping device picked up only sound waves that reached the exterior of the phone booth. Reversing that approach would leave the homeowner at the mercy of advancing technology–including imaging technology that could discern all human activity in the home. While the technology used in the present case was relatively crude, the rule we adopt must take account of more sophisticated systems that are already in use or in development…

*Dow Chemical* …involved enhanced aerial photography of an industrial complex, which does not share the Fourth Amendment sanctity of the home. The Fourth Amendment’s protection of the home has never been tied to measurement of the quality or quantity of information obtained. In *Silverman*, for example, we made clear that any physical invasion of the structure of the home, “by even a fraction of an inch,” was too much, and there is certainly no exception to the warrant requirement for the officer who barely cracks open the front door and sees nothing but the nonintimate rug on the vestibule floor. In the home, our cases show, *all* details are intimate details, because the entire area is held safe from prying government eyes.

We have said that the Fourth Amendment draws “a firm line at the entrance to the house. That line, we think, must be not only firm but also bright–which requires clear specification of those methods of surveillance that require a warrant. While it is certainly possible to conclude from the videotape of the thermal imaging that occurred in this case that no “significant” compromise of the homeowner’s privacy has occurred, we must take the long view, from the original meaning of the Fourth Amendment forward.

“The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens.” *Carroll* v. *United States* (1925). Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a “search” and is presumptively unreasonable without a warrant.

JUSTICE STEVENS wrote a dissenting opinion, joined by CJ REHNQUIST, O’CONNOR, and KENNEDY.

There is no need for the Court to craft a new rule to decide this case, as it is controlled by established principles from our Fourth Amendment jurisprudence. One of those core principles, of course, is that “searches and seizures *inside a home* without a warrant are presumptively unreasonable.” *Payton* v. *New York* (1980). But it is equally well settled that searches and seizures of property in plain view are presumptively reasonable. Whether that property is residential or commercial, the basic principle is the same: “ ‘What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.’ ”

..[T]his case involves nothing more than off-the-wall surveillance by law enforcement officers to gather information exposed to the general public from the outside of petitioner’s home. All that the infrared camera did in this case was passively measure heat emitted from the exterior surfaces of petitioner’s home; all that those measurements showed were relative differences in emission levels, vaguely indicating that some areas of the roof and outside walls were warmer than others.

…To be sure, the homeowner has a reasonable expectation of privacy concerning what takes place within the home, and the Fourth Amendment’s protection against physical invasions of the home should apply to their functional equivalent. But the equipment in this case did not penetrate the walls of petitioner’s home, and while it did pick up “details of the home” that were exposed to the public, it did not obtain “any information regarding the *interior* of the home…In the Court’s own words, based on what the thermal imager “showed” regarding the outside of petitioner’s home, the officers “concluded” that petitioner was engaging in illegal activity inside the home….In either case, the only conclusions the officers reached concerning the interior of the home were at least as indirect as those that might have been inferred from the contents of discarded garbage, see *California* v. *Greenwood,* (1988), or pen register data, see *Smith* v. *Maryland,* (1979)…For the first time in its history, the Court assumes that an inference can amount to a Fourth Amendment violation…

 Despite the Court’s attempt to draw a line that is “not only firm but also bright, the contours of its new rule are uncertain because its protection apparently dissipates as soon as the relevant technology is “in general public use,”. Yet how much use is general public use is not even hinted at by the Court’s opinion, which makes the somewhat doubtful assumption that the thermal imager used in this case does not satisfy that criterion. In any event, putting aside its lack of clarity, this criterion is somewhat perverse because it seems likely that the threat to privacy will grow, rather than recede, as the use of intrusive equipment becomes more readily available.

Although the Court is properly and commendably concerned about the threats to privacy that may flow from advances in the technology available to the law enforcement profession, it has unfortunately failed to heed the tried and true counsel of judicial restraint. Instead of concentrating on the rather mundane issue that is actually presented by the case before it, the Court has endeavored to craft an all-encompassing rule for the future. It would be far wiser to give legislators an unimpeded opportunity to grapple with these emerging issues rather than to shackle them with prematurely devised constitutional constraints.