

Private: Timothy Ivory Carpenter v. United States of America Essay – Chau Dinh, Winnie Shang – Stuart Hall School, Staunton, Virginia

Oral Argument: <https://www.wevideo.com/view/1081749624>

Table of Cited Authorities

The Constitution of United States

The Harlan Institute

United States v. Miller

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Argument Preview: The justices returned to the cellphones and the Fourth Amendment

Katz v. United States

Boyd v. United States

To the Farmers and Planners of Maryland, Md. J., Apr. 1, 1778

George Mason, Virginia Declaration of Rights

Statement of Argument:

In the case of Carpenter v. United States, Carpenter and Sanders, the suspects of a series of armed robberies, were proved to be engaged in an ongoing crime with other arrested robbers by investigating their companies' phone records. However, Carpenter and Sanders appealed to the court saying that the FBI's cell phone investigation violates the Fourth Amendment. They claimed that the FBI looked through the information in phones without a formally confirmed warrant and argued that there was a violation of the Fourth Amendment, stating 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.” But we believe that this accusation is invalid and improper to issue as a violation case under the Fourth Amendment. Other grounds such as the third party doctrine, expectation of privacy and contraries of tracking systems against them are enough to prove them guilty since there is certainly no infringement of the Fourth Amendment. The FBI did not invade into any of their “persons, houses, papers or effects” without lawful facts.

Argument:

First, the Fourth Amendment of U.S. Constitution protects people’s fundamental right of being secure in their properties and belongings against unaffirmed warrantless search. But one of the arrested robbers voluntarily provided the police with his phone as a source of information. FBI investigated information including “location data, call detail records, subscribers information” through the third party which was the cell phone company. During this process, FBI didn’t search Carpenter and Sanders’ personal data but the shared information with the cell phone company. When users enjoy services from the cell phone companies, their call records, and any footprints will be documented by the company as trade-offs. On the other word, cell phone company customers voluntarily provide these number related records to the company. According to the case *Smith v. Maryland*, the telephone numbers which are regularly and voluntarily given to cell phone companies are not protected by the Fourth Amendment. When it applies to *Carpenter v. U.S.* case, call records and location data are constantly received by the third party as daily conduct use. So we believe that FBI’s warrantless investigation of cell phone records through the third party is not protected by the Fourth Amendment.

As Carpenter and Sanders also benefit from the service of the phone company, they have to expect their information to be shared. Hence the expectation of privacy is improper, the information obtained by the police does not violate the Fourth Amendment. Also according to *United States v. Miller*, Miller sued The Bureau of Alcohol, Tobacco, and Firearms (ATF) for violating his Fourth Amendment when ATF investigated his bank account record without a warrant. But the Supreme Court held that Miller did not have a proper expectation of privacy when the information was gained from the third party doctrine. In the case of *Carpenter v. U.S.*, the FBI searches one of the robbers cell phone records to locate Timothy Carpenter and Timothy Sanders and collect evidence that proves their criminal acts without a formal search warrant. Notwithstanding, the act of collecting all records from the cell phone company – a subject lying within the Third Party Doctrine is

out of the range of the proper expectation of privacy. Based on the evidence presented so far, the third party doctrine proves how Carpenter's argument does not have enough evidence to go against the United States since their expectation of privacy is denied in this case.

Second, the information served as evidence against Sanders and Carpenter is credible and lawful for the following reason. It is based on the location tracking device that is much less accurate than the GPS tracking device, during the robberies, the robbers were within two miles from the crime scene. The government uses the signals from the cell towers connected to the phones to reach the conclusion. It is based on logical deduction rather than exact knowledge of location. It is clear that the location of the phones themselves was not directly tracked, but it is the cell towers that were searched. This is absolutely different from GPS – which is based on the coordinates of the subject – in which case is a violation of the Fourth Amendment should there be no official warrant. This case is a search that lasts for 127 days but is distinct from *United States v. Jones*, in which a precise tracking device was involved resulting in the exact knowledge of the location of the police. However, since the information is obtained from the cell towers, which stand publicly and transmit signals for millions of users, not the cell phones of Carpenter and Sanders' ownership, the government does not infringe upon the Fourth Amendment.

Third, as stated in the Stored Communications Act, a seizure of information shall be issued by the Court should there be reasonable grounds upon it, and in the event of government providing evidence supporting the seizure. In this case, the information of the robbers was obtained from a participant in the robberies, which serves as evidence for an ongoing crime. According to the case background, the police asked for permission to search through the transactional records in the phone provided for said purpose with other robbers. Since there is a presence of facts, the FBI has the right to arrest Carpenter and Sanders without violating the Fourth Amendment. Furthermore, the Fourth Amendment only protects individuals and their possessions under the conditions that there is no evident ground over them unless there is an official warrant from the court or that the target of the seizure is stated for certain. For instance, in the *United States v. Jones*, the tracking device was installed directly to Jones' car, which belonged to his possession. Nonetheless, since phone records do not belong to the cell phone owners, Sanders and Carpenter are not the protected subjects of the Fourth Amendment. Therefore, the grounds of this case are vague.

Fourth, based on the verdict, the Fourth Amendment only protects the content of the cellphones, not the signals from the cell towers indicating their estimated location. This is a clear distinction between content and information necessary to convey it. As given in the Fourth Amendment, "the right of people to be secure in their persons, houses, papers, and

effects, against unreasonable searches and seizures, shall not be violated”, however, there is not any unwarranted search of any of these mentioned because the arrestment of Carpenter and Sanders resulted from the indication of cell towers signals, which does not reside in persons, houses, papers, or effects. The Fourth Amendment prohibits the police from seizing the phones, as this can affect their paper content, yet it cannot defend against the collection of record data. Hence, there shall be no violation of the Fourth Amendment in this case. This is similar to the case of *Ex parte Jackson* in 1878 when the court ruled against Jackson by claiming that the Fourth Amendment prevents the content inside the sealed package from being exposed but does not protect the outside material of the package from such. In this case, although the phone numbers are registered in the phone companies, they can be exposed to the public. The content of the conversation on the line cannot be invaded, nevertheless, the records and data can. Hence, the FBI’s actions against Carpenter and Sanders are absolutely legal.

Fifth, in *Katz v. United States*, the federal agents installed an eavesdropping device outside a public photo booth when Katz was making phone calls. This is a direct violation of the Fourth Amendment as making phone calls in a public phone booth presents a need for privacy. It is the content of the conversation that was invaded. However, in this case, the police only asked the phone company to provide the phone records of Sanders and Carpenter, not the information they exchanged during the calls. Clearly, this does not violate the Fourth Amendment. Also, as given in the case of *Boyd v. United States*, the Fourth Amendment protects against invasion into private matters. Yet, the “private matters” here can be explained as the content of the conversation that needs to be protected, similar to the case of *Katz v. United States*. This, nonetheless, does not include phone records from the company. The phone records come from the phone numbers provided by the company and do not lie in the phones. The collection of records do not affect any of the matters protected by the Fourth Amendment, whether it is persons, houses, papers or effects.

There was a search over a period of 127 days, yet this search does not violate the Fourth Amendment. It is a collection of data from the cell towers indicating the approximate location of the suspects, rather than a direct tracking as in the case of *United States v. Jones*. Given in the case background, the police did not know exactly where they were during the time; therefore they did not infringe upon Sanders’ and Carpenter’s private matters, in this case being their precise whereabouts, stated in *To the Farmers and Planners of Maryland*, Md. J., Apr. 1, 1778, “Nay, they often search the clothes, petticoats and pockets of ladies or gentlemen (particularly when they are coming from on board an East India ship), and if they find any the least article that you cannot prove the duty to be paid on, seize it and carry it away with them; who are the very scum and refuse of mankind, who value not their oaths,

and will break them for a shilling.”, the ones who violated upon others’ privacy shall be punished, yet the expectation of privacy is already proved improper in this case.

Furthermore, a person’s whereabouts should be counted as personal privacy only if he is secure in a certain place, not in a vast area. In this case, the police can determine which cell towers provide signals to the suspects’ cell phones, not the accurate coordinates of their location. In short, the search is totally lawful.

Although there was a seizure of persons, the FBI has already had the affirmed evidence against Sanders and Carpenter, which can prove them guilty. Since the Fourth Amendment rules 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 the probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”, should there be probable cause behind the seizure, the subjects will not be under its protection. Hence, Sanders and Carpenter cannot argue against their arrestment. Also stated in George Mason, Virginia Declaration of Rights, “[G]eneral warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.”, the act of seizing a person without evidence is to be condemned, yet the police after logical deduction from the cell towers signal having reached the conclusion can serve as evidence supporting this seizure. Plus, the phone number provided by the testimony already exposed their identities. The phone records are solid evidence and unable to be changed easily. It is for certain that the seizure of Sanders and Carpenter does not violate the Fourth Amendment.

Conclusion:

With all aforementioned evidence, we are confident that there is no violation of the Fourth Amendment during the 127 days search in the case of Carpenter v. United States. This is a case that is directly related to the third party doctrine, and since there is no reasonable expectation of privacy, we claim that Carpenter’s accusation is not supported enough to go against the government.