**Citation**: Carpenter v. United States, No. 16-402, 585 U.S.___ (United States Supreme Court, 2018)
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**Parties**: United States of America (Respondent) & Timothy Ivory Carpenter (Petitioner)

**Facts**:

Authorities applied for court orders to acquire the cell phone records of Timothy Carpenter and other suspects in connection to a series of robberies under the Stored Communications Act. This Act allows for the government to compel records from Internet Service Providers if it "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." (585 U.S.___ *p*3).

The orders were granted – MetroPCS and Sprint handed over Carpenter's cell phone records, which contained information on his location at the times of the robberies being investigated. These records spanned 127 days. Carpenter was charged with six counts of robbery and six counts of carrying a firearm during a federal crime of violence, determined by the cell-site location information (CSLI) gathered from his phone records. Carpenter moved to suppress the data gathered from the ISPs; he proposed that gathering his cell-phone information constituted a search, and a search warrant was required. Further, since this information which was gathered without a warrant, the government violated his Fourth Amendment rights.

**Procedural History**:

The District Court for the Eastern District of Michigan denied Carpenter's motion to suppress the cell-phone evidence ruling that Carpenter did not have a reasonable expectation of privacy with respect to his cell-phone records. An FBI agent presented this evidence and effectively decided the case; Carpenter was convicted and sentenced to over 100 years in prison (1395 months), Carpenter appealed.

The ruling was affirmed by the Sixth Circuit Court of Appeals, who held that Carpenter did not have a reasonable expectation of privacy regarding his cell/location information because that information was shared with wireless carriers; they used *Smith v. Maryland 1979* as guidance that the Fourth Amendment applies to content; further, the information gathered comprised business records, not Carpenter's personal information. Since Carpenter willingly shared his information with his wireless carriers, the court found that it did not constitute a search and no warrant was necessary as the records were not protected under the Fourth Amendment. Carpenter appealed and was granted certiorari by the Supreme Court.

**Cause of Action**: The seizure of Carpenter's cell-phone records constituted a search and in doing so without a warrant, the US Government violated his Fourth Amendment rights.

**Defenses**:

The U.S. Government believed that since CSLI is less precise than GPS tracking its collection was permissible without a warrant. The location records on their own could not definitively prove where Carpenter was during the crimes, they placed him within a certain radius.

Additionally, the Government maintains that CSLI records are business records of the wireless carriers and thus the third-party doctrine, which holds that individuals who give information to third-parties have no reasonable expectation of privacy, is applicable. The Government argues that the request that resulted in the possession of the CSLI records was a simple "request for information from a third-party witness." (585 U.S.___ *p*15).

**Issue**: In collecting Carpenter's cell-phone location records, did the government conduct a search and thus violate his Fourth Amendment rights since this was completed without a warrant?

**Holding**: The Court ruled that procuring CSLI records constituted a search and required a warrant under the Fourth Amendment.

**Rule(s) of Law**: Although the CSLI records are held by a third party (wireless carrier), third-party doctrine does not apply and an individual retains a reasonable expectation of privacy.

**Reasoning**:

The Government did not acknowledge the change in technology that affected the facts of this case. As technology now allows for the compilation of records on years of location information on the individuals using cell-phones, the wireless carriers are not "typical witnesses." (585 U.S.__ *p*15). The Court examined the rulings of *Smith v. U.S.* and *Miller v. U. S.* In the Miller case, the court ruled against the individual who challenged the collection of his bank records under the Fourth Amendment. The court found that Miller had a limited expectation of privacy and took the risk of revealing his information to a third party, and the records comprised bank business records. Similarly, in Smith, the court ruled against the individual's claim that collecting the numbers he dialed constituted a search. The Smith court held that individuals do not have an expectation of privacy of the numbers they dial and Smith "voluntarily conveyed" the numbers to a third party, once again taking the risk of revealing his information (585 U.S.__ *p*4). Additionally, the rulings of *U.S. v. Knotts* and *U.S. v. Jones* were examined. In *Knotts* the court found that tracking a vehicle through traffic did not constitute a search as the location of the vehicle was available to any onlooker. Contrasting this finding, in *Jones* the court found that monitoring of prolonged amounts of time (28 days) infringed on expectations of privacy as the vehicle revealed the individual's location at every moment.

The *Knotts* and *Jones* cases differed greatly in nature from the circumstances surrounding the collection of Carpenter's CSLI records. "Mapping a cell phone's location over the course of 127 days provides an all-encompassing record of the holder's whereabouts." (585 U.S.__ *p*12). Despite the fact that the records are compiled for commercial use, Carpenter, as in *Jones*, maintained a reasonable expectation of privacy. The complete records of his every location for 127 days reveal his every movement and personal affiliations. The CSLI records from cell-phone records produce surveillance "as if it had attached an ankle monitor to the phone's user." (585 U.S.__ *p*13). With CSLI police can access immaculate surveillance, going back years, on any subject who carries a cellphone before their identification as a suspect. Due to these differences, *Knotts* cannot be applied to Carpenter's case.

Further, Third-party doctrine does not apply in *Carpenter* as it did in *Smith* and *Miller*. Due to the difference between the comprehensive information wireless carriers collected and the limited personal information gathered in the cases mentioned above the application of third-party

doctrine would require for a "significant extension of it to a distinct category of information." (585 U.S.__ *p*15).

**Commentary**:

This ruling is fair. This judgement relates to this specific instance and will not have an overall detrimental effect on police investigations going forward; authorities will only need to obtain a warrant when the individual of interest "has a legitimate privacy interest in records held by a third party," and time-sensitive investigations "may support a warrantless search" (585 U.S.__ *p*3-4). These authorities will still have access to cell-phone location related information, this ruling just enforces limitations on the amount and nature of data police are able to gather without a warrant. Authorities still have access to the same information with due process, this ruling determines that they do not have "unrestricted access to a wireless carrier's database of physical location information" (585 U.S.__ *p*22). In our society, it is essential that there is a force regulating the extent of the government's access to information. These limits are necessary to minimize the possibility of an individual in the government achieving a senior position, acquiring too much power, and misusing information.

Another facet of this case is the assumption that individuals willingly give their information to wireless carriers. Justice Thomas, in his dissent, highlights his property based approach and believes that the matter relates to whose property was searched. In practice, it appears people voluntarily give their information to their wireless carriers, but without this concession individuals would have to sacrifice elements of their cell-service or the necessity of a cell-phone. By withholding location information from wireless carriers an individual would have to significantly impair his everyday communications. Wireless carriers AT&T, Sprint, and TMobile recently announced their decision to stop selling consumer data to third parties, demonstrating consumer data is already being misused (Cox). The story that exposed this abuse details a third-party, MicroBilt, that aggregated consumer data and allowed for civilians to access the information for "legally dubious" purposes (Cox). If an individual allows for personal information to be shared with a wireless carrier out of necessity, that consumer is consenting to his data being used for his wireless carrier's business records to improve and analyze their service. Wireless carriers are not joined with law enforcement, and as such users do not consent to their data being shared with the Government when they allow information to be gathered on them by their wireless carriers. The possibilities of what the carrier could do with CSLI differs greatly from how the Government utilizes the records; the carriers use them for business to improve their services, while the Government will use CSLI for surveillance and investigations. Again, this information should only be accessible once there is probable cause to investigate an individual. Without this regulation CSLI could, instead of aid the investigation, lead the investigation in a mistaken direction.

Finally, the evidence produced by the cell towers is unreliable and there are experts against its use in trials. They claim this science is untrustworthy and should not be used as the basis of the case; arguably it should not be used at all (Cherry). Which tower picks up a call is determined by "at least 20 different factors" (Cherry *p2*). For example, maintenance on a closer tower could redirect a cellphone ping to a more distant tower. Moreover, this is not "an exact science," as a cell-phone not in the radius of one tower can be picked up by that very tower (Cherry *p*2). To utilize this evidence there would have to be a review of all relevant towers to ensure their

functionality and reliability (Cherry). The collection of these records without legal allowance first could result in the misuse and misunderstanding of data; these could then result in false conclusions and wrongful convictions. For example, if there was an individual who, by some stroke of bad luck, was within 20 miles of a multiple crimes, the examination of cell records without a clearly identified suspect could consequently identify the wrong suspect who is not a criminal, but shares a pattern with one.

Justices Roberts, Ginsburg, Breyer, Sotomayor, and Kagan rightfully acknowledge how technology has changed since *Knotts*. Their subsequent ruling strives to provide protection of privacy in a society with a diminishing value on privacy rights and violations. With the integration of technology into everyday life there must be some power fighting to maintain integrity within third-party organizations, as well as the Government. As noted in the opinion of the court, "when considering new innovations…the Court must tread carefully in such cases, to ensure that we do not embarrass the future" (585 U.S.__ *p*18). While this ruling clarifies Fourth Amendment protection in relation to CSLI records, technological innovation will no doubt give rise to various similar case. These cases will, hopefully, encourage rulings focused on maintaining the rights of American citizens as defined in the Constitution in the environment of technological innovation.

**Works Cited**:

Cherry, Michael. “Cell Tower Junk Science.” *Judicature*, vol. 95, no. 4, 2012, pp. 151–153., https://educatedevidence.com/Viewpoint_J-F.pdf.

Cox, Joseph. “I Gave a Bounty Hunter $300. Then He Located Our Phone.” *Motherboard*, VICE, 8 Jan. 2019, motherboard.vice.com/en_us/article/nepxbz/i-gave-a-bounty-hunter-300-dollars-located-phone-microbilt-zumigo-tmobile.