

## Supreme Court to Decide Major Privacy Case on Police Use of Cell Phone Location Data

June 7, 2017 - It has become a common practice for police to request that cell phone companies turn over location data on their customers in criminal investigations. And it is also common practice for those companies to turn over that data to police when it is requested. But the US Supreme Court may put the kibosh on those practices sometime next year. The justices have agreed to hear an appeal in a case that resulted in several armed robbery convictions who was placed at the scenes of the crime by cell phone location data that was obtained without a warrant. The question which the justices will address is whether that use of data violated the Fourth Amendment of the Constitution.

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Timothy Carpenter was convicted of six armed robberies in Michigan and Ohio. The police investigating the cases were able to place him near each of the robberies using cell phone location data. Carpenter appealed his convictions to the US Sixth Circuit Court of Appeals claiming that the use of that data required a search warrant. But the appeals court disagreed and upheld the convictions.

The appeals court decision was based on the Stored Communications Act; a 1986 law that allows the government to request stored electronic data if they have a "reasonable suspicion" that someone has been involved in a crime. That is a much lower standard than would be required to obtain a search warrant; which requires "probable cause."

The government likes the law the way it is. Local, state and federal law enforcement agencies all use their authority under the Stored Communications Act in criminal cases. It is quite likely that the DOJ and most of the states will file briefs in the case arguing to have the Supreme Court uphold current law. But the deck may be stacked against them.

There have already been two recent Supreme Court cases that are similar to this one in which the court ruled against the government. In one, the court ruled that a warrant is needed to place a GPS tracking device on a car to track the car's movements. In another, the court ruled that a warrant is needed to search the contents of cell phones seized during an arrest. If the court continues with this pattern of rulings, there is a very real chance that it will rule against the government in Carpenter's case too.

Carpenter's attorneys are likely to argue that in 1986, when cell phones were extremely rare, congress couldn't have possibly reviewed the ramification of the Stored Communications Act to personal privacy today. We agree.

The case will be heard when the court takes up its new term in October. A ruling can be expected sometime between October of this year and the end of June, 2018 when the court adjourns. We'll keep you posted on the case as it develops.

by Jim Malmberg

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