

Brief in favor of the Respondent in the case of Carpenter v. United States- Daniela Garduno and Ryan Blackburn

Respondent Brief

In the Supreme Court of the United States

[Month] Term, 2018

TIMOTHY IVORY CARPENTER, PETITIONER

V.

UNITED STATES, RESPONDENT

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

RESPONDENT'S OPENING BRIEF

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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 protects the reasonable seizure of incriminating evidence if allowed by a magistrate, thus affirming the actions of the United States against the petitioner, Mr. Timothy Carpenter. *The Fourth Amendment of the United States Constitution* protects only “the rights of the people to be secure in their persons, houses, papers, and effects...” against unreasonable search and seizure, articulating specifically that such seizures are only condoned by the government if “supported by oath or affirmation.” In attempting to conclude a criminal investigation, United States officers acted within the breadth of the law in utilizing a magistrate’s approval to obtain incriminating evidence (a trend seen in relative location and crimes committed in Detroit) through the defendant’s cell phone. The information gathered is also condoned due to the elimination of a reasonable expectation of privacy through the petitioner’s willingness to share his location with a third party, being his telecommunications company. Because of the

governmental sanction of these actions, it is both within the boundaries of the government and limits of American values to allow for the United States officers to obtain incriminating evidence against the petitioner by their exhibited ways and means.

As such, the officers' presenting of location-based evidence of the petitioner near areas of crime at the same time of the crime is within the confines of the law. Pursuant to the *Stored Communications Act of 1986*, "the government may require the disclosure of certain telecommunications records when 'specific and articulable facts show that there are reasonable grounds to believe that the contents of a wire, or electronic communication, or the records of other information sought, are relevant and material to an ongoing criminal investigation.'" The government had in fact established that there was enough probable cause to require Carpenter's telecommunications provider to produce "subscriber information, toll records, call detail records that showed the phone numbers of incoming and outgoing calls, and cell site information at the beginning and end of each call for the numbers in question" due to the naming of the petitioner, Timothy Carpenter, as an accessory in an ongoing criminal investigation and therefore should establish the evidence the United States Government provided in a court of law as admissible for the indictment of the petitioner, Timothy Carpenter.

ARGUMENTS

1. I. Judicial precedents justify the warrantless search and seizure of phone records.

Prior Supreme Court decisions merit the constitutionality of the warrantless search and seizure of Mr. Carpenter's phone records for an extended amount of time due to constraints on both a reasonable expectation of privacy and probable cause of the acting officers. As defined in *Katz v. United States*, a reasonable expectation of privacy (from Justice Harlan's concurring statement) is defined as a concept with two requirements: "first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable;" truly, American officers acted within the breadth of this definition to reestablish security in the surrounding Detroit area. Firstly, the defendant, Mr. Carpenter, throughout the investigation has exhibited no self preservation in securing the personal data (including his location during the times of the crimes), as such data is already given to his service provider. As discussed further in Justice Harlan's concurring statement, "because no intention to keep them to himself has been exhibited," Mr. Carpenter lacks a reasonable expectation of privacy to protect against the search and seizure of his phone records. This statement holds

true, because as a customer to his service provider, the defendant willingly gives up such information to a company in receipt for their services; aptly put, “objects, activities, or statements that he exposes to the ‘plain view’ of outsiders are not ‘protected.’” Jointly connected to the ruling of *Smith v. Maryland*, where the use of data from a pen register was considered constitutional because of its irrelevance to a legitimate expectation of privacy, Mr. Carpenter has willingly given up the data used in court to a third party, thus expelling any right to a reasonable expectation of privacy of information available to other members of the public and allowing for officers to use such information in a court of law as evidence. Secondly, Justice Harlan underlines an expectation of privacy that the general American community would recognize as reasonable; this second requirement is also fulfilled through the conscious actions of the defendant, thus resulting in a loss of any semblance of privacy. Mr. Carpenter consciously provided such information to a third party, and thus provides the American community with justification that such records, in fact, lack personal confidentiality and, thus, are permissible in court. As discussed by the court ruling on a related case, *California v. Ciraolo*, the respondent argues to the California Court of Appeal the unconstitutionality of the government’s actions in utilizing a plane 1,000 feet in the air for “naked-eye observations” so to obtain a warrant for the search and seizure of his property. In an attempt to further his argument that the government should not have deliberately spied on the happenings of his private property, the respondent “asserts he has not ‘knowingly’ exposed himself to aerial views.” In applying this court decision to *Carpenter v. United States*, one can understand that society’s approval of an expectation of privacy merits the government’s constitutionality in committing such actions; because of the deliberate and unsanctioned search of the respondent’s “private garden,” such actions were deemed too extreme for the confines of American law. Thus, Carpenter’s actions starkly contrast with those of the defendant in *California v. Ciraolo*, as he knowingly exposed personal information to a third party; because of this, it is within the duties of the government to obtain such information.

In deeming such accessibility as a requirement for the use of such evidence in a court of law, another question concerning the permissibility of evidence is formed: was there enough probable cause to merit the seizure of such records? The answer to this question is clear: as stated in *Camara v. Municipal Court*, the foremost concern of bodies of law is “to focus upon the governmental interest which allegedly justifies official intrusion;” because of an overwhelming governmental interest in the then at-large defendant, Mr. Carpenter, due to his involvement in and relevance to the crimes committed in April 2011, such actions are justified. Indeed, with the linking of Mr. Carpenter to illegal activity through other detained accomplices (where, in April of 2011, an arrested individual confessed to working with others – including Mr. Carpenter – in committing ‘armed robberies’), government officers have established a clear and reasonable probable cause to believe that the defendant would be deserving of a trial in a court of law.

2. Legislative precedents justify the warrantless search and seizure of phone records.

Pursuant to the *Fourth Amendment of the United States Constitution* as well as the *Stored Communications Act of 1986*, it has been established that any telecommunications information and records that can be made accessible will be made accessible if it is proven that the disclosure of the information is “relevant and material to an ongoing investigation.” Government authorities had sufficient probable cause subsequent to the confession of a perpetrator in connection to the robberies in which the petitioner, Timothy Carpenter, was named as an accomplice to the crime. Due to the aforementioned confession as well as the naming of the petitioner, Timothy Carpenter, authorities obtained probable cause that falls under the definition of probable cause that states, “when facts and circumstances within the police officer’s knowledge would lead a reasonable person to believe that the suspect has committed, is committing, or is about to commit a crime.” For this reason, officers were able to obtain an order from the magistrate judge that can be supported under the *Stored Communications Act of 1986* as well due to the establishment of probable cause and relevance to an ongoing criminal investigation. Furthermore, the *Massachusetts Declaration of Rights* states that “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 it has been established that the cause was, in fact, affirmed that the foundation of such search was affirmed by a magistrate judge and that the search was specifically for telecommunication records therefore it can be concluded that the search was, in fact, admissible.

The Fourth Amendment of the United States 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.” It is proven through the confession given and the ongoing investigation that tied the petitioner, Timothy Carpenter, to the crimes that there was sufficient probable cause and reason for the search therefore allowing authorities to gain access to the location of the petitioner’s phone. It is also understood that by owning and operating a telecommunications device that the locations can and will be recorded, thus eliminating the expectation of privacy in terms of location. In the twenty-first century, the approximate locations of any person with a telecommunication device is accessible to the world through a few clicks and we, as a progressing society, can no longer expect to remain hidden from view while simultaneously operating a device that is publicly

known to be monitored. Permission from a magistrate judge was given under the *Stored Communications Act* and the presence of probable cause in an ongoing investigation; for this reason and the reasons listed above, the petitioner, Timothy Carpenter, can not expect his location to remain private, allowing government authorities to lawfully obtain the records used in a court of law.

PROPOSED STANDARD

Under the *Stored Communications Act* and the *Fourth Amendment*, information gathered either through permission or warrants given to authorities by a magistrate judge in an ongoing investigation proven to exist under the clear presence of probable cause is admissible in a court of law for the purpose of indictment or defense.

CONCLUSION

Judicial and legislative precedents, as decided by elected United States government officials, guarantee the right to obtain records from telecommunications companies that would offer information relating to the petitioner, Timothy Carpenter, that lack a reasonable expectation of privacy and, thus, are permissible as evidence in a court of law. As such, the warrantless search and seizure of such information is constitutional, as provided by the confines of the law in strict adherence to the arguments presented above. As previously argued, a society that relies heavily on technology for everyday life can not reasonably assume that locations and telephone records are to remain private, especially in an ongoing criminal investigation in which the petitioner, Timothy Carpenter, has been named an accomplice. It is also known that the magistrate judge granted permission for the search based on the *Stored Communications Act of 1986* that required the information requested to be material to an ongoing investigation, which the information was proven to be via the aforementioned naming of the petitioner, Timothy Carpenter, in a criminal investigation. Furthermore, with the reasonable presence of probable cause as well as the fulfillment of the requirements listed in the *New York Ratification Convention Debates and Proceedings*, both the reasonable expectation of privacy and the need for probable cause have been eliminated and the use of such evidence by the United States government becomes admissible. Through a prior argument citing *Katz v. United States*, the United States government acted in conformity with the guidelines of the reasonable expectation of privacy due to Mr. Carpenter's willingness to share his location with a third party (the telecommunications provider). By knowingly sharing such information with said company, the petitioner, Timothy Carpenter, has surrendered his expectation of privacy, thus allowing officers access to and use of his information in a court of law. Such actions made

by the defendant also confirm the concurring opinion in *Smith v. Maryland* in which officers used evidence deemed legal due to the fact that the legitimate expectation of privacy was irrelevant. As proven by the *Fourth Amendment*, the *Stored Communications Act*, the *New York Ratification Convention Debates and Proceedings*, *Katz v. United States*, *Smith v. Maryland*, *California v. Ciraolo*, and *Camara v. Municipal Court*, the United States government exercised correct procedure in acquiring and using information made available during their investigation; as such, it is crucial that the Supreme Court rule in favor of the respondent and continue to support the safety and security of Americans.

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