

Brief in Favor of the Petitioner in Carpenter v. U.S. — Hurtgen/Norris

Petitioner Brief – Maddie & Maddie

To be in the Supreme Court of the United States

Winter Term, 2017

Timothy Ivory Carpenter, Petitioner

V.

United States of America, Respondent

PETITIONER’S OPENING BRIEF

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Oral Argument: <https://youtu.be/bM-AKQsV8wQ>

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

Although the police were following the laws that are established in the Stored Communications Act, the warrantless search of a person's cell-phone data is unconstitutional. Therefore, the Stored Communications Act should be overturned along with the Third-Party Doctrine. There have been multiple court cases where the Stored Communications Act is slowly being overturned by establishing laws of a person's digital privacy. A person's location is a possession because it is something that has the power to be kept public or private by the individual. Every free citizen has a right to keep their location private, and the development of new technology in phones should not impede that right. Phones are necessary for society today; therefore, people have very little option for whether or not to use them. They have even become a matter of safety. An abundance of personal information can be traced back to a person's cell-phone, location data being one of them. The question is whether the retrieval of location data from telecommunication companies requires a warrant. This case focuses on the meaning of a reasonable expectation of privacy on Carpenter's part. The cell-phone companies have the right to obtain the location information of their users, but they do not have the right to publicize such data. This location data is similar to that of the a patient's medical record. There is a reasonable expectation for the location data to be kept private.

Argument

1. The United States Constitution may be adapted, but its fundamental rights must remain indefinitely.

American society values privacy on a similar level to the freedom of speech and places both highly on the pedestal of individual rights. The Fourth Amendment states, “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.” This particular amendment has proved to be among the most cherished of the American people. If we claim to be a democratic nation, then our government must protect our most valued rights in order to prevent the rise of authoritarianism.

The United States Constitution was made to be adapted. Adaptations to the Constitution and amendments to laws do not change the meaning of the original written law, but instead they are a national consensus of what evolution has come to be. Society is constantly changing, evolving, and developing new opinions about what is just. The creators of the Constitution could not have predicted the adaptations that our world has today. They could not have expected that cell-phones would be invented or that they would be a tool that could store personal information. Laws such as the Stored Communications Act and the Third-Party Doctrine take away American citizens’ constitutional right to their privacy, as seen in the Fourth Amendment. The Stored Communications Act allows law enforcement to obtain a person’s subscriber information without a warrant, which includes the cell-phone user’s identity along with their bank statements, telephone numbers called, and location data. In the case of Carpenter, the FBI went to a civil officer who deals with very minor cases, requested this information of the telecommunications company under the Stored Communications Act, and were granted that request. Although the law enforcement was protected under the Stored Communications Act, this act should be deemed unconstitutional because it undermines the significance of the Fourth Amendment. If this act continues to be relevant in convictions and criminal investigations, the Fourth Amendment will lose its worth and true meaning. A low court judge should not be allowed to make the decision of whether or not to grant rights of these important

personal documents that could send a person to prison for life to the FBI by themselves.

Had the FBI been required to obtain a warrant, they most likely would not have had probable cause to obtain this information, as all they had was a statement from one of the fifteen original robbers including Carpenter's name. It is necessary to adapt these laws to how they react with our current society.

2. All private matters are protected under the Fourth Amendment; they may not be exploited or used against a person in court unless willingly given up.

As previously proven in *Boyd v. United States*, the Fourth Amendment protects against the invasion of a person's private matters. In the case of *Boyd v. United States*, the government requested private papers from the company because they had the suspicion that the company was not paying their dues on specific items. In court the defendant argued that they should not be required to produce evidence of personal papers or any information about themselves that would lead to their conviction. The specific word change from "secure in their persons, houses, papers, and effects" to a more all-encompassing statement of private matters, creates a better idea of exactly what a person is entitled to keep to themselves. Anything that a person has the ability to keep to themselves that no one else knows constitutes as a private matter. Although the term "private matters" has a fairly broad meaning and changes depending on the values of the individual, this right must be respected in order to create a unified nation. Carpenter's private matters were intruded upon and used against him in his conviction, and therefore the gathering of this information was unconstitutional. Many Americans are unaware that their phone data is being recorded and kept in records that can easily be accessed by the government. A reasonable expectation of privacy is relevant to Carpenter's case because he may not have known how easily the government had access to his calls and location data. While this can be helpful to our courts in revealing illegal acts, this data should only be used with probable cause, and it must require a warrant to retrieve because location is sensitive information that is categorized as a private matter.

3. Third parties should not be required or allowed to produce the information of their users to the government if that information is going to be used in a conviction or to exploit private matters.

The Third-Party Doctrine is a legal theory that allows third parties, such as telephone providers, banks, and other companies, access to the information that you willingly, give out when using their company's services. The government's ability to access this third party information without a warrant is in complete violation of our Fourth Amendment rights. As seen in *Smith v. Maryland*, the Supreme Court set the precedent that a person does not have a reasonable expectation of privacy when dialing phone numbers because the same phone numbers are voluntarily given to third parties. While it is true that people do not have a reasonable expectation of privacy when using many elements of their phones, there is an underlying problem that is neglected in this rule of telephone companies owning rights to their client's information. Phones are necessary in everyday life, but by using them we are becoming vulnerable to our private information, and this is unconstitutional. The cell-phone companies have the right to obtain the location information of their users, but they do not have the right to publicize such data or allow that data to be given to the courts without a proper warrant.

In *Smith v. Maryland* they were using a pen register to record the numbers called from the house of Smith, whose face and car were both recognized by McDonough, the woman whom he robbed. The police had reasonable cause to believe that this man committed the robbery, so they were able to obtain phone records through permission of a lower court under the Stored Communications Act, which showed them a call made from Smith's home to McDonough's home on the day that McDonough said she received a threatening call. This information allowed the police to then obtain a warrant to go into Smith's house. While inside they found a telephone book with the page turned down on the phone of McDonough. Smith was arrested, and McDonough identified him as the man who had robbed her. Although this case was ruled constitutional, this decision should not affect the outcome of *Carpenter's* case. The circumstances are completely different because the information derived was only phone numbers instead of location data, which is a more private matter. The data that was used to obtain a warrant to enter Smith's home was a phone number that he had dialed. A phone number dialed is not personal property or personal information because according to the Third-Party Doctrine, telephone companies obtain this information anyway.

IV. Warrants should be required in all situations to ensure that Constitutional rights are not infringed upon.

While this case may seem quite different from Carpenter's, *Riley v. California* deals with a similar case of an warrantless search. Riley, a member of the Lincoln Park gang of San Diego, was pulled over by the police while driving a different car with expired license registration tags. Because his driver's license was suspended, the car had to be impounded. Before a car is impounded, police are required to perform an inventory search on the vehicle. During the search, police located two guns and arrested him for possession of firearms. Riley had his cell phone in his pocket during his arrest, so a gang detective analyzed videos and photos of him making gang references and signs. He was then tied to the shooting and was charged with shooting at a vehicle, attempted murder, and assault with a semi-automatic firearm. He received fifteen years to life in prison. By looking through his phone upon his arrest for obtaining firearms, the police found evidence of crimes that they may not have found otherwise, because Riley had a right to the personal images in his phone. The police looked through his phone without a warrant, and the information that they retrieved from that search and seizure led to Riley's conviction. Because Riley was already in custody and arrested, it would have been easy for the police to obtain a warrant to search Riley's phone. They certainly would have had probable cause; however, the way that they went about the search of Riley's cell-phone was unconstitutional and should have required a warrant.

Close to when the Constitution was written in the 1800s, politicians and other important figures argued that there should always be warrants. Even if they did not know about cell-phones, this document clearly states that they were against warrantless searches. The New York Ratification Convention Debates and Proceedings state, "every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, or his property; and therefore that all warrants to search suspected places, or seize any freeman, his papers or property, without information upon oath, or affirmation of sufficient cause, are grievous and oppressive; and that all general warrants (or such in which the place or person suspected, are not particularly designated) are dangerous and ought not to be granted." The New York Ratification Convention Debates and Proceedings further support the fact that the breaching of a person's private life without a proper warrant is dangerous to society. Intruding upon someone's personal property or information is oppressive and unbalances the power of the government and the rights of the people. Warrants are necessary to ensure that there is trust between the government and the people.

V. The Stored Communications Act should be ruled unconstitutional.

United States v. Jones is similar to Carpenter v. United States because it involves the wrongful persecution of a person based on their location data. Because of the precedent set in United States v. Jones, the location data was a personal property of Carpenter's that should not be trespassed without the approval of a warrant. Had he been spotted near the scene of the crimes by the public without the justification of where his phone was at the time, he would have reasonable expectation that his location was known by the public. In *Kyllo v. United States*, it was determined that a device used to explore information not previously known to the general public is unreasonable without a warrant. Because Carpenter was not openly showing his criminal activities, he had a Fourth Amendment right to "be secure in [his person]" and hide his location; therefore, law enforcement obtained his location unconstitutionally. Further, the Stored Communications Act should be ruled unconstitutional because there should not be a lower standard that one could use to obtain information. The Fourth Amendment requires that all searches and seizures be done only upon approval of a warrant. Thus, a lower standard does not follow the guidelines set in the Fourth Amendment. Moreover, Carpenter's location was tracked for 127 days, which is an extended period of time. United States v. Jones declared that "long term GPS monitoring also violates someone's reasonable expectation of privacy". Therefore, the location data obtained from Carpenter's phone was illegal as not only was the location obtained unconstitutionally but also for an extended period of time. The police attached a tracker to Antoine Jones' car without his knowledge, and they were able to track everywhere he went for a full month. United States v. Jones came to the overall decision that the warrantless constant monitoring of the defendant was unconstitutional. Being able to obtain a person's cell-phone records for the entire time that they have owned a cell-phone directly contradicts the decision in United States v. Jones. Similarly to Carpenter's case, Jones' private location data was violated by the police because of the warrantless tracking and then the use of that location data to convict him. This case decided whether or not a person's location was private information and personal property because otherwise they would not be able to track his actions and then convict him of a crime. Just as in this case, the government tracked Carpenter's location without obtaining a warrant, and they used this information against him in trial which ended in his conviction. Had they been required to obtain a warrant before tracking his location, they may have been denied that warrant. There was very little probable cause for searching his phone records to find his location; therefore, he may have not been convicted in the first place. There is nothing that allows the conviction of Carpenter without going against the Constitution and its intent. Although these two cases may appear to be quite different because of the physical placement of the GPS onto Jones' car and the technological obtaining of Carpenter's location, their violations of the Fourth Amendment are actually similar. Both cases achieved the same information by using different methods. Both methods of tracking location led to a conviction. Regardless of the way that their locations were exploited, the violation of

privacy in a person's personal location data without their knowledge is the same. Because both methods of deriving location data led to the same outcome, the Stored Communications Act is therefore unconstitutional.

VI. The Stored Communications Act fundamentally contradicts values held by the Framers of the Constitution.

The Massachusetts Declaration of Rights (enacted 1780 as part of state constitution) states, "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. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws." According to this document, any items or information owned by a citizen of the United States must be acquired through the use of a warrant. There are to be no exceptions to this statement. Because the police acquired personal information through the use of the Stored Communications Act, this act proves to be unconstitutional. The Stored Communications Act serves as a loophole for the gathering of evidence without a warrant. It reflects on the worries of the government that people have their own opinions. As derived from the United States Constitution, people of this nation are born with the right of privacy and to their personal information. Using the Stored Communications Act brings our country closer to the tyrannical structure that we tried to avoid when the Constitution was created.

In the Virginia Declaration of Rights, it affirms the fourth amendment search and seizure clause that prohibits the warrantless search of a person's belongings. It also states that warrants given without strong evidence are "grievous and oppressive, and ought not to be granted." The Stored Communications Act is in violation of this right because law enforcement is sometimes granted documents that they would not have been able to receive a warrant for. The retrieval of warrants should be the same across the board. There should be no loopholes for law enforcement to receive personal information about a person that could lead to their conviction, as that is unconstitutional.

Conclusion

We can definitively say that this warrantless search of Carpenter’s cell-phone location data violated the fourth amendment. The Court held that the warrantless search exception following an arrest exists for the purposes of protecting officer safety and preserving evidence, neither of which is at issue in the search of digital data. The digital data cannot be used as a weapon to harm an arresting officer, and police officers have the ability to preserve evidence while awaiting a warrant by disconnecting the phone from the network and placing the phone in a “Faraday bag.” The Court characterized cell phones as minicomputers filled with massive amounts of private information, which distinguished them from the traditional items that can be seized from an arrestee’s person, such as a wallet. The Court also held that information accessible via the phone but stored using “cloud computing” is not even “on the arrestee’s person.” Nonetheless, the Court held that some warrantless searches of cell phones might be permitted in an emergency: when the government’s interests are so compelling that a search would be reasonable.

If we don’t adapt our understanding of the Fourth Amendment to the digital age, chaos will ensue. A major difference between the United States and tyrannical nations is the freedom to live without worry of unnecessary invasion by the government. Americans live in harmony with the government by trusting that their privacy is protected. If this trust is broken, future unrest may prevail because Americans have lived under the laws protecting their individual rights since the birth of this nation, and therefore people will feel that their unalienable rights are being threatened. If this becomes a common thought among the population, violence will erupt and the United States will lose its true meaning and culture. In conclusion, a warrant should be required to obtain location data from telecommunication companies for government purposes to use against an individual in the court of law.