

Carpenter v US Brief for Petitioner — Liu and Smith

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IN THE SUPREME COURT OF  
THE STATE OF THE UNITED STATES

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TIMOTHY IVORY CARPENTER,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

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Brief for Petitioner

Peter Liu and Kaylee Smith

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:

The Fourth Amendment of the United States Constitution enables persons the right to security in privacy stating. Additionally, the right protects citizens from unlawful searches and seizures, stating: “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.” The amendment’s harsh use of words proves that without a warrant issued, the person’s possessions must not be seized nor searched.

In the question of this case: does the warrantless search and seizure of cell phone records including location data over the course of 127 days violate the Fourth Amendment, the answer of the respondent’s side is no. The rules of personal privacy were set by United States v. Jones, and further protected from the Katz v. United States case. Both cases enabled citizens to privacy despite the information that their devices may disclose. Back to the current case, Carpenter V. United States, the illegal search and seizure under the cell phone were not simply business records, they were the property of another person. In the era of

technological madness, it is important that the government realizes that it over crosses boundaries formed by the Constitution when warrantless search and seizure of cell phone records and location data violates the Fourth Amendment.

### ARGUMENT:

After arresting four men for armed robbery, the FBI searched and seized the Plaintiff's information via cell phone without a warrant. Eventually, the Plaintiff's personal records were sealed by a third party.

According to the Fourth amendment, in order for a search and seizure to occur, a warrant must first be obtained. Articles that are seized include: informative documents, drugs, or any type of weapon. A search is examining the persons articles or property. The only time a warrant is not needed occurs when the item(s) are in plain site: open fields, or in a car window. In this case, the FBI went directly to searching through the phones records, therefore violating the Plaintiff's rights.

Further, the Supreme Court has lawfully determined that installing a GPS tracker on a citizens vehicle without a Warrant is unlawful. This rule of law was established due to the case: *United States v. Jones*, 565 U.S. 400 (2012). Jones was arrested in 2006 for drug possession after police illegally attached a GPS tracker to his car, without judicial approval.

Over the time of a month, Jones was arrested by the police. Because of this cause, the United States Supreme Court held that installing a Global Positioning System to monitor one's movements is unconstitutional under the Fourth amendment. This was a landmark case that set the blueprint for reasonable suspicion of privacy. Further, this case prohibits the abuse of the fourth amendment by federal officials. *United States v Jones* is applicable to *Carpenter v United States* because phone records have the power to track a person's movement much like GPS systems do. The functionality of a phone even exceeds the capabilities of a GPS and consists of even more utilities like subscription services. As the majority opinion for *United States v Jones* writes: "[F]or most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas ('persons, houses, papers, and effects') it enumerates." The protections of the 4th amendment go beyond simply papers and persons, they also extend to the modern day equivalent of call site records.

In *Katz V. United States* the United States Supreme Court determined certain limitations to privacy in public places. Katz used a public pay phone for the personal usage to transmit illegal gambling around the United States. The entire time he took advantage of public payphones, the FBI recorded every conversation that he had from an eavesdropping device. Based on the knowledge that the FBI obtained from eavesdropping, Katz was convicted for the illegal transmission of, "wagering information from Los Angeles to Boston." Katz stated

that he could not be convicted under the evidence of eavesdropping that the government had because the records were trespassing him, therefore violating his fourth amendment right. Although the Court of Appeals rejected his point, the United States Supreme Court agreed with Katz, agreeing that his Fourth Amendment protection against unreasonable searches and seizures was unlawful:

“The Government’s activities in electronically listening to and recording the petitioner’s words violated the privacy upon which he justifiably relied while using the telephone booth, and thus constituted a “search and seizure” within the meaning of the Fourth Amendment.” Therefore, the 4th amendment prohibits searches where the parties shows “an actual expectation of privacy” and that this expectation is “one that society is prepared to recognize as reasonable.” We believe Carpenter v United States satisfies both of these conditions. Carpenter used his phone number in order to privately contact his criminal associates, which means that he expected a sense of privacy. Carpenter used his personal phone which meant that his cell site information would have likely only be known by the people he was calling, giving him an actual expectation of privacy. The verbal testimony of one is not enough to qualify for probable cause to search this private data because it is unreliable and is prone to be inaccurate, which is why the government’s search and seizure unconstitutional. The second condition is satisfied because our society recognizes the importance of the privacy of our cell phones. A large portion of the United States populace owns a cell phone, and we trust our cell phones with valuable information and functions in order to integrate ourselves into the modern world. Therefore, it is clear that society recognizes this exception of cell site information privacy as reasonable.

The Supreme Court has also determined in precedent rulings that the 4th amendment does not solely pertain to physical invasions of a person’s property. In *Boyd v United States*, the majority opinion said that “it does not require actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the Fourth Amendment.” Therefore, the 4th amendment also protects against the invasion of a person’s personal information. In the case of *Carpenter v U.S*, the modern era of technology has made digital data significant to one’s personal information. Digital data such as cell site information and phone numbers are vitally personal data and allowing the government to search for this information without a warrant infringes on one’s personal private matters. *Boyd v United States* provides a precedent for determining in this case that Carpenter’s personal data was unreasonably searched and seized by the government.

The Supreme Court acknowledges that business records that the government obtains from a third party are not protected under the 4th amendment, as third party business records do not have a reasonable expectation of privacy. This was established in *United States v Miller* in the majority opinion: “Even if we direct our attention to the original checks and deposit

slips, rather than to the microfilm copies actually viewed and obtained by means of the subpoena, we perceive no legitimate ‘expectation of privacy’ in their contents. The checks are not confidential communications but negotiable instruments to be used in commercial transactions. All of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business.” However, the facts of *Carpenter v United States* are not analogous enough to the facts of *United States v Miller* to allow us to apply the ruling in *United States v Miller* to *Carpenter v United States*. The FBI obtained the cell site information at the beginning and ending of each call, essentially finding the location records for all of the individuals that use these numbers. In an increasingly digitized world, business transactions can be done anywhere in the world. Therefore, the records that the FBI found are not simply business transactions. The FBI has geographical information that transcends the nature of typical business transactions, and the FBI should have received a formal search warrant in order to access this vital personal information.

If we look at what the founders intended for the 4th amendment to protect, we can see that they wrote the Constitution to protect citizens from illegal searches and to extend protections to more than just physical property. An anonymous member at the New York Ratifying Convention Debates and Proceedings of 1788 writes that “[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.” In addition to wanting to protect property, the founders also wanted to protect one’s “person” and his “papers.” These words indicate that the founders saw the 4th amendment as an amendment that protected more than just physical property. Papers during the founder’s era would have most likely been sent to each other and geographically marked with stamps. Therefore, the papers of the founder’s era are similar enough to the Carpenter’s location data so that we can say the founders intended for public records including location data to be under the protections of the 4th amendment.

The Massachusetts Bill of Rights reiterates the same sentiments that the New York Ratifying Convention Debates share. The Massachusetts Constitution 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. 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.” Again, we see similar language used to discuss the protections that people have against unreasonable searches from the government: “persons,” “papers,” and “possessions.” Carpenter’s case continues to be applicable in a historical context, as papers in the founder’s era usually contained the location of the individual through the form of postage and this is similar to the location data that the government seized from Carpenter’s criminal partner.

The fourth amendment was violated because the Plaintiff’s records were claimed because the document were searched without a warrant. When in *United States v. Jones* set the boundaries of search and seizure listed above.

### CONCLUSION:

The Warrantless search and seizure of Timothy Carpenter’s cell phone records should be finally disclosed as unconstitutional because of the third parties that were involved in receiving the records. In this time and era of mass media and technology, the government must respect citizens private telephone and GPS systems installed in everyone’s phone. The Plaintiff’s fourth amendment granted privacy was violated in one’s right to a private individual.

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