
LEGAL UPDATES

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

SEARCH AND SEIZURE AND THE FOURTH AMENDMENT

Filed by the United States Supreme Court

June 22, 2018

Carpenter v. United States

No. 16-402

www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf

Factual Background and Prior Proceedings. The police arrested four persons for robbing Radio Shacks and T-Mobile stores in Detroit, Michigan. One of the arrested persons confessed that up to fifteen persons were accomplices in nine different store robberies in Michigan and Ohio and provided the Federal Bureau of Investigation (FBI) with the cell phone numbers of some of the accomplices. The FBI reviewed these cell phone records to identify additional cell phone numbers that had been called around the time of the robberies. Based upon the cell phone records provided by one of the arrested persons, prosecutors sought court orders under the federal Stored Communications Act to obtain cell phone location records for the petitioner Timothy Carpenter (Carpenter). The prosecution did not pursue a search warrant for Carpenter's cell phone location records but rather relied upon the framework established under the federal Stored Communications Act to obtain his records. The Stored Communications Act permits the Government to compel the disclosure of cell phone location records from cell phone carriers when it offers specific and articulable facts showing that there are reasonable grounds to believe the cell phone location records sought are relevant and material to an ongoing criminal investigation. A federal magistrate issued two court orders directing Carpenter's cell phone carriers to disclose his cell phone location records that provided physical location points of his cell phones based on his incoming and outgoing calls during the four-month period when the robberies occurred.

Prior to trial, Carpenter moved to suppress the Government's seizure of his cell phone location records arguing that such a seizure violated the Fourth Amendment of the United States Constitution (Fourth Amendment) because the Government obtained the records without a search warrant supported by probable cause. The United States District Court for the Eastern District of Michigan denied the motion, and the prosecution provided evidence at trial that Carpenter's phone was near four of the robbery locations at the time the robberies occurred. Carpenter was subsequently convicted of robbery and federal firearms violations and sentenced to prison. The Court of Appeals for the Sixth Circuit (Court of Appeals) affirmed Carpenter's conviction, finding Carpenter lacked a reasonable expectation of privacy in his cell phone location records because he had shared such information with his cell phone carrier. Carpenter appealed to the Supreme Court of the United States (Court).

Issue. Whether a cell phone user who voluntarily conveys cell phone data to the user's cell phone carrier has a reasonable expectation of privacy with respect to the user's cell phone location records under the Fourth Amendment.

LEGAL UPDATES

Analysis. The Court held in a 5-4 decision that the acquisition of Carpenter’s cell phone location records constituted an illegal search because a search warrant was not first obtained as required by the Fourth Amendment, which provides the right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. The classification of cell phone location records maintained by a third party (cell phone carriers) does not fit neatly under existing privacy case law. The Court stated that requests for cell phone location records are at the intersection of two lines of case law, both of which provide the current understanding of a person’s privacy interests at stake under the Fourth Amendment. The first set of cases address a person’s expectation of privacy, and the second set of cases address instances where a person voluntarily turns over the person’s information to a third party (the “third-party doctrine”). Generally, the Court has held that a person has no legitimate expectation of privacy in information voluntarily turned over by the person to third parties. However, in this case, the Court is confronted with a new phenomenon whereby a person’s cell phone location records held or maintained by a third-party cell phone carrier provide information about a person’s past movements through the use of recorded cell signals and such information is detailed, encyclopedic, and effortlessly compiled. The Court stated a person does not surrender all Fourth Amendment protections when entering the public sphere. A person’s cell phone location records over the course of a four-month period provides an all-encompassing record of the person’s past movements, revealing an intimate window into the person’s life. According to the Government’s argument, essentially every person carrying a cell phone has effectively been tailed every movement of every day allowing police access to this surveillance information without regard to the constraints of the Fourth Amendment. Thus, the Court concluded it must take into account more sophisticated systems of gathering information that are already in use or in development, and the fact that such information is gathered by a third party does not make it less deserving of Fourth Amendment protection.

Holding. The Court held the Government’s acquisition of cell phone location records were a search under the Fourth Amendment and a search warrant is required in order for the government to retrieve such information. The Court reversed the judgment of the Court of Appeals and remanded the case for further proceedings consistent with the opinion.

Dissent by Justice Kennedy, Joined by Justices Thomas and Alito. Justice Kennedy’s dissent emphasized that the new rule the majority opinion formulates puts needed, reasonable, accepted, lawful, and congressionally authorized criminal investigations at serious risk in serious cases. The Court has previously held that people have no Fourth Amendment interests in business records which are possessed, owned, and controlled by a third party. Business customers like Carpenter do not own, possess, control, or use the records, and for that reason have no reasonable expectation that the records cannot be disclosed pursuant to the lawful compulsory process outlined under the federal Stored Communications Act. The majority opinion decouples the Fourth Amendment doctrine from property-based concepts that have long grounded the analytic framework of Fourth Amendment cases, and draws an unprincipled and unworkable line between cell phone location records and financial and other telephonic records.

Dissent by Justice Thomas. Justice Thomas wrote that because the Fourth Amendment guarantees the right of people to be secure from unreasonable searches of their persons, houses, papers, and effects, obtaining the cell phone location records of Carpenter’s cell phone carrier was not a search of Carpenter’s property. Carpenter did not create, maintain, or own the cell phone location records. Whether the Fourth Amendment rights are too broad or too narrow, this Court has no authority to unilaterally alter the document the founding generation approved.

LEGAL UPDATES

Dissent by Justices Alito and Thomas. Justices Alito and Thomas emphasized that new technology relating to personal privacy should concern the Court but the Court's decision guarantees a blizzard of litigation while threatening many legitimate and valuable investigative practices. First, the Court ignores the basic distinction between an actual search pursuant to a court order merely requiring a party to look through its own records and produce specified documents. The court orders in this case are the equivalent of subpoenas for documents. A search intrudes on personal privacy far more deeply, and requires probable cause, while a court order to produce records is not personally intrusive. Second, the Court's majority decision allows a defendant to object to the search of a third party's property. By departing dramatically from the fundamental principles of the Fourth Amendment, the Court destabilizes long-established Fourth Amendment doctrine.

Dissent by Justice Gorsuch. The Fourth Amendment protects the right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. The Court need only ask if a house, paper, or effect was the person's under the law. Nothing else is necessary to trigger Fourth Amendment protections. Judges should decide cases based on democratically legitimate sources. A Fourth Amendment decision based on this principle carves out significant room for legislative participation in the Fourth Amendment context. If Carpenter had pursued this case under existing federal statutory law, it is entirely possible Carpenter's cell phone location information could have been kept confidential because federal statutory law generally prohibits a cell phone carrier from disclosing a customer's cell phone location information without the customer's consent.

LSA Monitor: Joe McEniry 515.281.3189