



United States

BACKGROUND AND FACTS Edward Hanousek worked for Pacific & Arctic Railroad and Navigation Company (P&A) as a roadmaster of the White Pass & Yukon Railroad in Alaska. Hanousek was responsible "for every detail of the safe and efficient maintenance and construction of track, structures and marine facilities of the entire railroad," including special projects. One project was a rock quarry, known as "6-mile," above the Skagway River. Next to the quarry, and just beneath the surface, ran a high-pressure oil pipeline owned by Pacific & Arctic Pipeline, Inc., P&A's sister company. When the quarry's

backhoe operator punctured the pipeline, an estimated 1,000 to 5,000 gallons of oil were discharged into the river. Hanousek was charged with, among other things, negligently discharging a harmful quantity of oil into a navigable water of the United States in violation of the criminal provisions of the Clean Water Act (CWA). After a trial in a federal district court, a jury convicted Hanousek, and the court imposed a sentence of six months' imprisonment, six months in a halfway house, six months' supervised release, and a fine of \$5,000. Hanousek appealed to the U.S. Court of Appeals for the Ninth Circuit, arguing in part that the statute under which he was convicted violated his right to due process because he was not aware of what the CWA required.

IN THE LANGUAGE
OF THE COURT

DAVID R. THOMPSON, Circuit Judge.

The criminal provisions of the CWA [Clean Water Act] constitute public welfare legislation. Public welfare legislation is designed to protect the public from potentially harmful or injurious items and may render criminal a type of conduct that a reasonable person should know is subject to stringent public regulation and may seriously threaten the community's health or safety.

It is well established that a public welfare statute may subject a person to criminal liability for his or her ordinary negligence without violating due process. [Emphasis added.]

[W]here dangerous or deleterious devices or products or obnoxious waste materials are involved, the probability of regulation is so great that anyone who is aware that he is in possession of them or dealing with them must be presumed to be aware of the regulation.

Hanousek argues that he was simply the roadmaster of the White Pass & Yukon railroad charged with overseeing a rock-quarrying project and was not in a position to know what the law required under the CWA. In the context of a public welfare statute, as long as a defendant knows he is dealing with a dangerous device of a character that places him in responsible relation to a public danger, he should be alerted to the probability of strict regulation. Hanousek does not dispute that he was aware that a high-pressure petroleum products pipeline owned by Pacific & Arctic's sister company ran close to the surface next to the railroad tracks at 6-mile, and does not argue that he was unaware of the dangers a break or puncture of the pipeline by a piece of heavy machinery would pose. Therefore, Hanousek should have been alerted to the probability of strict regulation.

In light of [the fact] that the criminal provisions of the CWA constitute public welfare legislation, and the fact that a public welfare statute may impose criminal penalties for ordinary negligent conduct without offending due process, we conclude that [the CWA] does not violate due process by permitting criminal penalties for ordinary negligent conduct.

DECISION
AND REMEDY

The U.S. Court of Appeals for the Ninth Circuit affirmed Hanousek's conviction. A corporate manager who has responsibility for operations with the potential to cause harm can be held criminally liable for harm that results even if he or she does not actually know of the specific statute under which liability may be imposed.

The following case examines the reach of the Fourth Amendment's protection against unreasonable search and seizure.



U.S. SUPREME COURT CASE 7.3 Thermal Imager Search

Kyllo v. United States

533 U.S. 27, 121 S.Ct. 2038, 150 L.Ed.2d 94, Web 2001 U.S. Lexis 4487 (2001)
Supreme Court of the United States

“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 government intrusion.”

—Justice Scalia

Facts

Government agents suspected that marijuana was being grown in the home of Danny Kyllo, which was part of a triplex building in Florence, Oregon. Indoor marijuana growth typically requires high-intensity lamps. In order to determine whether an amount of heat was emanating from Kyllo's home, consistent with the use of such lamps, federal agents used a thermal imager to scan the triplex. Thermal imagers detect infrared radiation and produce images of the radiation. The scan of Kyllo's home, which was performed from an automobile on the street, showed that the roof over the garage and a side wall of Kyllo's home were “hot.” The agents used this scanning evidence to obtain a search warrant authorizing a search of Kyllo's home. During the search, the agents found an indoor growing operation involving more than 100 marijuana plants.

Kyllo was indicted for manufacturing marijuana, a violation of federal criminal law. Kyllo moved to suppress the imaging evidence and the evidence it led to, arguing that it was an unreasonable search that violated the Fourth Amendment to the U.S. Constitution. The U.S. District Court disagreed with Kyllo and let the evidence be introduced and considered at trial. Kyllo then entered a conditional guilty plea and appealed the trial court's failure to suppress the challenged evidence to the U.S. Court of Appeals. The U.S. Court of Appeals affirmed the trial court's decision to admit the evidence. Kyllo appealed to the U.S. Supreme Court.

Issue

Is the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat within the home a “search” within the meaning of the Fourth Amendment?

Language of the U.S. Supreme Court

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 government intrusion. With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no. The present case involves officers on a public street engaged in more than naked-eye surveillance of a home. The question we confront today is what limits there are upon this power of technology to shrink the realm of guaranteed privacy. We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area constitutes a search. This assures preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted. On the basis of this criterion, the information obtained by the thermal imager in this case was the product of a search.

Decision

The U.S. Supreme Court held that the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat within the home is a “search” within the meaning of the Fourth Amendment. The Supreme Court reversed the decision of the U.S. Court of Appeals and remanded the case for further proceedings.

Case Questions

Critical Legal Thinking What does the Fourth Amendment's prohibition against unreasonable search and seizure provide? Explain.

Business Ethics Did the police act ethically in obtaining the evidence in this case? Did Kyllo act ethically in trying to suppress the evidence?

Contemporary Business Is selling illegal drugs a big business in this country? How can the government catch entrepreneurs such as Kyllo?

PRIVILEGE AGAINST SELF-INCRIMINATION

The Fifth Amendment to the U.S. Constitution provides that no person “shall be compelled in any criminal case to be a witness against himself.” Thus, a person cannot be compelled to give testimony against himself or herself, although nontestimonial evidence



Supreme Court of the
United States, 1966.
384 U.S. 436,
86 S.Ct. 1602,
16 L.Ed.2d 694.

BACKGROUND AND FACTS On March 13, 1963, Ernesto Miranda was arrested at his home for the kidnapping and rape of an eighteen-year-old woman. Miranda was taken to a Phoenix, Arizona, police station and questioned by two officers. Two hours later, the officers emerged from the interrogation room with a written confession signed by Miranda. A paragraph at the top of the confession stated that the confession had been made voluntarily, without threats or promises of immunity, and "with full knowledge of my legal rights, understanding any statement I make may be used against me." Miranda was at no time advised that he had a right to remain silent and a right to have a lawyer present. The confession was admitted into evidence at the trial, and Miranda was convicted and sentenced to prison for twenty to thirty years. Miranda appealed the decision, claiming that he had not been informed of his constitutional rights. The Supreme Court of Arizona held that Miranda's constitutional rights had not been violated and affirmed his conviction. The Miranda case was subsequently consolidated with three other cases involving similar issues and reviewed by the United States Supreme Court.

IN THE LANGUAGE
OF THE COURT

Mr. Chief Justice WARREN delivered the opinion of the Court.

The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence; the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. * * *

At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. * * *

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, *but also of the consequences of forgoing it.* * * * [Emphasis added.]

The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. * * *

In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent [without funds] a lawyer will be appointed to represent him. * * * The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent—the person most often subjected to interrogation—the knowledge that he too has a right to have counsel present.

DECISION
AND REMEDY

The Supreme Court held that Miranda could not be convicted of the crime on the basis of his confession because his confession was inadmissible as evidence. For any statement made by a defendant to be admissible, the defendant must be informed of certain constitutional rights prior to police interrogation. If the accused waives his or her rights to remain silent and to have counsel present, the government must demonstrate that the waiver was made knowingly, voluntarily, and intelligently.