

Over the course of a year, police in a small town received complaints about vandalism in public parks. They connected the incidents because the vandal left specific graffiti at each site, and investigation provided the police with a reasonable suspicion that the perpetrator was a specific local resident. Using an online directory that the resident had joined, the police obtained the resident's cell-phone number. The police then subpoenaed the cell-phone provider to provide one year of historical cell-phone site-location data. The data showed that for each incident, the resident's cell phone had been in the vicinity of the vandalized property.

The resident was charged with multiple counts of destruction of property. Defense counsel has moved to exclude the cell-phone site-location data, arguing that its collection violated the Fourth Amendment.

Did the collection of the data violate the Fourth Amendment?

- A. No, because a person has no reasonable expectation of privacy in information shared with a third party.
- B. No, because the subpoena was based on a cell-phone number that the resident had voluntarily placed in the public domain.
- C. Yes, because a subpoena must be based on probable cause.
- D. Yes, because a warrant is required to collect such extensive historical cell-phone site-location data.

Incorrect

Correct answer D

Collecting Statistics

01 min, 34 secsTime Spent

2023Version

Explanation:

Common items & areas

with no reasonable expectation of privacy

Bank records

Things exposed to public view (eg, open fields, abandoned property)

Physical characteristics (eg, handwriting, vocal sound)

Conversations with undercover officers & informants

Pen registers (ie, records of dialed telephone numbers)

Smells emanating from cars & other items

Prison inmate's cell

Automobile's vehicle identification number (VIN)

The **Fourth Amendment** is violated when the government conducts an unreasonable search or seizure—ie, when police act without a warrant and no [exception](#) applies. A Fourth Amendment **search** occurs if one of the following tests is met:

Physical trespass test – the government physically intrudes upon a [constitutionally protected area](#) to obtain information (eg, an intrusion upon curtilage).

Reasonable expectation of privacy test – the government invades a person's **subjective** expectation of privacy that society would find **objectively reasonable**.

Under the third-party doctrine, individuals generally have no reasonable expectation of privacy in **information voluntarily turned over to a third party** (eg, financial records given to a bank) **(Choice A)**. As a result, a **warrant is not required** to collect that information. However, individuals have a reasonable expectation of privacy in their extensive physical movements captured by **historical cell-phone site-location** data—even if it is held by a third party (eg, cell-phone provider).^{*} Therefore a **warrant is required** to collect such information.

Here, the police subpoenaed one year's worth of the local resident's cell-phone site-location data from the cell-phone provider. But such extensive historical cell-phone site-location data could not be collected by the police without a warrant—which they failed to obtain. Therefore, the collection of the data violated the Fourth Amendment.

^{*}The Supreme Court justified this rule in *Carpenter v. United States* on the ground that such data reveals not only a person's location but also the person's "familial, political, professional, religious, and sexual associations," which constitute a person's most sacred privacies.

(Choice B) Although the subpoena was based on a cell-phone number that the resident had voluntarily placed in the public domain, the police could not constitutionally collect that cell phone's historical site-location data without a warrant.

(Choice C) A warrant must be based on probable cause, but a subpoena can be based on mere reasonable suspicion. As a result, a warrant—not a subpoena—is required for the government to collect an individual's historical cell-phone site-location data.

Educational objective:

Under the third-party doctrine, individuals generally have no reasonable expectation of privacy in information voluntarily turned over to a third party, so a warrant is not required to collect such information. However, a warrant is required to collect historical cell-phone site-location data—even if it is held by a third party.

References

U.S. Const. amend. IV (prohibiting unreasonable searches and seizures).

Carpenter v. United States, 138 S. Ct. 2206, 2218–19 (2018) (holding that individuals have a reasonable expectation of privacy in their physical movements that are captured in cell-phone site-location data).

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