In The Supreme Court of the United States

_____

TIMOTHY IVORY CARPENTER, PETITIONER

V.

UNITED STATES OF AMERICA

RESPONDENT

_____

ON WRIT OF CERTIORARI

TO THE UNITED STATES OF AMERICA

FOR THE SIXTH CIRCUIT

_____

Amanda Ellerbruch & Natalie Intihar

Counsel of Record

Ellerbruch & Intihar

2501 Country Club Road

Lake Oswego, OR

(503) 534-2313

Counsel for Petitioner

CERTIORARI GRANTED FEBRUARY 16, 2018

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

The Fourth Amendment to the United States Constitution provides:

“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."

The Stored Communications Act, 18 U.S.C. § 2703(d) provides:

"Requirements for Court Order—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. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

STATEMENT OF THE CASE

Background

In April 2011, police arrested four men for a series of armed robberies of T-Mobile and Radio Shack stores in Detroit, Michigan. One of these individuals confessed to working with as many as fifteen men to commit nine armed robberies. He gave the police his cell phone number and the numbers of some accomplices.

The FBI searched through his cell phone records to identify other numbers that were contacted during the time of the robberies. Following this initial inquiry, the FBI asked several magistrate judges for permission to obtain "transactional records" associated with sixteen other cell phone numbers. (The data requested included subscriber information, toll records, call detail records that showed the phone numbers of incoming and outgoing calls, and cell site information at the beginning and end of each call for the numbers in question.) The magistrate judges granted the government's application pursuant to the Stored Communications Act, under which the government may require the disclosure of certain telecommunications records when "specific and articulable facts show[ ] 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.". Note that the government did not request a formal search warrant.

Based on these searches, the police obtained evidence implicating Timothy Carpenter and Timothy Sanders with the crimes. They were soon charged with several violations of federal law.

Carpenter and Sanders moved to suppress the evidence derived from the FBI's search of their cell phones. They argued that this warrantless search violated the Fourth Amendment because there was no probable cause. The United States District Court for the Eastern District of Michigan denied their motion to suppress the evidence.

District Court Proceedings

At trial, the government presented location data from Carpenter and Sanders's cell phones. The records showed that while several of the robberies were being committed, the duo used their cell phones within two miles of crime scenes. Carpenter and Sanders were convicted of nine armed robberies, and given sentences of 1,395 months and 170 months, respectively. The court refused to set aside their verdict, ruling that the government's compilation of the defendant's cell-site records was not a search under the Fourth Amendment; therefore, a warrant was not needed.

First Opinion by the Sixth Circuit

The U.S. Court of Appeals for the Sixth Circuit affirmed the district court's decision. The three-judge panel held:

"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. The government's evidence at trial included business records from the defendants' wireless carriers, showing that each man used his cellphone within a half-mile to two miles of several robberies during the times the robberies occurred. The defendants argue that 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. We reject the defendant's Fourth Amendment argument along with numerous others, and affirm the district court's judgment."

SUMMARY OF ARGUMENT

The text included in the fourth amendment expressly states that a person shall be secure in their persons, houses, papers and effects, against unreasonable searches and seizures. The courts have claimed that there is a clear distinction between content of communication and information necessary to convey it. However, as an American people it is important that we have the right to privacy no matter the cost.

ARGUMENT

These previous ideas were established in Boyd v. United States 116 U.S. 616, 625, which provided an understanding that a physical invasion of the home is not necessary for an act to violate the search and seizure clause of the Fourth Amendment. The protection of the fourth amendment extends to the personal security of a citizen. Justice Joseph P. Bradley states that "it does not require actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the Fourth Amendment." Boyd v. United States 116 U.S. 616, 625 established one of the first and most important arguments; the privacy of the American people takes priority over all other matters.

While the magistrate judges in the earliest court proceedings in this case granted the government's application pursuant to the Stored Communications Act, under which the government may require the disclosure of certain telecommunications records when "specific and articulable facts show[ ] that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought". However, the Stored Communication Act does not apply to this case and its theories based on the fact that the government did not file a formal application and did not carry out proper procedure when attempting to attain the information at hand.

An interesting, forward thinking theory is the mosaic theory of the fourth amendment which states that enough individual data collections compiled and analyzed together become a fourth amendment search. However, this is still a new theory and is still emerging in modern day law. The privacy of the American people is more important than any emerging theory attempting to defend a breach of security.

An important legal case to consider is the one presented in Riley v. California 573 US (2014). In this case, David Leon Riley was a suspect in a shooting also associated with drugs and other violence, and upon being questioned and detained his phone was searched without a warrant. On the cell phone they found evidence that Riley was apart of a dangerous gang and seized the cell phone upon arrest. Riley moved to have this evidence stricken from trial, as he claimed that the search was illegal and unconstitutional.

In US v. Jones, a man named Antoine Jones was suspected to be involved in illegal federal drug crimes. To combat this, the police placed a tracking device on his automobile without a warrant. Based on the location data collected from the tracking device, he was arrested. At trial, Jones was convicted on a count of conspiracy. However, the conviction was overturned by the U.S. Court of Appeals for the D.C. Circuit, which stated that 24/7 warrantless monitoring of the defendant was unconstitutional. The case of US v Jones was instrumental in proving that the location data obtained from a warrantless search would not be upheld in the courts. A breach of privacy with something as simple as location data is still a breach of privacy, and has not been tolerated in past court rulings, as seen in this one.

In the case of Carpenter v US, there was an obvious search and seizure of evidence without a warrant, making the case very similar to the one analyzed previously, US v. Jones. Technology is an up and coming nuance and while it has different components from the things we've seen in the past, it is important to remember that the American people still hold the same privacy rights that they did 10 years ago, even when technology wasn't such a regular thing.

In the year 1878, Jackson decided to send an envelope containing an illegal lottery circular. The mailman saw that it was illegal and turned him in. Consequently Jackson was tried, charged and convicted. He then petitioned for a writ of habeas corpus and writ of certiorari, claiming that his arrest violated the Fourth Amendment. The Supreme Court held that the government needed a search warrant to open letters and packages.The Supreme Court later stated that "The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household. No law of Congress can place in the hands of officials connected with the postal service any authority to invade the secrecy of letters and such sealed packages in the mail; and all regulations adopted as to mail matter of this kind must be in subordination to the great principle embodied in the Fourth Amendment of the Constitution."

Enacted in 1780 as a part of Massachusetts state constitution, the Massachusetts Declaration of Rights claims that "every subject has a right to be secure from all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws." In addition, the New York Ratification Convention Debates and Proceedings in the year 1788, an important point was brought up. The committee claimed that "[Every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, or his property; and therefore that all warrants to search suspected places, or seize any freeman, his papers or property, without information upon oath, or affirmation of sufficient cause, are grievous and oppressive; and that all general warrants (or such in which the place or person suspected, are not particularly designated) are dangerous and ought not to be granted."

Q and A for Harlan Institute
Harlan Video Brief