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Timothy Carpenter PETITIONER

V.

United States RESPONDENT

Petitioner’s opening brief

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Supreme Court of the United States

February 18, 2018

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 4th amendment of the Constitution 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, and particularly describing the place to be searched, and the persons or things to be seized. In the case of *Carpenter v. United States of America*, this amendment is clearly violated when the cell site location information was taken from the phone records of Carpenter. Using this information constitutes a search and therefore a warrant is required for this action. Because no formal warrant was issued, this action is a violation of Carpenter's rights. In *Boyd v. United States*, the court held that a person should be protected in their private financial documents. The third-party doctrine should not be applied to the cell-site location information. In *Miller v. United States*, the court ruled that a person does not have a reasonable expectation of privacy in their bank records overturned to a third party. This information in this case, however, is unlike a bank record or a business transaction record due to the fact that it is relatively accurate 24/7 location data. Carpenter also had his constitutional rights infringed when he was tracked using cell-site location information for 127 days. In *Jones v. United States*, the court held that the use of GPS device without a warrant is unconstitutional. This ruling shows that the monitoring of a person for this period of time is unconstitutional. We believe that our entire government needs to rethink the fourth amendment and its applications in our continuously growing technologically dependent society.

Argument

The use of Cell Site Location Information is a search and therefore violates Carpenter's 4th amendment rights.

A. The use of Cell Site Location Information was a violation of Carpenter's 4th amendment rights because they didn't receive a formal warrant to search the device. In *Boyd v. US* the court states "There need not be a physical invasion of one's home to constitute a violation of the Fourth Amendment protection against unreasonable search or seizure. The Fourth Amendment of the Constitution protects against the invasion into a person's private matters." The Cell Site Location Information taken from Carpenter is a private paper and therefore should be protected because of this case. There was also no probable cause for the obtaining of this Cell Site Location Information. Is there was any probable cause there could have easily been a warrant issued to obtain this information. However, because no warrant was issued at any time, Carpenter's rights were infringed upon when his location was revealed through the Cell Site Location Information was obtained and used to incriminate Carpenter. We believe that our entire government needs to rethink the fourth amendment and its applications in our continuously growing technologically dependent society.

B. The Cell Site Location Information was obtained by unjust means of The Stored Communications act. In order for certain information to fall under the Stored Communications Act, the court must have "specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication" can be used in the investigation. The data used against Carpenter was specific location data of where Carpenter was at the time. In the Stored Communications Act, there is not specified if Cell Site Location may be obtained. Instead it states that, "records and information sought" may be obtained for evidence. This general wording makes it very easy for someone's rights to be violated by this act. This act gives much more power to law enforcement than is needed. It leaves a gargantuan amount of information that a person would want to remain private vulnerable to searches and seizures. By allowing this information to be used in the court, the door has now been open for an infinite amount of supposedly private information to be used against people and to be able to be searched and seized without any warrants. Validating the investigators actions in obtaining this data through warrantless means by using this act as a substitute for a warrant is a clear violation of Carpenters fourth amendment and his reasonable expectation of privacy.

The Third Party Doctrine cannot be applied to the Cell Site Location Information

A. Established in 1976, the Third Party Doctrine states that any information voluntarily handed over to third parties such as banks, phone companies, internet service providers, and email servers do not have a reasonable expectation of privacy in this information given up. Although this doctrine can be applied practically to certain cases, it cannot to this specific case and to Cell Site Location Information. In this age when technology is advancing at a far quicker speed than we could ever imagine, a doctrine that was established even before the first smartphone was invented cannot be used in any practical sense to the Cell Site Location Information that was obtained through a phone company.

B. The *New York Ratification Convention Debates and Proceedings* states that, “Every free man has a right to be secure from all unreasonable searches and seizures of his person, his papers, and his property.” Cell Site Location Information is considered property and therefore is protected because of Carpenters rights as a free man. Just because Carpenters information was transmitted to a third party cell phone company, doesn’t mean that he has no privacy interest in the said data. Carpenter would have a reasonable expectation of privacy in his property and therefore the Third Party Doctrine is invalid in this case.

C. Another discrepancy with the application of the third party in this case is that before the widespread use of cellphones, people could have the choice to filter the information they choose to hand over to a third party, but in Carpenters case, this function was automatic, and therefore, not voluntary. In order for the third party doctrine to apply, the information given had to be voluntarily handed over by a willing and knowing person, since carpenter did none of this, it is clearly evident that the third party doctrine holds no relevance in this case.

Carpenter had his rights infringed upon when his records were obtained with information of his location for 127 days.

A. In the case of *United States v. Jones*, the court ruled that the placement of a tracking device to detect their location without a warrant over a one month period is unconstitutional. This case clearly mirrors that ruling. The Cell Site Location Information used to incriminate Carpenter was information taken from 127 days of tracking his location. Carpenter has a reasonable expectation of privacy in his location of a long period of time. The time period of 127 days is clearly long enough for someone to have this reasonable expectation of privacy in their location. Because a reasonable expectation of privacy is established when Carpenter was tracked for 127 days, a warrant would be needed to search and seize the Cell Site Location Information that was used in this case. When the location of carpenter was revealed his privacy almost was completely taken away. This is a

clear violation of his right to privacy in his records that he has a reasonable expectation of privacy in.

B. Using the privacy test established by *Katz v. United States*, it is again evident how egregiously the rights of Carpenter were violated. The *Katz* privacy test is used to determine if a person has a reasonable expectation of privacy. The two parts of this test are, “Does the individual have a subjective expectation of privacy?” and “Is society prepared to recognize that this expectation is objectively reasonable?” If the test is passed, then the person has a reasonable expectation of privacy. In this case, the use of Cell Site Location Information should be put through this test. The Cell Site Location used passes the first prong of the test. A normal person would be expecting to keep his location private and not have it used in a case against him. This expectation is subjective because a person would enjoy not having their location exposed at all times. The Cell Site Location Information also passes the second prong of the test. With the advancement of technology being faster than the laws that protect people’s information, the public would be able to see this information as having an objectionable expectation of privacy. By passing the two pronged *Katz* test it is evident Carpenter has a reasonable expectation of privacy in the Cell Site Location Information used in this case.

The data transmitted to Metro pcs and Tmobile is still Timothy Carpenters property

A. Since the data that was used to prosecute Carpenter came from Carpenters phone and the components of the data itself come from the result of his actions, such as when he moves to another location, the raw data which they used as evidence is his intellectual property. This would result in the protection of the data due to the fact that the prosecution had no warrant pursuant to Carpenter and his cellular data.

B. Carpenter paid for the cellular service and therefore he paid for designated radio frequency that depended on his cardinal direction in relation to the tower and so the compounded cardinal directions that gave the prosecution his approximate location, is his personal asset. In order to use this information as evidence, the prosecution would’ve had to file for a search warrant in order to prosecute him with it. In other words, Carpenter owned the service and data that he was getting and receiving, the contents of this data is effectively irrelevant in proving that he had no reasonable expectation of privacy because it was his property, which is protected under the fourth amendment.

Digital privacy needs to be protected by the fourth amendment

A. Private information that would be otherwise physically stored away pre cell phone era is now carried within these cell phones that ninety five percent of Americans have today. Information such as cell site location, personal health information, bank records, credit card information, and forms of personal identification are stored in many of these peoples cell phones, therefore we find it essential for the sake of everyone's privacy that the fourth amendment needs to be able to expand upon this digital information such as carpenters cell site location and needs to be able to protect this data. When the average American puts their information on their phone that they own, they should have a reasonable expectation of privacy, and as pursuant to the fourth amendment, have that right infringed upon only in the presence of a warrant that has been issued under a probable cause.

B. Due to how vulnerable cell phones make us, allowing the government to be able to easily obtain the data without a warrant would cause an immeasurable amount of distrust and causes people to resort to protected assets to communicate and store information into. As technology grows, so must our constitutional protection over them.

Conclusion and Prayer

The use of the Cell Site Location Information to incriminate Timothy Carpenter was an illegal search into his private life. This information was obtained through a warrantless search and seizure. The information cannot be seized under the Stored Communications Act. The Third Party Doctrine cannot be applied to the Cell Site Location Information seized by law enforcement. Carpenter also had his privacy rights infringed when he was tracked for 127 days, an unreasonable amount of time to observe someone's location. It is also clear that Carpenter had a reasonable expectation of privacy in this information when the *Katz* test is used.

This case will be vital in the growing need for privacy while technology grows exponentially. Ruling against Carpenter will only lessen individual's rights to privacy and their reasonable expectation of privacy. We pray that The Supreme Court will rule in favor of Timothy Carpenter because of the reasoning we have presented.

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