Supreme Court requires warrant to search cellphone location records

(June 26, 2018) - The U.S. Supreme Court has held the FBI violated a cellphone user's constitutional rights when it obtained four months' worth of location information from his cellular providers via a subpoena rather than a warrant supported by probable cause.

Carpenter v. United States, No. 16-402, 2018 WL 3073916 (U.S. June 22, 2018).

Writing for a 5-4 majority, Chief Justice John Roberts said the FBI was required to obtain a warrant based on probable cause because its acquisition of historical cellphone location records constituted a search for purposes of the Fourth Amendment.

The FBI's subpoena under the Stored Communications Act, 18 U.S.C.A. § 2703, did not satisfy that requirement because the agency needed to demonstrate only "reasonable grounds" for believing the records were "relevant and material to an ongoing investigation," the majority said.

Additionally, the majority held that the third-party doctrine, which allows law enforcement to obtain certain business records without a warrant, does not apply to cellphone location records because they contain particularly revealing and sensitive information about a person's movements over time.

"The decision is a major step forward in digital privacy and in shaping a new Fourth Amendment jurisprudence that recognizes the reality that we all carry devices around in our pockets that are capable of 'near perfect surveillance,'" according to attorney Ben Berkowitz of Keker, Van Nest & Peters, who was not involved in the case.

"We should expect to see further Fourth Amendment challenges to law enforcement efforts to collect personal and sensitive information transmitted by the public — often unknowingly — to third parties like phone and internet companies without a warrant," he added.

Cellphone location records

According to the majority's opinion, in 2011 during a multistate FBI investigation of armed robberies at Radio Shack and T-Mobile stores, law enforcement obtained the cellphone

numbers of several suspects, including Timothy I. Carpenter, from a man who had confessed to own his involvement.

The FBI requested and received two court-approved subpoenas under the Stored Communications Act that directed Sprint and MetroPCS to disclose business records showing the location of Carpenter and the other suspects' cellphones over a four-month period, the opinion said.

Sprint and MetroPCS complied and produced records that contained nearly 13,000 location points for Carpenter's cellphone during the relevant period, according to the opinion.

Carpenter was charged in April 2012 with multiple counts of robbery and carrying a firearm during a federal crime of violence.

He filed a motion to suppress the cell-site evidence, arguing the FBI was required to get a warrant supported by probable cause before obtaining the cellphone location records and that its failure to do so amounted to an unlawful seizure.

U.S. District Judge Sean F. Cox of the Eastern District of Michigan denied the motion, and prosecutors used the cell-site records to establish that Carpenter's cellphone — and by extension Carpenter — was at the scene of four of the charged robberies.

The jury convicted Carpenter on all but one of the firearm counts, and Judge Cox sentenced him to more than 100 years in prison. Carpenter appealed.

Third-party doctrine

In April 2016 a three-judge panel of the 6th U.S. Circuit Court of Appeals affirmed the District Court's decision to allow the government to use the cellphone location records at trial. *U.S. v. Carpenter*, 819 F.3d 880 (6th Cir. 2016).

The panel reasoned that, under the third-party doctrine, Carpenter did not have a reasonable expectation of privacy in the records because he had voluntarily disclosed his cellphone location data to his cellular carriers.

Carpenter petitioned for certiorari, and the Supreme Court agreed to hear the case.

Chief Justice Roberts, joined by Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan, reversed the 6th Circuit's ruling June 22.

The majority noted that police requests for cellphone location records implicate two distinct lines of Supreme Court precedent: One recognizes a reasonable expectation of privacy in a person's movements from place to place, and the other establishes the third-party doctrine, which recognizes that a person has no reasonable privacy expectation in information voluntarily shared with third parties.

For example, in *United States v. Jones*, 565 U.S. 400 (2012), the court ruled that police officers violated the defendant's reasonable expectation of privacy by failing to get a warrant before secretly using a GPS device to track his vehicle's movements for a month.

The privacy interests at stake in law enforcement's collection of cellphone location data are "even greater" than those at issue in the *Jones* case, according to the majority.

"When the government tracks the location of a cellphone it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone's user," Chief Justice Roberts wrote.

On the other hand, the cases establishing the third-party doctrine, such as *United States v. Miller*, 425 U.S. 435 (1976), which involved bank records, have not addressed situations where law enforcement is seeking records that contain information as revealing as cellphone location data, the majority said.

"There is a world of difference between the limited types of personal information addressed in … *Miller* and the exhaustive chronicle of information casually collected by wireless carriers today," Chief Justice Roberts wrote.

Given the "unique nature" of cellphone location records, the majority declined to extend the third-party doctrine to information that reveals the past locations of cellphones and, by implication, their users.

Justice Anthony Kennedy wrote a dissenting opinion, joined by Justices Clarence Thomas and Samuel Alito, arguing that cellphone location records are "no different" from other types of records that are subject to the third-party doctrine.

"Customers like petitioner do not own, possess, control or use the records, and for that reason have no reasonable expectation that they cannot be disclosed pursuant to lawful compulsory process," Justice Kennedy wrote.

By Dave Embree

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