

TepMaiPetitionerBrief

IN THE SUPREME COURT OF

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THE UNITED STATES

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TIMOTHY IVORY CARPENTER,

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Petitioner

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Vs.

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UNITED STATES OF AMERICA,

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Respondent

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Aileen Mai and Amena Tep

Brief for petitioner, Timothy Ivory Carpenter

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Statement of argument.

The Massachusetts Declaration of Rights and the fourth amendment states that “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...” This is a fourth amendment case, because there was an unreasonable search and seizure. The fourth amendment requires a warrant when searching ones “papers, and effects”. However in todays case, they only got permission from the magistrate judges, which is overbearing on the fourth amendment’s warrant requirement. And by allowing “permission”, over a warrant would be the government’s

attempt to bypass the fourth amendment. *New York Ratification Convention Debates and Proceedings* also states that “every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, or his property” These cases/sources show that the fourth amendment protects you from unreasonable searches and seizures against your person, papers, houses, or effects.

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Argument

Today, we will be demonstrating that one, the state action at issue was a fourth amendment event. Secondly, the amount of days worth of information is unreasonable, and lastly, the stored communications act and third party doctrine should not be applied in the case before the court today.

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1) This case is a fourth amendment case

As it becomes easier for the government to glimpse into our daily lives, the protection of the fourth amendment is becoming increasingly more important now than ever. The fourth amendment states “the right of the people to be secure in their persons, papers, houses, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause”. The fourth amendment was ratified on December 15, 1791. Which was approximately 227 years ago, a time in which cell phones, more specifically cell phone location data, were not an issue. However because of society’s constant increase in technological change, we have to apply the fourth amendment to society’s current fit, because not doing so would apply an old understanding to today’s society. Cell phone data, is considered papers under the fourth amendment. In previous years, important documents were all kept on physical papers, and placed somewhere physically safe. However because of technological advances, people are able to keep these documents on their own cell phones. Because of this, these papers should be protected

under the fourth amendment. In order to obtain these papers, a warrant should've been issued. The respondents may argue that no warrant was needed ; however by ruling in their favor would be to allow FBI agents to impede on our fourth amendment right which is something that the legislators did not intend on doing. In looking at the fourth amendment, we look closely at the test set forth in Katz V. United States. In order to determine whether there was an unlawful search, we must look at two factors. 1. Whether the parties (carpenter in this case) exhibited a reasonable expectation of privacy. 2. Whether that expectation is one that society is prepared to recognize as reasonable. Applying the first prong to today's case, Carpenter did have a reasonable expectation of privacy. According to the Supreme Court in Rakas v. Illinois (1978), the "expectation of privacy must have a source outside of the Fourth Amendment either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." As mentioned beforehand, cell phone data records are protected under the fourth amendment. Because of the severity of importance these documents range from, a reasonable expectation of privacy is expected with every cell phone user. If the courts do not grant this reasonable expectation of privacy, the government would be allowed to search through cell phones anytime they please. And in the end would lead to more convictions based off of rights provided by the fourth amendment, that is no longer granted to us. This expectation is one that should be recognized as reasonable because it is reasonable to expect the contents of your cell phone private. Your own personal bank statements, insurance, call records, are all private information. And because of it, it is only reasonable to assume that cell phones have a reasonable expectation of privacy.

2). 127 days is unreasonable

In today's case, the government took 127 days worth of cell phone records and that is an unreasonable amount of information obtained even if it was needed to convict Carpenter. United States vs. Jones, held that GPS monitoring over a long period of time was unconstitutional. Your phone and GPS tracking both track your position even if the GPS tracker is more precise than the location information the government obtained from the cell phone records, they both track your location and both are easily accessible to the government so since the circumstances are similar, the court should follow the ruling in United States vs. Jones in holding that GPS monitoring over a long period of time is unconstitutional. The government obtained 127 days worth of information to convict Carpenter for the robberies on the dates that they occurred, not a timespan that encompasses when the robberies took place. If we apply the reasonable man standard, a reasonable person can come to the conclusion that taking 127 days worth of information for nine armed robberies two of which were dated, one occurring on December 13, 2010

and the other one happening on April 5, 2011, that lasted a day is highly unreasonable. The 127 days worth of information exposes more personal information than information that will help with his conviction, more than the telephone number in *Smith vs. Maryland* and more than the financial documents in *United States vs. Miller*. The 127 days worth of information did more harm than it did good, meaning that it is unreasonable to take that much information without a warrant for only a few pieces of evidence.

3) Stored Communication Act and Third Party Doctrine does not apply

According to the *Stored Communication Act*, “a court order may be issued only if the government offers specific and articulable facts (probable cause) 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.” It is our contention that the Stored Communication Act should not be applied to today’s case, because it is trying to surpass the fourth amendment. The Stored Communication Act lowers the standard for police officers to search through cell phone records. When applying the fourth amendment, probable cause is needed to get a warrant to search through “papers”, however the respondents will claim that this act is merely sufficient enough to search through contents of a cell phone. If this act could be applied to cases such as the one beforehand, it would create no need for a fourth amendment. And it would allow police officers to again search through the contents of a cell phone without a warrant. This Act cannot be taken advantage of as a reason to bypass the fourth amendment. If we focus solely on the words in the fourth amendment that read “..no warrants shall issue, but upon probable cause, supported by oath or affirmation..” and then looking at The Stored Communication Act that says “specific and articulable facts showing there are reasonable grounds..” we can see that in the fourth amendment probable cause is needed, and in the act “reasonable grounds” need to be shown. Reasonable grounds is far less of a burden of proof, rather than “probable cause, supported by a Oath or affirmation” .The Stored Communication Act is an attempt to bypass the fourth amendment three part requirement.

1. There must be probable cause
2. Probable cause is needed for a warrant
3. It must be supported by Oath or affirmation

The Stored Communication Act only requires “reasonable grounds”, instead of probable cause. Which lowers the standard from the fourth amendment, the Stored Communications Act lowers the law even more by being extremely vague in not defining

what they mean by ‘reasonable grounds’ The second requirement is that a warrant is necessary, and as mentioned previously, no warrant was issued. Better yet, the respondents are using this Act, as their own excuse to not even get a warrant. Moving on to the third requirement, the oath of affirmation. the stored communication act does not have this in its requirements. and by not having one, would not allow people to have a due process protection the constitution sets up for us, so not only is it violating one amendment, it also has the potential to violate another amendment’s right and the court should not violate two rights guaranteed by the amendments. Even if the court were to rule that there was reasonable grounds and that the magistrate judge’s permission counted as a ‘warrant’ it will still fail because nothing in the record shows that the government officials were sworn under oath and testified in court . Because the stored communications act is extremely vague, and because the reasonable grounds is not defined, we cannot apply it because the stored communications act is an act that bypasses the fourth amendment.

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4.The third party doctrine should not apply.

In 1967, the Supreme Court pronounced in Katz, that “what a person knowingly exposes to the public even in his own home or office, is not a subject of fourth amendment protection”. This rule “that a person has no legitimate expectation of privacy in information he turns over to third parties” is known as the third party doctrine. The respondents will argue that cell phone users “assume” the risk when handling information over to third parties. However people do not assume the legal risks as a manner of pure deduction, but assume only those risks of unregulated government intrusion that this court tells us we have to assume”. Most of the data on our cell phones, are in the hands of third parties. Banks, cell phone companies, car companies, and emails. And to say that because we hand this over, means we have no expectation of privacy, is an unreasonable standard that this court should not apply.

Conclusion

In a society that is becoming more and more developed technologically, it is crucial that whatever is in our technology or cell phones stays confidential . Today we have shown that this case, is a fourth amendment issue, the Stored Communication Act is an attempt by the respondents to bypass the fourth amendment, 127 days worth of information is very unreasonable, and that the third party doctrine should not be applied in today’s case. If the court were to rule in favor of the respondents, the United States, the court would be allowing the government to have the ability to search someone’s electronic records for no

reason, without a warrant, and not under oath or affirmation and still get away with it. If this court chooses to rule in favor of the petitioner, timothy carpenter, it would put a strict set of guidelines in order to search someone's phone. This will create a new precedent, that says you cannot search someones phone, without following all the guidelines set forth by the fourth amendment.

Prayer

Your honor, today you have heard the reasons as to why you cannot bypass the fourth amendment's warrant requirement, as the respondents are attempting to do. And you have also heard the reasons as to why the stored communication act, and third party doctrine should not apply. It is for these reasons that we respectfully pray this court rule in favor of the petitioner, timothy carpenter, and overturn the lower court's decision thank you

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