

Supreme Court Hears Oral Argument Today in Major Case Regarding Cell Phone Location Privacy



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In *Carpenter v. United States*, federal investigators sought cellphone location data for a set of persons suspected in a series of robberies. The Fourth Amendment prevents the government from conducting unreasonable searches and seizures, and if successful a Fourth Amendment challenge would suppress the result of the search. Under the Stored Communications Act, a governmental entity may obtain cellphone location data either by warrant or by presenting a court with 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. The investigators went the latter route, and obtained 127 days' worth of cellphone location data. That location data enabled the investigators to determine whether certain cellphones were in close proximity to each robbery, and thus confirm a list of suspects near to the location of all the robberies. Carpenter was eventually convicted and sentenced to nearly 116 years in prison.

Carpenter's Fourth Amendment challenge centers around whether a person has a reasonable expectation of privacy in their cellphone location data, which would require a warrant before disclosure of same may be made. This case came out of the 6th Circuit. The U.S. Courts of Appeal for the Circuits are split on whether a cellphone user has a reasonable expectation of privacy to cellphone data held by a carrier. The 3rd Circuit has held that a federal magistrate may require a warrant, while the 4th, 5th, 6th and 11th Circuits have held—under what is called the third-party doctrine—that a warrant is not required. The third-party doctrine arose under *United States v. Miller*, which held that a person has no Fourth Amendment right to information that person voluntarily provides to a third-party service provider.

Carpenter has argued that the fact that a cell phone provides its location to a carrier without any meaningful interaction of the user cannot equate to a voluntary disclosure under the third-party doctrine. (It also could be noted that the cellphone user has no means to bar the transmission of such data by his or her cellphone.) The government argued that the location data was kept by the service provider for the service provider's purposes: to find weak spots in service coverage and to determine whether a user was roaming, such data is not a search, it only leads to an inference that a person was in a particular location at a particular time, and that cellphone users know that their cellphones transmit data as part of their core feature set. Recent Supreme Court cases have held that warrants were required for the collection of location data collected by a GPS locator on a vehicle (*United States v. Jones*, a 9-0 decision) and for the collection of evidence inside a cellphone that was obtained during an arrest (*Riley v. California*, a 9-0 decision).

It remains to be seen whether those precedents apply here, and whether the Fourth Amendment finds this more indirect method of searching an unreasonable one.

