Matt Grimm and Matt Phillips (Petitioner Brief)

Petitioner Brief – Grimm & Phillips

In the Supreme Court of the United States

March Term, 2018

TIMOTHY IVORY CARPENTER, PETITIONER

V.

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PETITIONER'S OPENING BRIEF

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Oral Argument: https://www.youtube.com/watch?v=nDVAMFtxmuA

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 does not allow for the government to obtain cell phone records including location data without a warrant. The Fourth Amendment protects, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. This right "shall not be violated". Mr. Carpenter claims his 4th Amendment right was violated when the FBI seized his cellular tower location records. His claim is correct. The FBI needed to prove probable cause and then gain a warrant to access the location records; they chose to bypass both of these procedures. This circumstance is no exception to the warrant process. The FBI needs to follow these procedures because of past court precedents, specifically United States v. Jones. This case established that there is a reasonable expectation of privacy in a person's movement. Using cellular location data without a warrant would violate this precedent. Lastly, Using the third party doctrine to allow this unreasonable search would be a mistake. When the third party doctrine was established, technology such as we have today was not accounted for. As seen in United States v. Jones the third party doctrine was not used because of this very reason. An expectation of privacy is something that should be accounted for in this case. In this new age of technology, data, that can hinder a fair trial, can be obtained more easily by the government. This reality may be disregarded by the opposition but should be noted as it is crucial.
All of this explains why the FBI was not doing good police work, but actually violating the constitution by seizing the cellular tower location records with no permit.
Argument

1. Unlawful Search by Police Negates Legal Validity of Evidence Source

The 4th amendment of the U.S. Constitution protects the people from unlawful search and seizure without a warrant unless a probable cause can be confirmed. The government must provide probable cause for a warrant before entering any personal property of all peoples in the United States. The trust between the American people and their police is centered in the idea that their personal property is personal and may not be searched with lack of probable cause. The case in question begins with a clear violation of this right when the FBI searched the phone of John Doe without a warrant. They claimed use of the stored communications act (SCA) for their search, however, the SCA was created in 1986 as a part of the electronic communications privacy act which when conceived had no scope as to the growth of information stored in phones. The ECPA as well as the SCA violate the 4th amendment right as probable cause was not the standard for a warrant to search.

Furthermore the SCA states that the FBI may only access the phone if A "by the person or entity providing a wire or electronic communications service;" or B "by a user of that service with respect to a communication of or intended for that user;" The FBI reports no permission for a search received from John Doe nor was the information extracted from the phone "communication or or intended for that user". We therefore believe that under the context of the FBI's search and report the evidence received through the phone should be excluded.

2. Tracking of Citizens Without Consent or Warrant Violates Previous Standards

The means by which the FBI received the phone numbers of the defendants was an intrusion of property without a warrant. Much like in U.S. vs Jones when the police trespassed upon a vehicle to attach a GPS tracking device. This creates a direct link and similarity between the cases of Jones, and our defendant as the methods through which the tracking was pursued is unconstitutional.

As stated above the methods used to conduct the search of John Doe's phone were against federal beyond the rights of the federal government. We believe that as found in U.S. vs Jones the tracking of our defendants should be excluded not for intent but for method of reconnaissance. Katz vs U.S. found that people have a reasonable expectation of privacy. In neither case was a warrant issued to implement the means of tracking, and in our case there were no means of probable cause. Receiving the location of our defendants through tracking did not require a warrant due to the private party who held the information. However this is not relevant because the source of our defendants phone number is where the constitution was violated.

3. Privacy must take on a new meaning in an era of technology

Smith vs Maryland withheld that the government doesn't need a warrant for a pen register. This however is in no way relevant to our case as phones themselves did not hold the contact information rather a seperate device captured them. A tracking device is a seperate technology from a pen register as is a contact list held within the hardware and software of a cellular phone. Therefore the precedent set in this case is in no way affiliated in the technology used today.

Miller vs U.S. 1934 includes in its third party doctrine that allows third parties to divulge information without a warrant from the government. At the time this ruling was conceived personal information was not so heavily documented and stored within third parties. No longer do third parties hold little more information than business transactions and paper trails, third parties can now tell, where a person is, what they are doing, their hobbies, there likes, their dislikes, and their political affiliation. We have reached a penultimate point where the government must adapt to technology and affirm a new concept of privacy. As Justice Sotomayor said in her concurrence to U.S. vs Jones "it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. This approach is ill suited to the digital age, in which

people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks." now is the opportunity to achieve this.

Conclusion

The government may not use information found on a cell phone searched without a warrant. If the government allows this action, the government would be able to use this location data and track anybody; this is due to the fact a vast majority of Americans have cellular devices today. This action invades the privacy of Americans. Although previous court actions would signal such behavior is acceptable, these standards did not account for the technology boom that has occured in the country since the time in which they were set in place. It is important that the court recognizes that if they sides with the United States, this may lead to big brother government becoming a reality. They will be able to track everything we do and inherently then be able to influence the behavior of the peoples. We must be careful now in the precedents about technology to prevent government corruption in the future.

Probable cause and a warrant must be obtained before cellular location data is given to the government. The Supreme Court should rule in favor of the petitionary Timothy Ivory Carpenter because the search and seizure of obtaining cellular location data violates the Fourth Amendment.
