Brief in favor of the Petitioner in the case of Carpenter v. United States- Sasha Chuprakova and Nancy Trinh

Petitioner Brief – Chuprakova and Trinh

In the Supreme Court of the United States

March 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 NINTH CIRCUIT

PETITIONER'S OPENING BRIEF

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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 protects citizens of the United States from warrantless searches and seizures by entities of the United States government. Carpenter's rights were clearly violated by the government when the government searched his phone records through information given to them by phone companies and seized vast quantities of information, including location data. The location data given to and accessed by the police did not fall under the Stored Communications Act as they did not have enough facts to justify a court order and they were searching on too broad of a scale. As there was no warrant issued, the information obtained neither falls under probable cause or the Stored Communications Act, making its use to incriminate Carpenter unconstitutional. Furthermore, Carpenter had a reasonable expectation of privacy as he was simply using his cellular device, and not purposefully sharing the information, whether that be communications or geographical tracking data, on it with his phone company. A majority of Americans carry and use a wireless or cellular device but that does not mean they consent to having their location tracked and monitored. Following a multitude of set precedents, the method of which authorities obtained Carpenter's data and the tracking of his location for extended periods of time was a form of unconstitutional search and seizure. Additionally, the Third Party Doctrine should not apply to cellular records as that would allot an unnecessary amount of power to the government and severely infringe upon the rights of American citizens.

Argument

1. **I. The data gathered did not fall under the Stored Communications Act.**

The officers were not searching for specific information. They tracked the phone and accessed its data over the course of 127 days, meaning that the contents were without a doubt unusually voluminous in nature, as is prohibited by said Stored Communications Act. Phone records; including location, taken over the course of 127 days would have been immense. The government had access to everywhere he went, every call he made, every website he visited; an enormous magnitude of information. This was not a case where they traced a single phone call, or even tracked his location for a single day; this was over the course of four months.

The Stored Communications Act allows for court orders under "specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication" are relevant to the ongoing investigation. However, the information used to incriminate Carpenter was specifically location data. Location data is not telecommunications. Location data is not explicitly defined as seizable in the Stored Communications Act and the broad definition of "records or other information sought" is too broad and opens the door to nearly limitless amounts of information available for a "constitutional" search and seizure. The inability of this act to define what info is allowed to to be seized outside of specifically telecommunications provides the argument that the tracking of Carpenter's location to be unconstitutional. This would further cause his arrest to be unconstitutional as the information used to arrest him was not legal.

Furthermore, the only fact they had prior to requesting the court order was that Carpenter was in contact with an arrested man. That was the only evidence they had tying him to the crime, meaning that they also did not have articulable evidence and facts to request such an order under the Stored Communications Act, which requires "specific and articulable facts showing 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." They did not have these facts or enough evidence for a warrant. The officers used the Stored Communications Act to avoid following protocol and infringe upon the rights of the common man. Such infringement of privacy is not only harmful to people like Carpenter, but to every single man, woman, child and human being that uses a cell phone or other wireless device.

II. Carpenter had a reasonable expectation of privacy.

The Fourth Amendment is defined as the right "to be secure in [one's] persons, houses, papers, and effects, against unreasonable searches and seizures" and the protection that "no Warrants shall issue, but upon probable cause." This right to one's property is historically reaffirmed by multiple documents, one notably being the *Massachusetts Declaration of Rights* that states that "Every subject has a right to be secure from all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions." This invents the

concept of a reasonable expectation of privacy where every individual is entitled to a degree of confidentiality and security on their personal information.

A reasonable expectation of privacy, as defined through the test created from *Kratz v. United States*, clarifies that a person must "have exhibited an actual (subjective) expectation of privacy" and said expectation must "be one that society is prepared to recognize as 'reasonable." Carpenter did hold true to this two part test. He believed his communications and location data were private and were to not be seized without his consent. This belief is a common expectation of the average citizen. These two conditions were met and yet Carpenter's private information was seized and used to incriminate him, clearly infringing on his Fourth Amendment rights.

With the modern technological world, an individual expects to hold a reasonable level of privacy to their devices and the information stored in them. Whom one communicates with and the information they store in their devices is not presented to the public and is of the private nature. One does not expect to be monitored around the clock and it is reasonable to assume that such monitoring would be an invasion of an individual's privacy. One's personal information, especially location, is to remain private until probable cause leads into the correct procedure to obtain such information constitutionally; with a warrant. The Fourth Amendment itself ensures a person with a reasonable expectation of privacy and protection from warrantless searches and seizures. In Carpenter's case, no warrant was issued and the information taken to charge him violates various other precedents and acts, making both the seizure and his arrest unconstitutional.

As stated in *Smith v. Maryland*, a person holds their Fourth Amendment protections if they believe that the government has infringed on their reasonable expectation of privacy- which in this case did happen. The information seized was delved into and analyzed rather than being viewed on a surface level. Law enforcement did not just look at his records and history on a mere surface level, rather they sorted and searched through 127 days worth of data to find a single piece that was incriminating. It is also not regular conduct of a company to give out the information of their customers to law enforcement, especially without a warrant and especially when the Stored Communications Act does not apply**.**

This trumps the ability of *Smith v. Maryland*'s precedent applying to this case. *Smith v. Maryland* clarified that a reasonable expectation does not apply to recorded phone numbers as numbers are of regular conduct in a phone company's business. However, location data and tracking is not a phone number nor used in regular conduct of a phone company's business therefore proving how the use of this data by law enforcement violated Carpenter's Fourth Amendment rights.

III. The Third Party Doctrine should no longer apply to phone records.

The Third Party Doctrine, which was established in 1976 and reaffirmed in 1979, before the existence of widespread cellular devices, states that if a person willingly hands over information to a third party, they waive their Fourth Amendment rights regarding that information. In a day and age where nearly everyone stores at least a portion of their information online or on their cellular devices, this doctrine opens up a vast quantity of personal information to the government.

US v. Miller and *Smith v. Maryland* never anticipated the technological revolution, and therefore did not account for the information that citizens store and convey on their cellular devices. Unlike *US v. Miller*, in which the bank that Miller provided information to revealed the incriminating evidence to law enforcement, Carpenter did not intend to share his information with the phone company. It was established that in Miller's case, "the checks [were] not confidential communications" (*United States v. Miller, 425 U.S. 435, 443 (1976)*), unlike the communications and location data of Carpenter. He was simply using his cellular device, unaware that the phone company had a right to access his location and other cellular data. Furthermore, in *Smith v. Maryland*, a pen register was placed, tracking only which numbers the defendant called, whereas in Carpenter's case, the content and location were accessed as well. Carpenter did have a reason to believe that his location data would remain private, as he did not willingly share it with any third party.

By allowing the government to access all data that is stored on cellular devices today without a warrant would not only be an enormous overstep of privacy, it would violate people's right to property. As stated in the *New York Ratification Convention Debates and Proceedings (July 19, 1788)*, "every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, or his property." One's cellular data is one's property, and accessing it without a warrant it trespassing on their rights as an American citizen and human being.

In *United States v. Jones*, it was declared that the placement of a long term tracking device, in this case 127 days without a warrant, infringes upon one's expectation of privacy. Along with this, United States v. Jones cites that it is "necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties." The idea that a third party is able to volunteer one's information that was given to them in confidence does not suit our digital age well. In our society, much of our personal information is entrusted to third parties such as phone companies. This trust is easily encroached on by the Third Party Doctrine and should be protected to preserve privacy in a day and age where information can be so easily accessed. Considering how accessible information can be, it is key to ensure one's privacy, whether that be protecting one's data or location, so some limitation must be defined as to how far law enforcement can go.

The Third Party Doctrine is a valid legal theory, and has merit in numerous situations. However, it's power should not be extended to phone companies. That provides the

government unlimited access into the lives of American citizens. In the words of James Otis, "it is a power that places the liberty of every man in the hands of every petty officer". *(James Otis, Arguments Against Writs of Assistance (February 1761))* People have no choice but to allow phone companies access to their data, but that does not mean they intend to share that information with them. Thus, the Third Party Doctrine should not apply to any records stored on a cellphone, including location data.

Proposed standard

The warrantless search and seizure of cell phone data, including location, does violate the Fourth Amendment, as one has a reasonable expectation of privacy whilst using their cellular device, and the actions of the officers were not excused by the Stored Communications Act or the Third Party Doctrine.

Conclusion

The warrantless search and seizure of Carpenter's cellular data was not protected by the Stored Communications Act, and it is clear that he had a reasonable expectation of privacy regarding his location while he was making a phone call. People should feel secure about the movements they make and the data they store on their phone, as that is their personal property. The government had enough time, but not enough evidence to obtain a warrant, and heavily overstepped their bounds by searching 127 days of cellular data. Furthermore, the Third Party Doctrine should not apply to cell phone data collection, as that would set a harmful precedent allowing the warrantless search of vast quantities of data, heavily infringing upon the rights of American citizens.
The Supreme Court should rule in favor of the petitioner Timothy Carpenter because it would set a precedent of protecting the citizens' personal information, regardless of where they choose to store it. Ruling in favor of the responder would mean allowing the government to access almost every single detail of a person's life without a warrant or suitable justification. The era of technology is upon America, and the court should continue to protect the rights guaranteed by the Fourth Amendment, which includes protecting cellular data.