Harlan Virtual Supreme Court: Carpenter v. US-GhaneaBassiri and Sahni

IN THE SUPREME COURT OF

THE STATE OF THE UNITED STATES

———————

TIMOTHY IVORY CARPENTER,

Petitioner

vs.

UNITED STATES OF AMERICA ,

Respondent

————————————————————————

————————————————————————

Brief for Respondent

Kamala GhaneaBassiri & Juliana Sahni

Video Link:

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?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statement Of Argument

The warrantless search and seizure of cell phone records, which include location data, over the course of 127 days does not violate the Fourth Amendment. United States v. Miller and Smith v. Maryland have established the Third Party Doctrine, stating that one has essentially no expectation of privacy for information he or she voluntarily provides third parties. Cell phone records, and more specifically location data of a cell phone, fall under the category of third party information. United States v. Jones set the precedent that "long term GPS monitoring" is an infringement of one's privacy, however in Carpenter's case the FBI was not monitoring present actions, instead they were reviewing his past cell phone history to find out where he was during the time of the robberies. Furthermore the acquisition of cell phone records is permitted under the Stored Communications Act. The Stored Communications Act states, "A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or

the records or other information sought, are relevant and material to an ongoing criminal investigation" (Stored Communications Act), establishing the standard of proof for these records to be "specific and articulable facts" as opposed to probable cause. In the case of Carpenter v. United States, the FBI met this standard given that their information involving Timothy Carpenter was offered by an individual arrested for the same armed robberies Carpenter was also involved in. This combined with a reasonably low expectation of privacy surrounding cell phone works to support the United States government's position in this case. Carpenter had almost no expectation of privacy surrounding his phone data from the moment he purchased his cell phone, and the FBI met the standard of proof required to search his records. Therefore, the warrantless search and seizure of cell phone records does not violate the Fourth Amendment.

Argument

1. Locational information from cell phones does not have a reasonable expectation of privacy

Everyone loves privacy, however, they perhaps knowingly and unknowingly give up their right to privacy in many different ways. With the emergence of hand-held technology has come a lower expectation of privacy. With social media outlets such as Instagram and Snapchat, geotagging and location sharing services have become the norm. All of these apps ask permission from the owner of the smartphone before using his or her location, and most people willingly consent to this tracking.The widespread use of these applications and other location sharing devices shows a common understanding that one's expectation to privacy has been significantly lowered. The invention of the internet, and more specifically social media, has created a culture based on sharing. We share pictures, videos, thoughts, and along with these, our locations on social media. The fact that we so easily consent to being tracked on our cell phones demonstrates how one's location is not being treated like an extremely private matter anymore. Even services that we often often overlook because they are deemed necessary, like emergency location services and ambulances, can track and locate people based on telephone data. The current standard of proof for obtaining cell phone records is "specific and articulable facts" showing that the information provided in the cell phone data is relevant to an ongoing investigation. Because there is such a low expectation of privacy, there is no reason to have a higher standard of proof such as probable cause to obtain this information.

II. The information provided by cell phone records is not specific enough to be considered an unreasonable search and seizure

The location services used by smartphones to track one's location work through a combination of wi-fi, cell site data, Bluetooth, and GPS technology. This combination of technology allows for more specific location information that is found in apps such as Snapchat or Find My Friends. Information from just cell site data alone, however, does not provide the same location specificity of a tracking app such as "Find My Friends". In the case of Carpenter v. U.S., the U.S. government gathered data from cell phone towers about the location of Carpenter in order to reveal any correlation between him and various armed robberies. United States v. Jones has already established that unwarranted 24/7 GPS tracking is a violation of Fourth Amendment rights. Cell phone records like the ones used in Carpenter v. United States do not contain the same specific location data that a GPS tracking device would provide. Cell phone records contain cell site information, which only shows the "pings" of a person's cell phone at the nearest cell tower. Cell site information by itself is specific enough to determine a person's actual location–in many circumstances the closest cell tower can be more than five miles away from the phone. Because cell site information is so general, even 911 wireless services rarely use cell site information to locate a cell phone call due to the fact that it is not useful for tracking a person. This data is simply a part of the necessary information cellular providers need to do their job.

In the Ex Parte Jackson ruling, the Supreme Court held that the government needed a search warrant to open letters and packages, but not to use the "outward form and weight" of those materials, including the name and address of the recipient". (733) The United States government, similarly looked at the "outward form and weight" of the location data that they were collecting and thus did not violate the Fourth Amendment. The government never read or listened to Carpenter's messages. Instead, the broad scope in which they gathered information about Carpenter was enough to convict him but not enough to violate his right to privacy.

There is an important distinction to be made between the information the government gathered versus accusatory claims that suggest that the government's actions were synonymous with GPS tracking. The United States government simply uncovered cell cite information rather than GPS tracking. GPS tracking would indeed easily be an invasion of privacy because it reveals too much about one's personal life. Cell cite information only revealed the general location of Carpenter and his in relation to the Radio Shacks that were robbed. None of this reveals the sort of personal information that would require a warrant.

We can look to the Fourth Amendment to understand our protections against searches, and unwarranted physical searches. We cannot, however, look back on the words from The Federalist Papers or the New York Ratification Debates and Proceedings and expect to find the answer to a question about the use of cellular devices. In the context of these writing,

they cannot give us much guidance because the technological advances we are discussing now were not in the picture then. Rather than attempting to solve this debate with an originalist lens, it is vital that we instead examine past precedents in the context of the technology used to determine whether there was a reasonable expectation privacy.

In United States v. Miller, Mitch Miller, the defendant, was accused and convicted of the possession of equipment to distill alcohol and bootleg alcohol. As part of the investigation into Miller's guilt or innocence, the Bureau of Alcohol, Tobacco and Firearms subpoenaed Miller's bank records to find evidence of purchases of such equipment described above. Miller attempted to appeal his conviction on the premise of his Fourth Amendment rights being violated. He based his argument on the ruling of Katz v. United States, that said "we have . . . departed from the narrow view...[that]property interests control the right of the Government to search and seize" and that unreasonable search and seizures can occur when the government infringes on "the privacy upon which [a person] justifiably rely[s]". The Supreme Court, however, ruled in favor of the United States government, reasoning that Miller did not have a reasonable expectation of privacy because the information obtained were found in business records that involved a third party. The Court argued that there was no legitimate expectation of privacy in the contents of the bank records; checks are not private communications, they are means of conducting business and commercial transactions. In United States v. Miller began to establish that documentation given to third parties are no longer private matters, which would later be reinforced in Smith v. Maryland. This precedent is relevant to the case of Carpenter v. U.S. because cell site records function like business records in that they are voluntarily shared with a third party, the cell provider.

In the case of Smith v. Maryland, the government used phone call records to solve a case. After Michael Lee Smith robbed a woman, he began to make threatening phone calls to her, and even drove by her house once. They then got in contact with the phone company to receive data about the various numbers the suspect dialed on his own phone. After seeing the numbers Smith dialed, they were able to conclude that he was indeed the man harassing the victim, he was arrested and convicted. Smith believed the use of phone records was a violation of his Fourth Amendment rights, but the Supreme Court ruled against him, saying the reasonable expectation of privacy does not apply to phone call records. Phone numbers are recorded and used in the regular conduct of a phone company's business, and they are voluntarily shared with third parties. Therefore, the court ruled that telephone numbers given to third parties are not protected by the Fourth Amendment. The Supreme Court explained their ruling, saying, "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". This same reasoning applies to the use of cell site data. It is information necessary for telephone

companies to conduct business and convey information, and is data that is voluntarily shared with third parties. There is no reasonable expectation of privacy pertaining to cell site data, and therefore the Fourth Amendment protections against unlawful search and seizure do not apply to Timothy Carpenter's case.

Conclusion

The the warrantless search and seizure of cell phone records including location data over the course of 127 days is not a violation of Fourth Amendment rights. Cell site data is not protected by the Fourth Amendments rights against search and seizure. It is third party information that is necessary for conducting business. Furthermore, locational information from cell phones has an extremely low expectation of privacy, and the cell site data attained for investigation is far too general to be considered the search of a person. We ask the Supreme Court to uphold the precedents set in Smith v. Maryland, United States v. Miller, and Ex Parte Jackson when considering Carpenter's case and side with the ruling of the U.S. Court of Appeals for the Sixth Circuit.
