

Brief in Favor of the Petitioner in Carpenter v. United States Rica Llagas-Cassandra Dominguez

In the Supreme Court of the United States

February Term, 2018

TIMOTHY IVORY CARPENTER, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

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Oral argument:

QUESTION PRESENTED

DOES THE WARRANTLESS SEARCH AND SEIZURE OF CELL PHONE RECORDS INCLUDING LOCATION DATA OVER THE COURSE OF 127 DAYS VIOLATE THE FOURTH AMENDMENT?

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Statement of Argument

The Fourth Amendment of the United States Constitution grants people the right to be secure in their persons and effects. The Fourth Amendment protects people from unreasonable searches and seizure and creates a reasonable expectation of privacy. The precedent for reasonable expectation of privacy set by United States v. Jones 565 U.S. 400 allows people to expect privacy despite the personal information they may disclose to third party sources on the grounds that, in an increasingly digital age, it is a breach of privacy if the government was able to intercept and intervene with information and communication people release in order to perform everyday tasks. The warrantless search and seizure of cell phone records including location data violate the Fourth Amendment under this precedence.

Argument

1. (The Plaintiff’s Fourth Amendment Right Was Violated)

There was a seizure of the Plaintiff’s personal information not authorized by a warrant. The Plaintiff’s records were obtained first through a third party. The FBI then accessed his records in a similarly roundabout way by asking for permission to access “transactional records” on the grounds that “specific and articulable facts show[] that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.”.

A search most certainly occurred when they combed through the aforementioned “transactional records” and deduced that the Plaintiff was within two miles of the armed robbery. The only way they managed to obtain this information was by means of going through his phone records. Given that in this increasingly technological world, personal information put out online is considered property (a precedent set by *United States v. Jones*) it is reasonable to conclude that there was a search and seizure of Mr. Jones’ effects.

A seizure is the removal of articles of evidence by law enforcement officers. Such articles that may be seized are informative documents, material evidence, narcotics, as well as firearms/weapons. A search is an examination of a person’s premises and property. In which law enforcement may conduct the search on the person’s residence, vehicle, or business. During a search and seizure it is often required for the law enforcement to obtain a search warrant. A warrant is not required for an incident in which there is a lawful arrest, the seizure of items in plain view, in a vehicle (with the exception of the trunk), searches on the border, or in open fields. Officers must present their account in order to claim probable cause. As well as all locations to be searched and items to be seized. All of this is presented to a judge or magistrate in an affidavit to be approved or dismissed. The officer is only required to search the premises and seize the items as explicitly stated in the warrant. This is with the exception of any illegal evidence/activity in plain sight. Judges/Magistrates are permitted to approve various types of searches. In the case of *Carpenter V. US* the judges granted the government’s application pursuant to the Stored Communications Act. The act specifies that the government may require the disclosure of certain telecommunications records when “specific and articulable facts show that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.”. The government did not request a formal search warrant in this case specifically. The fourth amendment explicitly states “The right of people to secure their property and effects in the event of an unreasonable search and seizure, the need for probable cause to obtain a warrant, and how the warrant is to be used.”.

1. The Fourth Amendment Requires A Reasonable Expectation Of Privacy

During trial the government presented business records of the defendant’s’ mobile devices showing that the men used their devices in close proximity to the location of the robberies.

The defendants argue that the government’s collection of those records constituted a warrantless search in violation of the Fourth Amendment. A reasonable expectation of privacy is applicable in cases of their bodies, personal property, homes, business offices, as well as in automobiles. There is no reasonable expectation of privacy in things like bank records, vehicle location/paint, garbage left at the roadside, handwriting, the scent of/in

luggage, land visible in a public place, and other places and things visible in plain or open view.

United States v. Jones was a landmark case that set the precedent for having a reasonable expectation of privacy. This precedent prohibits the abuse of fourth amendment exceptions by federal officials. Additionally the case enhances the protections provided by fourth amendment rights granted by the bill of rights. In Katz v. United States the court determines the limitations to reasonable expectations of privacy in public places. Boyd v. United States withheld that the fourth amendment protects against a person's private property and possessions, not a mere protection against search and seizure of homes.

The content of a communication is found in verbal or written communication explicitly.

The unwarranted collection of location data on the part of the officers violates Mr. Carter's 4th amendment right in that the amendment explicitly requires a reasonable expectation of privacy. The defendant did not consent to a search of his private property or effects which includes phone records. Initially the FBI gained access to the defendant's phone records through a third party as well as neglected to obtain a formal warrant. Having seized the cell phone numbers the FBI searched through his phone's records to identify other numbers that were contacted during the time of the robberies. Under the reasonable expectation of privacy the location data of the defendant was not found in plain sight and furthermore did not contain any relevant information to the criminal investigation. Probable cause cannot be conceived through the number or location of an individual.

Proposed standard

The 4th amendment was violated because the client's records were obtained in a manner that did not involve their awareness. The precedent set by United States v. Jones 565 U.S. 400 along with other supporting documents does not allow for the warrantless search and seizure of Timothy Ivory Carpenter

Conclusion

The warrantless search and seizure of Timothy Ivory Carpenter's phone records should be deemed unconstitutional due to the obtainment of the records through third-parties. With the Plaintiff having a reasonable expectation of privacy granted to him through precedence, the government's access to his records have violated his rights. The Plaintiff's records count as private property and not only where they obtained through warrantless means, they were accessed without his knowledge and without any real probable cause. In a world where people are getting easier to track and locate, each private citizen deserve to know who is

accessing their information and for what purposes. Allowance of the Plaintiff's privacy to be violated in such a manner will set a malicious standard in how the government can interact with the people: in a way that violates their basic right to exist as private individuals.

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