

Virtual Supreme Court — Yoon and Waddell

In the Supreme Court of the United States

Winter Term, 2018

Timothy Ivory Carpenter, Petitioner

V.

United States of America, Respondent

On writ of certiorari

to the United States court of appeals

For the sixth circuit

Preliminary Oral Argument: <https://www.youtube.com/watch?v=pvm8XvacFy8&feature=youtu.be>

Respondent's Opening Brief

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Petition for certiorari granted June 5th, 2017

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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Basis of Jurisdiction

On June 5, 2017, a panel of the Sixth Circuit Court of Appeals “affirmed In Fourth Amendment cases the Supreme Court has long recognized a distinction between the content of a communication and the information necessary to convey it. Content, per this distinction, is protected under the Fourth Amendment, but routing information is not. Here, Timothy Carpenter and Timothy Sanders were convicted of nine armed robberies in violation of the Hobbs Act” (harlan institute.org). The defendants then filed for a review targeting constitutionality of the evidence.

Constitutional Provisions

The Fourth Amendment to the United States Constitution provides the following:

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.

Statement of the Case

1. Background

Four men were arrested for a series of armed robberies in T-Mobile and Radio Shack stores in Detroit, Michigan, April 2011. One of the men confessed that they worked with at least 15 other men to commit the robberies. The said individual gave officers his cellphone number along with the numbers of some of their accomplices.

B. District Court Proceedings

The police conducted searches which involved looking through phone records. Based on the searches the officers found evidence about Timothy Carpenter and Timothy Sanders committing the robberies. Shortly after the two of them were fined with multiple federal law violations. Both Carpenter and Sanders worked to suppress the evidence found in the FBI’s

search of the records. They made the argument that since the search was warrantless, it was a violation of their fourth amendment rights.

C. First Opinion by the Sixth Circuit

During the trial the government had presented both Carpenter's and Sander's cell phone's location data. The records of their phones showed that while during the process of some of their crimes, the two of them used their phones within a two mile radius of the locations they hit. They were convicted of nine armed robberies. Carpenter was sentenced with 1,395 months while Sander's was sentenced with 170 months. The court argued that the government's compilation of cell phone search was not a search under the fourth amendment, allowing a warrant not to be needed.

D. Proceedings on Remand

During the trial, it has been argued that the form of tracking Carpenter and Sander's locations was through a different means that was much less accurate than a GPS system. While a GPS system can accurately outline an individual's activity constantly, the tracking system "CSLI" (Cell Site Location Information) gives the government the ability to track the target when and where they start the call, and when and where they are at the end of the call. Also, this data can only be accurate to a 120 or 60 degree angle from the cell tower with a 2 mile radius extending from it.

The "accuracy" of this type of data is merely 3.5 million to 100 million square

foot area possibility, and will be even less effective in rural and suburban areas. While a GPS can identify which corner in the store at the mall the target went to at all times, CSLI for this case can identify what mall the target resided in only at the start and at the end of the call.

On April 13, 2016, the U.S. Sixth circuit court of appeals have reinforced that the CSLI is not a search under the Fourth Amendment and is therefore denying the defendant's appeal on the grounds that "Content, per this distinction, is protected under the Fourth Amendment, but routing information is not." Therefore, the Fourth Amendment argument, as well as many others Carpenter and Sanders made has been rejected.

Summary of Argument

The text of the Fourth Amendment clearly provides protection against warrantless searches persons, effects, papers, and property. However, it also states that reasonable expectation of privacy be a requirement in deciding on the legality of evidence gathering.

The information that was gathered was a CSLI tracking software for the cell phone companies, so that for billing and business purposes, they can identify where and when a caller has utilized their services by pinging off of cell towers in their immediate vicinity. This information was then used as evidence by the appellant to charge the defendants for several violations of the federal law, which were armed robberies. The defendant's claims that this was an unconstitutional search and therefore, the evidence should be omitted has been struck down, and rightly so.

The Sixth Circuit Court of Appeals has stated that the search was legal

Firstly, the CSLI did not search nor seize the person, effect, papers, or property

Secondly, the information was from a thirds party source, therefore protected under the Third Party Doctrine

Thirdly, the search was very limited, suppressing the reasonable expectation of privacy, strengthened by the Third Party Doctrine

Argument

I. CSLI DOES NOT VIOLATE THE FOURTH AMENDMENT SEARCH REQUIREMENTS

1. CSLI does not directly search the person, or any of his effects, papers, or house.

The Fourth Amendment only protects the unreasonable search and seizure of items listed above, and the gathering of CSLI data reasonable and non-intrusive.

Ex Parte Jackson case has stated that “the outward form, including name and address” is allowed to be used in the court of law without a warrant. The CSLI is arguably within this jurisdiction as it merely looks at the location of the defendants at one point in time, which has been also verified by witnesses. Therefore, it is not held responsible under the Fourth Amendment due to it not requiring a warrant

2. The information the government has gained is from a third party source

The Third Party Doctrine makes it so that anyone who voluntarily gives up information to a third parties like banks, companies, etc has no reasonable expectation of privacy over what

they have given to the third party. Therefore, the government can legally and constitutionally request for information from the third party and be legitimate in the court of law.

In *Smith v Maryland*, the Supreme court held that

“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.”

Therefore, it is completely reasonable that the government be able to gain this type of information without infringing on the expectation of privacy, because there is no expectation of privacy granted to the defendant.

Due to this, the government’s use of the CSLI during the trial is reasonable, and is deemed a constitutionally legal piece of evidence, solidifying the government’s position

3. The search was only limited to minimal descriptions

The evidence has never revealed any content, and therefore never delved into the person or effects. This leads to the fact that it was only data that was “seized” during the search, and data is not a seizable item under the Fourth Amendment. The internet is far too large and broad to maintain data on a personal level, as well as the earlier topic that this was from a third party source. Perhaps if the CSLI was gained from a personal computer, this may be a different case, however the government utilized a third party.

The distinction between the content and the method of conveying content is important to take into consideration when dealing with an issue such as this. *U.S. v Miller* has already dealt with a similar case, to which they argued that

“All of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business.”

This is practically the same case, with different facts as they both deal with a third party revealing information to the government, and that evidence being legal due to the elimination of reasonable privacy due to its third party aspect.

Conclusion

The use of CSLI for use as evidence in the court of law without a warrant is constitutionally legal and therefore the appellant is not in violation of the Fourth Amendment. It is far too broad and the defendants did not have reasonable expectation of privacy in matters of this level. For all the reasons stated above, this Court should not grant review and uphold the judgement of the Sixth Circuit Court of Appeals.

Respectfully submitted, February 15th, 2018

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