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US Supreme Court: Fourth Amendment Applies to Cellphone Tracking

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In a landmark Fourth Amendment decision in *Carpenter v. United States*, delivered on June 22, the Supreme Court addressed the intersection of privacy and law enforcement in the digital age. It held that law enforcement officials must obtain a search warrant based on probable cause in order to compel cellular service providers to turn over information tracking an individual's location over time. In an opinion by Chief Justice Roberts, writing for a five justice majority, the Court explicitly acknowledged that the revolutionary advances in cellphone technology must affect the way the privacy protections of the Fourth Amendment are applied.

In *Carpenter*, the government sought and obtained the defendant's cell site location information from his cellular service provider via a subpoena issued under the Stored Communications Act, rather than via a search warrant. The government used that information to convict the defendant at trial. The question before the Court was whether the Fourth Amendment applied to cell site location information, and therefore required the government to get a warrant.

In reversing the defendant's conviction, the Court noted a tension between cases holding that the Fourth Amendment applies when the individual has a reasonable expectation of privacy and cases holding that the Fourth Amendment is inapplicable when the government obtains an individual's records from a third-party (in this case the cellular service provider), rather than from the individual himself. In this instance the Court resolved that tension in favor of the reasonable expectation of privacy, finding that cellphone owners have such an expectation in the data concerning their movements even though the data are collected and stored by third-party providers.

Four justices dissented. Justice Kennedy, joined by Justices Thomas and Alito, wrote that since the records were held by third parties, the Fourth Amendment's protections against warrantless searches did not apply. In separate dissents, Justice Thomas and Justice Gorsuch wrote that the Court should discard the reasonable expectation of privacy test. Justice Alito, joined by Justice Thomas, wrote that the Fourth Amendment did not apply because the government had proceeded by a subpoena, rather than by an actual search.

The immediate result of *Carpenter* is that the government will now generally need a search warrant to get cellphone information showing an individual's location over time. The broader implications of the opinion are less clear. On the one hand, *Carpenter* represents a possible paradigm shift: it is the first time that the Court has held that the Fourth Amendment can apply to records held by a third party. On the other hand, Chief Justice Roberts emphasized that the decision is "narrow," and made clear that its implications should be worked out on a case-by-case basis. What is indisputable, however, is that a majority of the Court is prepared to adjust Fourth Amendment doctrine to grapple with the profound privacy implications of the "seismic shifts in digital technology."

To discuss these issues further or to pose questions about this alert, please contact one of the attorneys listed here.

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