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 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?

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STATEMENT

Following the arrest of four men involved in a series of robberies, the FBI continued an investigation, in which one of the perpetrators confessed and provided a description of working with fifteen others. He gave the cell phone numbers of his accomplices in the process. One of them being Mr.Carpenter. That led to the discovery of evidence that linked the petitioner Mr.Carpenter to those crimes. The evidence was acquired after obtaining permission from several judges. All evidence obtained belonged to and was collected by Mr. Carpenter’s cell phone provider. Mr.Carpenter now comes forth alleging that there was a violation of his Fourth Amendment and that the lower court has erred. There was no search and seizure in this case just like there is no violation of the Fourth Amendment. All investigation and evidence was a product of good police-work. For this reason, we ask that this court affirm the lower court’s ruling.

ARGUMENT

To begin, the key argument in today’s case before the U.S. Supreme Court can be established simply and definitely if one looked back at the ruling of the U.S. Appeals Court in this matter:

It has been long understood that in 4th Amendment cases the Supreme Court has recognized and defined the line of distinction between what is the content in communication and the necessary amount to convey it. There are two types of communication, and according to Mr. Carpenter alleged claims, the government has

violated and infringed on one. It is Mr. Carpenter's allegation that hat the government's collection of those records constituted a warrantless search in violation of the Fourth Amendment. In making that argument, however, the defendants elide both the distinction described above and the difference between GPS tracking and the far less precise locational information that the government obtained here. Take for example the Supreme Court ruling in United States v. Jones, 565 U.S. 400 (2012) in this case, the police placed a tracking device on a suspect's vehicle to monitor and know his exact location at all times. The court of course, rightfully ruled that "installing a GPS tracker on defendant's vehicle, without a warrant, in order to monitor him constituted an unlawful search under the Fourth Amendment." Your honor, it is important that this court understand that there was no violation under the standard set by Jones. Never at any time throughout the investigation did the FBI have access to the exact location or content that would be ruled inadmissible in a court of law. All evidence collected was provided by the cell phone provider and consisted of nothing more than business records.

So to reiterate our previous contention, you can clearly see that there is a difference between the content of the communication and conveyance of the said material. This is where the petitioner makes his largest air. The Government did not violate his rights and did not search his property. What they did was use proper police work and obtained information about the petitioner from outside sources. At first, this may sound like a strange argument and a person may ask- are not phone records truly the right of the parties who were making the call? This is where the petitioner's logic begins to be tested against case-law and begins to fall apart. What were these records that the police were able to obtain? The records were from the phone company and it showed how the phone calls were made not what was on the phone calls. This means that it showed the conveyance of how the phone calls were made. This material belonged to the phone company and is shared monthly with the customer. Records of cell towers used are important to the phone company because most cell phone towers are not owned by just one carrier- all carriers share space and use them. Therefore, the company keeps records of use for their records. In the agreements and contracts that person signed before getting their cell phone it is clearly stated that this information is reserved for the company.

This creates the three additional arguments for the government side. The Supreme Court ruled in United States v. Miller, 425 U.S. 435, 443 (1976) that "a defendant does not have a reasonable expectation of privacy concerning information found in business transaction records when the government obtains it from a third-party." What is even more interesting with the application of this case is that under these circumstances, Mr.Carpenter shouldn't have an expectation of privacy regardless of any preconceived notion.This is because none of the material obtained belongs to Mr. Carpenter. Under the Supreme Court Ruling Katz v.

United States, 389 U.S. 347 (1967) the court looked at the circumstances that involved the use of illegal records being collected through transmissions and used against the defendant. The court ruled that the use of such records was indeed a violation of Katz's 4th amendment, but again your honor the reason of why the court ruled that way was because the substance of the evidence was derived from the content of those transmissions. In our case, the FBI did not at any time listen, record, or collect conversations to use against Mr.Carpenter.

In addition, the material in question was not in the material position of the petitioner and did not belong to the petitioner. This is not something that emerged out of thin air, or by what we are saying here, but by a signed contract he had with his provider. As Supreme Court Justice Louis Brandeis explained, "The old idea of a good bargain was a transaction in which one man got the better of another. The new idea of a good contract is a transaction which is good for both parties to it." All information obtained was out of good police work. Like the Supreme Court held in the case of Smith v. Maryland, 442 U.S. 735 (1979) "Fourth Amendment protections are only relevant if the individual believes that the government has infringed on the individual's reasonable expectation of privacy. This reasonable expectation of privacy does not apply to the number recorded by a pen register because those numbers are used in the regular conduct of the phone company's business." Like in our case, the police used information that was collected regularly by the cell phone provider. Nothing was changed or altered to obtain only records that had Mr.Carpenter in them. The cell phone provider carried on with their usual business and the privacy of others was never at risk. Here the petitioner freely signed an agreement for his phone. The company provided him service for the phone, and his service for the phone worked, upholding the expectation of the contract. Despite their integrity, however, when the phone service contract apparently did not work in his favor- the petitioner decided to try to dismantle the results of his contractual and legally binding obligations. Just like Brandeis said- you cannot change the contract after you sign unless both parties are willing to change it and resign. Clearly, the law should be on the side of the company and the government. If the Supreme Court would rule in favor of the petitioner- how could any contracts or agreements be legally binding in the US again?

Second, based on the first argument- the rights of the petitioner to claim that his papers were searched because that documentation was signed over the company is absurd, he is asking to have it both ways. He wants to have both his phone conversation records and conveyance records be private- which is against company policy and contract he signed. James Madison in the Proposed Bill of Rights addressed this when he wrote in Article Six, " 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.".. Note- their persons, their houses, their papers and their effects he did not say anything about information or property that you did not control, own, or have possession of does it? Here the petitioner is trying to assume a right that he did not prove or offer any evidence that he had.

Third, George Mason even a more persuasive case in the Virginia Declaration of Rights 1776. He argued, "General 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.". Would the reverse of such be true to? How can a petitioner claim that materials were his and this was indeed a search when clearly the materials we signed over by him to the company as part of contract that he entered into willingly with the company and as part of that contract- the said records of the conveyance of said calls would be kept as part of the business practices of the company for the purposes of conducting their business. By signing the contract the petitioner is no longer the owner of the material and showed have no right to claim such. The court must also understand that the sole factor that got Mr.Carpenter in the position he is in today is his actions. The cell phone provider did not commit or involve itself in the series of robberies discussed in this case. This was never a case of a search and seizure the police stayed within the boundaries of the law to conduct their investigation. The records they collected could be described as breadcrumbs considering the fact that the police was never really sure of Mr.Carpenter's location. They simply had an approximation. And in the end your honor, this is not an issue that would involve the government or Mr.Carpenter. The decision to show the records to the FBI was fully at the cell phone provider's discretion. Not all companies are in accordance to follow the third-party exception and it has been ruled previously that they are in their full right. The cell phone provider voluntarily gave all their information and willingly cooperated with the FBI's investigation. At the end of the day, this is not a case involving technology but rather contracts and what were the agreements and conditions within such contracts.

CONCLUSION

Your honor, it is clear that there exists no violation of Mr.Carpenter's 4th amendment. We have demonstrated that this was not a case that involved a search in seizure in the first place. In Ogden v. Saunders, 25 U.S. 213 (1828) Chief Justice John Marshall said, "To say that the intention of the instrument must prevail; that this intention must be collected from its words; that its words are to be understood in that sense in which they are generally used by those for whom the instrument was intended; that its provisions are neither to be restricted

into insignificance, nor extended to objects not comprehended in them, nor contemplated by its framers; — is to repeat what has been already said more at large, and all that can be necessary." This case is not about technology as the petitioner will try to make you believe. This case is about a contract nothing less and nothing more. It is this simple, the petitioner signed a series of agreements that entitled and granted his cell phone provider to collect the records they deemed necessary. Records that were rightfully provided by the cell phone provider. There is no other way to stand, but to uphold the lower court's ruling.
