

Supreme Court Requires Warrant for Cellphone Information

In *Carpenter v. United States*, 585 U.S. (June 22, 2018), the U.S. Supreme Court held for the first time that the Fourth Amendment requires police to obtain a warrant backed by probable cause to acquire cellphone location information possessed by third parties.

In 2011, four men were arrested for a series of robberies. One confessed the suspects had conducted the robberies over four months and identified 15 accomplices. He supplied the FBI with their cell phone numbers. The FBI reviewed his call records to identify numbers that he had called around the time of the robberies. With this information, prosecutors sought orders under the Stored Communications Act (SCA) to obtain cell phone records for Timothy Carpenter. The SCA permits the disclosure of certain telephone records when an official "offers 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." 18 U.S.C. § 2703(d). Carpenter's cellphone providers turned over four months of records showing the location of his phone. He was charged with 12 counts of robbery and carrying a firearm during a federal crime of violence. He moved to suppress the cell location records, arguing they were obtained without a warrant supported by probable cause.

The Supreme Court explained the information sought by prosecutors - personal location information maintained by third parties - did not fit into its previous decisions. The Court had held long-term remote tracking by a GPS device attached to a vehicle by officers impinged on the driver's expectation of privacy and so constituted a search under the Fourth Amendment. See *United States v. Jones*, 132 S.Ct. 945 (2012). However, a separate line of cases provided that a person had no expectation of privacy in information shared voluntarily with third parties and allowed government officials to obtain such information without triggering the protections of the Fourth Amendment. These cases dealt with bank records and pen registers, devices that recorded outgoing calls on landline phones, maintained by telephone companies.

In this case, the Supreme Court noted the use of modern cellphones, which create a record of a person's movements, were similar to that of GPS tracking as "cell phone location information is detailed, encyclopedic, and effortlessly compiled." Similar to bank records and pen registers, cellphone location information is voluntarily provided to service providers. However, the Court noted "few could have imagined a society in which a phone goes wherever its owner goes, conveying to the wireless carrier not just dialed digits, but a detailed and comprehensive record of the person's movements." The Court held "that an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through" cell-site location information. It explained that "[m]apping a cell phone's location over the course of 127 days provides an all-encompassing record of the holder's whereabouts. As with GPS information, the time-stamped data provides an intimate window into a person's life, revealing not only his particular movements, but through them his...associations."

Comment: Law enforcement and other officials should immediately take note of this decision, which likely affects numerous ongoing criminal investigations throughout the country. While evidence obtained prior to the Carpenter decision would be unlikely to be suppressed under the "good faith" doctrine, all future attempts to obtain cellphone location data must be through a warrant.