

GuynesWorleyRespondentBrief

IN THE SUPREME COURT OF
THE UNITED STATES

TIMOTHY MICHAEL CARPENTER,

Petitioner

Vs.

UNITED STATES OF AMERICA,

Respondent

Brief for respondent

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?

Dylan Guynes

Avery Worley

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Introduction

In April 2011, the police arrested four men under suspicion of committing a string of armed robberies at Radio Shacks and T-Mobile stores in and around Detroit. Timothy Carpenter confessed that him and the group had robbed nine different stores in Michigan and Ohio between December 2010 and March 2011, and that they were supported by a shifting ensemble of 15 other men who served as get away drivers and look outs. Carpenter after having confessed to the crimes gave the FBI his own cell phone number and numbers of other participants. The FBI applied for three orders from magistrate judges to be able to obtain the cell site data of Carpenter's phone. They were granted and Carpenter was charged with six counts of aiding and abetting robbery in violation with the Hobbs Act.

Statement of Argument

The fourth amendment states that no person even the authorities shall not have the right to search a person's houses, papers, and effects, and even the person themselves without a valid judge approved warrant. According to this information certain parts of a person's cell phone records are not considered protected under the third party doctrine as they are handed over to their respective telecommunications company. When signing up for a cell phone plan you give rights to the owners of the company to look at their cell towers and behold rightful information. So if that company has the right to look at that person's records surely the police do in order to look into an investigation. The persons in this case had no reasonable expectation of privacy as his cell phone carrier already has his information in the database and cell towers. Therefore, authorities did not need a warrant to search through Mr. Carpenter's records.

First point of error: That the cell-site data collected does not violate the fourth amendment because it falls under the stored communications act, and that Carpenter's contention that the

Under the stored communications act in order to meet the requirements to obtain a Court Order in which it states that the government may require the disclosure of certain telecommunication records. However it only applies if there are reasonable grounds to believe that the evidence is relevant to an ongoing criminal investigation. In todays case the FBI applied to three magistrate judges to obtain the transactional records for the 16

different cell phone numbers that were given to them by Carpenter when he confessed to helping with the robberies. The transactional records included subscriber information, toll records, and call detail records including listed and unlisted phone numbers. All three judges granted the applications and Carpenter was arrested on six charges in violation of the hobbs act.

Carpenter tries to argue that governments collection of the site location data as well as the collection of business records without the use of a warrant violated his fourth amendment rights. However the holding in *Ex parte jackson, 96 U.S 727 (1878)* stated that while the government needed a search warrant to open letters and packages they however did not need a warrant in order to use the names and addresses of the recipient. In today's case it can be applied to the governments collection of cell site evidence which is that they were not considered private records, because the cell phone service provider is considered the recipient. This includes much of carpenter's phone records. One of such documents is the cell site data. This is because when you register for a Cell phone carrier their databases and Cell site towers, because they are property of the company, are not categorized as your persons, papers, houses, and effects, providing access for the government to analyze without a valid warrant under the stored communications act. The government did not look at any personal information such as texts, pictures, or other content, and focused just the location, and a few other things the government therefore did not need a judge approved warrant in order to collect the the information. Carpenters fourth amendment rights were not violated because under *United states v. Davis* it held that searches conducted in objectively reasonable reliance on binding precedent are not subject to the exclusionary rule. Carpenters fourth amendment rights were not violated because the absence of a search warrant was protected from the cases cited above.

Carpenter tries to use *United States v. Jones, 565 U.S. 400 (2012)* by saying that this case applies to how the FBI used the cell towers to find the place and time in which Carpenter used his cell phones. The use of this case is does not apply in todays case, because unlike in that case the FBI did not use GPS tracking which was decided that in order to use it the authorities needed to get a warrant. In this case the FBI used the cell site data gathered from the various cell phone towers in and around the areas where the robberies occurred. While information gathered from cell phone towers is not as accurate as the GPS tracking the evidence gathered from them does tell a story. These records show that Carpenter used his cell phone before and after each of the robberies took place and that he was within half a mile to two miles of several of the robberies that had occurred throughout the Michigan and Ohio area. These facts would lead a reasonable person to believe that Carpenter was aware of what was happening.

Second point of error: A Warrant was not needed to search both Tim's as the information was given to the third party.

There was no violation of the fourth amendment whatsoever. In fact, Carpenter was not

searched at all. The only persons searched was the Phone company who gave up the information rightfully and willingly. The complainant was not searched at all. The phone company was but they gave consent and are not complaining. The factor of consent made this search not a search at all. Without it being a search, there was no violation of the fourth amendment. If they had searched the complainant directly then there could be a chance it was a violation of the fourth amendment but they didn't search the complainant, therefore there was no search or seizure.

Even if there was a search on carpenter it would not be valid according to the third party doctrine. Originally the idea behind the Third Party Doctrine was that you can only have privacy in what you intend to keep from others, meaning you need to manifest your subjective expectation of privacy to have Fourth amendment rights. Because the Third Party Doctrine has a very wide application, if a criminal confesses to his/her friend about his crimes, the government can get the information from the friend without overstepping the criminals Fourth Amendment rights. The same thing applies with depositing a check and dialing a phone number. The government can get the information from the bank and phone company without implicating his fourth amendment rights. A key implication of the Third Party is that the government only has to deal with the constitutional rights of the person or company that obtained and now possesses the information. Upon the receipt the sender of the information no longer has Fourth Amendment rights. When Tim Carpenter gave up his confession to his accomplices he no longer had the possession of the information. When the friends gave up the information willingly there was no search or seizure. Looking at the case *United states V. Davis No. 12-12928 (2014)*, a similar situation occurred. Quartavious Davis, on trial with five co-defendants, was convicted on several counts of Hobb Acts robbery, conspiracy, and possession of a firearm in furtherance of a crime of violence and sentenced to over 161 years in prison. He appealed on several grounds, principally arguing that the court admitted stored cell site location information obtained without a warrant, in violation of his Fourth Amendment rights. The government had obtained the data under a provision of the Stored Communications Act, that only requires showing that there are reasonable grounds to believe that the records sought, are relevant to an ongoing criminal investigation. Davis's information was no longer in his possession, as he gave it to the Third Party when signing up for the provider. According to another similar case *Smith V. Maryland No.78-5374 (1979)*, a phone company records are not of private possession. Prior to her robbery, Patricia McDonough gave the police a description of the robber and of a 1975 Monte Carlo automobile she had observed near the scene of the crime. After the robbery, McDonough began receiving threatening phone calls from the robber. On one occasion, the caller asked that she step out on her front porch; she did so, and saw the 1975 Monte Carlo she had earlier described to police moving slowly past her home. Later police spotted a man who met McDonough's description driving a 1975 Monte Carlo in her neighborhood. By tracing the license plate number, police learned that

the car was registered in the name of petitioner, Michael Lee Smith. The next day the Phone carrier provider set up a pen register to record the dialed numbers made by the suspect's phone, revealing it was the suspect. They were then able to obtain a warrant to search Smith's house. On trial the petitioner sought to remove all evidence from the pen register, stating it violated his fourth amendment rights. The Court of Appeals affirmed the judgment of conviction, saying that there is no constitutionally protected reasonable expectation of privacy in the numbers dialed into a telephone system and hence no search within the fourth amendment is implicated by the use of a pen register installed at the central offices of the telephone company.

Conclusion

The Facts of the case at hand, *United States V. Carpenter 16-402*, is that Carpenter had no possession of the information given to the FBI based on the Stored Communications Act and the Third Party Doctrine, therefore there was no search, seizure, or violation of the fourth amendment whatsoever. When the information was given to the phone company it instantly became the property of the carrier and Carpenters fourth amendment rights towards the information were revoked.

In fact the FBI didn't even do a search on the complainant. The government conducted a search on the phone company who gave authorized consent to the FBI to take the information. The only considered search could be the phone company, though they did not complain and gave consent. In conclusion there was no violation of Carpenters fourth amendment rights.

Lastly even if the FBI did in fact get the information from the Complainant, it still wouldn't be considered a violation of the fourth amendment because it wasn't Tim's information. The government got the information from the Cellphone company. The information came from the Cell towers and property of the Carrier. Carpenter had no right of privacy to the Cell towers seeing as they were not his property. In order for it to be even considered a Fourth Amendment violation, it would have to be Carpenters possession, which indeed it was not.

Prayer

It is for these reasons that we pray that this court uphold the decision of the lower court and rule in favor of the respondent the united states in today's case.