Unmarked Opinions Activity

Carpenter v. United States (2018)

After reading the **background, facts, issue, constitutional amendment, statute, Supreme Court precedents, and arguments,** read Opinion A and Opinion B below. Choose which opinion you agree with and think should be the majority (winning) opinion and circle "Majority." Choose which you disagree with and think should be the dissenting opinion and circle "Dissent." Explain the reasons for your choices. After you have made your decision, compare your answers to those of the Supreme Court by reading the case summary.

Opinion A

This case presents the question whether the Government conducts a search under the Fourth Amendment when it accesses historical cell phone records that provide a comprehensive chronicle of the user's past movements.

As Justice Brandeis explained in his famous dissent, the Court is obligated—as "[s]ubtler and more far-reaching means of invading privacy have become available to the Government"—to ensure that the "progress of science" does not erode Fourth Amendment protections. Here the progress of science has afforded law enforcement a powerful new tool to carry out its important responsibilities. At the same time, this tool risks Government encroachment of the sort the Framers, "after consulting the lessons of history," drafted the Fourth Amendment to prevent.

Majority

Dissent

We decline to grant the state unrestricted access to a wireless carrier's database of physical location information. In light of the deeply revealing nature of CSLI [cell-site location information], its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection, the fact that such information is gathered by a third party does not make it any less deserving of Fourth Amendment protection. The Government's acquisition of the cell-site records here was a search under that Amendment.

Opinion B

The concept of reasonable expectations of privacy… sought to look beyond the "arcane distinctions developed in property and tort law" in evaluating whether a person has a sufficient connection to the thing or place searched to assert Fourth Amendment interests in it. First…individuals often have greater expectations of privacy in things and places that belong to them, not to others. And second, the Fourth Amendment's protections must remain tethered to the text of that Amendment, which, again, protects only a person's own "persons, houses, papers, and effects."

Majority

Cell-site records, however, are no different from the many other kinds of business records the Government has a lawful right to obtain... Customers like petitioner [Carpenter] do not own, possess, control, or use the records, and for that reason have no reasonable expectation that they cannot be disclosed...

Dissent

This case should be resolved by interpreting accepted property principles as the baseline for reasonable expectations of privacy. Here the Government did not search anything over which Carpenter could assert ownership or control. Instead, it issued a court-authorized subpoena to a third party to disclose information it alone owned and controlled. That should suffice to resolve this case.

Carpenter v. United States (2018)

Argued: November 29, 2017

Decided: June 22, 2018

Background

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" The Fourth Amendment prohibits searches and seizures that are unreasonable. A search occurs when the government looks through someone's property or belongings, as long as that person had a reasonable expectation of privacy.

"The government" could be any agent or officer of the federal, state, or local governments. "A reasonable expectation of privacy" is a legal term. It means that 1) the person whose belongings are being searched expected those belongings to be private, and 2) society recognizes that expectation as being reasonable.

The second part of the Fourth Amendment is about warrants: "…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."

A warrant is a legal document that authorizes a search. Probable cause is an officer's reasonable belief, supported by personal knowledge or reliable sources, that a crime has been committed and items connected to the crime are likely to be found in a certain place. A search authorized by a warrant is considered a "reasonable" search.

This is a case about the location data generated by cell phones and whether it is an unreasonable search for the government to collect that data.

Cell phones work by establishing radio connections with nearby cell towers. Phones are constantly searching for the strongest signal from nearby towers. Whenever someone's cell phone establishes a connection with a tower, the wireless company can log certain details about that connection. These details might include the date, time, and length of each call; the phone numbers engaged in the call; and the location of the cell towers the phone was connected to when the call began and ended. This information can give some clues to where a phone was located on certain days and times. Law enforcement officials sometimes find it helpful to use this information from the wireless companies to help confirm whether a suspect was in a certain area at a specific time.

Facts

The FBI suspected that Timothy Carpenter was participating in armed robberies, and agents wanted to review data about the location of Carpenter's cell phone. A federal law, the Stored Communications Act, allows law enforcement officers to request an order from a judge that requires a telecommunications company to turn over such records. To get that order (which is not a warrant), the officers must show the judge that the records they want are relevant to an active

criminal investigation. "Relevant to a criminal investigation" is a lower standard than "probable cause," which must indicate that a crime has been committed and the information being sought is connected to the crime.

The FBI showed a judge that the records they wanted were related to a criminal investigation, and they received records about Carpenter's cell phone from his wireless phone company. The records included information about which cell phone towers Carpenter's phone sent signals to at the beginning and end of each call he made or received over a 127-day period.

The government used the location data at Carpenter's trial to show that Carpenter used his cell phone within a mile or two of several robberies around the time the robberies occurred. The trial also included testimony from several accomplices who said that Carpenter organized most of the robberies. Carpenter was convicted of nine armed robberies.

Carpenter appealed that ruling, arguing that the prosecution should not have been allowed to present the cellphone location data at his trial. He said that the government's collection of that information was an unconstitutional search under the Fourth Amendment. Such records, he argued, should only be seized with a warrant, supported by probable cause.

The U.S. Court of Appeals for the Sixth Circuit ruled that the government's collection of cell-site records was not legally a search, because Carpenter did not have a reasonable expectation that the location data from his cell phone was private. If it is not a search, the government did not need a warrant.

Issue

Did the government need to get a warrant before gathering location data about Carpenter's cell phone from his wireless company?

Constitutional Amendment, Statute, and Supreme Court Precedents

- **Fourth Amendment to the U.S. Constitution**

  "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."

- **Stored Communications Act (1986)**

  The Stored Communications Act authorizes a judge to issue an order to a telecommunications company to hand over user records to the government. The government must "offer specific and articulable facts showing that there are reasonable grounds to believe" that the records sought "are relevant and material to an ongoing criminal investigation."

- *Mapp v. Ohio (1961)*

  This case extended the exclusionary rule, as created by *Weeks v. United States*, to cases arising in state courts. The Court decided that the right to privacy is a crucial element of the Constitution and the Fourth Amendment, and that the *Mapp* decision was necessary to "close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right."

- *Smith v. Maryland* **(1979)**

  The Supreme Court ruled that the police's installation of a device that tracked the phone numbers a person dialed from his home phone was not a search because the caller could not reasonably expect those numbers, which he had disclosed to his phone company, to remain private. The Court reasoned that it had "consistently . . . held that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." The Court relied on a prior case that had held that the government does not conduct a search by obtaining an individual's bank records from his bank. The Court also noted that the device "did not acquire the contents of communications" and that it was not installed in Smith's home, so the police had not entered his home without authorization.

- *United States v. Jones* **(2012)**

  The Supreme Court ruled that the installation of a GPS tracking device on someone's vehicle, without a warrant, is an unlawful search under the Fourth Amendment. The Court said that the GPS tracking in this case was unconstitutional because the government had trespassed onto Jones' personal property to install the device. Although the majority opinion did not say so, five justices agreed, through concurring opinions, that such long-term GPS monitoring (the police had monitored Jones's location for more than a month) also violates someone's reasonable expectation of privacy.

- *Riley v. California* **(2014)**

  The Supreme Court decided that a warrantless search of data on an arrestee's cell phone is generally unconstitutional. The justices said that police officers should get a warrant if they want to search through someone's cell phone when they are arrested (unless it is an emergency). The Court said that people have strong privacy interests in their phones, which can store more personal information than a person in the past would have ever been able to carry on them.

Arguments for Carpenter (petitioner)

- The government should have gotten a warrant before collecting Carpenter's cellphone location data. It was a search, because Carpenter reasonably expected that the government would not pry into records that could document his movements, locations, and activities over a period of months. Most people would agree that such data should be private.

- It is almost impossible to live in today's society without using a cellphone. Most people carry phones with them everywhere they go. Cell phone location records can show where someone was, and when, and who they were with, at virtually all times.
- The government argues that, since the data was produced by the cell phone company, Carpenter did not have a reasonable expectation that it would be private. But the cases the government relies on were decided before the advent of the digital age. Today, it is hard to function in society without sharing information with third parties. Just because another person or company has access to or control over private records, it should not mean that they are no longer considered private.
- This case is like *United States v. Jones* because the government is gathering sensitive location data, without a warrant, over a long period of time.
- This case is not like *Smith v. Maryland,* because the information the government gathered is so much more detailed and sensitive than when just phone numbers were dialed. Also, cell phone users are likely not even aware that their wireless companies store—and can give to the government—such intensive information about the location of their phones.
- There are other ways companies track people's digital information too—for example, internet service providers maintain copies of lots of information about websites their customers visit, and search engines record logs of individuals' searches. This information reveals a lot about innocent people's lives. If the government can obtain cellphone location data without a warrant, what would prevent it from gathering this sort of information about everyday Americans?

Arguments for the United States (respondent)

- The government did not need a warrant to gather the cellphone location data. People have no reasonable expectation of privacy in information they freely give to a third party like a cell phone company. This case is a lot like *Smith v. Maryland* and the bank records case.
- The government would have needed a warrant to record the words spoken in Carpenter's phone calls because the content of someone's communications is private. But cell phone location data is more like an address on an envelope or the phone numbers they dialed; it is information that gets the message from point A to point B. Those records say nothing about the content of any calls.
- This case is different from *Unites States v. Jones* where the government secretly attached a GPS tracking device to someone's car. In *Jones* the government itself conducted surveillance—which constituted a search—rather than merely acquiring a third party's business records. And GPS tracking is different from cell-site location information because it is very precise and can locate a person within about 50 feet. The data the government obtained here is far less precise, as it can only suggest a person's location within a number of miles. Also, the

government did not have to trespass or invade Carpenter's personal property to get this information.

- This case is different from *Riley v. California*. There, everyone agreed that a search had occurred, and the only question was whether an exception to the warrant requirement for searches occurring during arrests should apply. The question in this case is whether a search occurred in the first place, given that Carpenter voluntarily conveyed information about the location of his phone to his cell phone provider.
- Any cellphone user should know that their phone "exposes" its location to their cell phone provider. Users also know that the phone companies record this information for a variety of legitimate business purposes.
- The American people have expressed their expectation of privacy with regard to digital information through their Congressional representatives who passed the Stored Communications Act. That law stakes out a middle ground between full Fourth Amendment protection and no protection at all, requiring that the government show "reasonable grounds" but not "probable cause" to obtain the cell-site data at issue here.

