

BaldizonBremerRespondentBrief

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

No. YAG-APP-2017

Timothy Ivory Carpenter, Petitioner

v.

The United States of America, Respondent

On Appeal from

The United States District Court for the Eastern District of Detroit Michigan

Brief for the Respondent

Daniel Baldizon

Joseph Bremer

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Questions Presented

Whether or not 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 search at issue in Carpenter v. United States (2018) does not violate the Fourth Amendment of the United States Constitution as the petitioner has contended because the “search” at issue in this case was not a Fourth Amendment event and the need for the authorities to have a warrant is unnecessary due to the nature of the cell phone information being retrieved from the third party by the Federal Bureau of Investigation and the police.

The points to be addressed are whether or not the actions of the government of the United States constituted the need for a warrant and that there was no search at all to begin with and so the Fourth Amendment could not be violated.

Argument I

In Carpenter v. United States (2018) the FBI used roaming data to track the whereabouts of Timothy Carpenter, a suspect in multiple cell phone robberies, after his phone number was given to authorities when one of the men in the robberies confessed. For every phone call Carpenter made, the roaming data would be tracked in nearby cell towers in order to improve the quality of the call while simultaneously recording location data. In the Fourth Amendment, we find the rights of the people are protected from unreasonable searches and seizures by the government and in order to initiate a search or seizure, warrant must be obtained from a judge. The issue we find here is that there is no search to begin with in Carpenter v. United States (2018). The argument that the police cannot look into the phone records of a suspect without a warrant are upheld by the holding in Katz v. United States (1967), a case in which it was decided that the police cannot eavesdrop on a phone conversation without a warrant, but in the case before the court, the information obtained came directly from the usage of the cell phone, rather than the content of any conversation in the phone call Timothy Carpenter made. A similar example of this is found in Ex parte Jackson (1878), where authorities discovered an illegal lottery circular being sent through the mail and the Supreme Court of the United States decided that the government would need a warrant to open these letters, but not for the information on the outside of the envelope. The information obtained in Carpenter v. United States (2018) did not come from a direct phone call and the police didn't eavesdrop on what Carpenter said in the phone call. Because of this, the ruling in Katz v. United States (1967) is not violated. They instead used the hypothetical "outside information" to their advantage by using the roaming data to track his location and promptly arrest him. In order to provide the best quality call, cell phone companies track their consumer's location to ping their cell phone to the nearest cell tower. The roaming of the consumer is then used to plan out where more cell towers need to be added for their specific company. Using this information, a customer can be tracked to a nearby cell tower, but their exact location cannot be tracked in this manner. The information found through the roaming data used for cell towers does not need a warrant if the information doesn't violate the Stored Communications Act (1986), an act from 1986 which states that if the information is relevant to an ongoing criminal investigation, it can be obtained without a warrant, but to be clear, the Stored Communications Act (1986) doesn't attempt to bypass the Fourth Amendment, it simply codifies the amendment to be used through the Stored Communications Act (1986), and the Third Party Doctrine from United States v. Miller

(1976) protects the United States from an alleged violation of the people's constitutional rights concerning their reasonable expectation of privacy because the information was willfully handed over by one of the accomplices in the phone store robberies Carpenter participated in.

Timothy Carpenter has no subjective expectation of privacy due to his signed phone contact and the common knowledge that phones can be used to track location because of the roaming data that is to be collected. This expels a subjective expectation and the objective expectation is handled directly from the Stored Communications Act (1986), the expression of Congress of how these expectations and searches should be handled. The government was "lawfully at the looking place" in their ongoing investigation of the cell phone robberies and the enhancement they used, that being the collected data from the cell phone company. No reasonable expectation of privacy was violated since Carpenter signed a contact and had prior knowledge that his cell phone location could be tracked through the roaming data and cell towers his cell phone used. Only if an actual search or seizure of Carpenter had been conducted, would the investigators need a warrant. The government's usage of the resources they had needs no warrant under the Stored Communications Act (1986) because of the nature of the information being obtained and the alleged search of the petitioner Timothy Carpenter that, in reality, never happened.

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Argument II

On December 15th, 1791, James Madison, an extensively known American scholar, began an extensive proposal to Congress for a modification to the Constitution, the Fourth Amendment. This amendment stated 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." Madison's goal, and the goal of the other Congressmen, was to protect the American citizens from experiencing the cruelty they had personally faced with the tyrant king George III. Timothy Carpenter, a thief and an armed robber, claims to have had this

very tyranny imposed upon him, however we can see that is absolutely not the case. I will be addressing 3 points as to why,

- First, that the Third Party Doctrine applies to Timothy Carpenter's claim, therefore he cannot have been unreasonably searched.
- Second, that as stated in United States v. Miller (1976) business records are not subject to an expectation of privacy, therefore the search of his cell phone records was constitutional.
- Third, that the 11th circuit case United States v. Davis (2015) is a good template for United States v. Carpenter (2018).

To begin with my first point, Timothy Carpenter had no reasonable expectation of privacy due to the Third Party Doctrine. In 1979, a woman in Baltimore was robbed, and then received multiple threatening phone calls from her assailant. The police then located the assailant and identified him as Mr. Michael Lee Smith. They contacted his telephone company, and placed a pen register on Smith's phone line, to ensure that Smith was the person calling and harrasing the Baltimore woman. Smith sued claiming that his Fourth Amendment rights were violated as he did not consent to the pen register being placed on his line, however the court disagreed with him. In Smith v. Maryland (1979) the court found that "although the caller's conduct may have been calculated to keep the contents of his conversation private, his conduct was not and could not have been calculated to preserve the privacy of the number he dialed." Simply put, Smith states that a caller's information cannot be private, as it is given to a Third Party." In Carpenter's case, the record states that "the FBI asked several magistrate judges for permission to obtain "transitional records" associated with sixteen other cell phone numbers." It then goes on to state that transitional records include subscriber information, toll records, call detail records showing the ingoings and outgoings of calls." These cell phone records simply are not protected under the 4th amendment, as the records are shared with a third party. Carpenter's claim that his privacy was violated has no legal backing, as the phone records are clearly not protected.

To address my second point, that business records are not subject to an expectation of privacy. In 1976, the Supreme Court found in United States v. Miller (1976) that a defendant does not have a reasonable expectation of privacy concerning information found in business transaction records. The question then is whether or not cell phone records are business records. Phone companies always have specific plans, in which you can pay for a certain amount of minutes on the phone, number of texts, and gigabytes of data. The phone company keeps track of the number of minutes used, or number of texts sent, via phone towers and records from those towers. Whether someone has an unlimited plan, or a limited amount of these minutes, texts, and gigabytes of data, they engaged in a business

transaction to obtain the phone utilities. Timothy Carpenter had to have signed up for a plan with his company, no matter what type it was, he paid for the plan, therefore it is a business transaction.. Carpenter paid the phone company for the plan he had, and the records of that transaction were what the FBI obtained, therefore the search of these records was completely constitutional. Due to *United States v. Miller* and *Smith v. Maryland* it is clear that Timothy Carpenter's claims that his *Fourth Amendment* rights had been violated are completely false and have no backing.

To address my third and final point, that the case *United States v. Davis (2015)* is a template this court should apply to *Carpenter v. United States (2018)*. Quartavious Davis, like Carpenter, was a thief found guilty because of information found in cell phone records. The FBI used location data from Davis' phone provider, Metro PCS, in order to track him down and connect him to the robberies he was accused of. In order to do this, the FBI was given permission from judges, and not a warrant, and just like in Carpenter's case, the defendant claimed this was a violation of the *Fourth Amendment*. Instead of dismissing the evidence as fruit of the poisonous tree, the court found that the evidence was collected in "good faith" so it is therefore able to be presented in court. *The Good Faith Doctrine* is a legal doctrine that states "evidence collected in violation of privacy rights as interpreted from the *Fourth Amendment* may be admitted at trial if the police officers were acting in good faith (*bona fides*) while relying upon a defective search warrant — that is, they had reason to believe their actions were legal." In short, even though the evidence collected by the police needed a warrant, which it clearly does not, it would still be admissible in court according to the *Good Faith Doctrine*, as they do meet all of the requirements.

Conclusion

In conclusion, the petitioner, Timothy Carpenter, clearly had no reasonable expectation of privacy and the police had no error in their usage of roaming data. Carpenter handed over his information to a third party, the phone company. According to *Smith v. Maryland (1979)*, "the caller's conduct may have been calculated to keep the contents of his conversation private, his conduct was not and could not have been calculated to preserve the privacy of the number he dialed" so he could not of had a reasonable expectation of privacy. Along with this, *United States v. Miller (1976)* states that business records cannot be reasonably private. Finally, even if the court found that a warrant is needed, the *Good Faith Doctrine* still applies to this case, so the evidence would still be permissible in court. It

is for these reasons that we pray the court rule in favor of the respondent: The United States of America, in today's case.

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