***Carpenter v. United States*, 2018 WL 3073916, 585 U.S. __ (June 22, 2018)**

After the FBI identified the cell phone numbers of several robbery suspects, prosecutors were granted court orders to get the suspects' cell phone records under the Stored Communications Act. Wireless carriers produced cell-site location information (CSLI) for Carpenter's phone, and the prosecution obtained 12,898 location points cataloging Carpenter's movements over 127 days, an average of 101 data points per day. Carpenter moved to suppress the data, the trial court denied the motion, and prosecutors used the records at trial to show that Carpenter's phone was near 4 of the robbery locations at the time those robberies occurred. Carpenter was convicted; the Sixth Circuit affirmed, holding that Carpenter lacked a reasonable expectation of privacy in the location information collected by the FBI because he had shared that information with his wireless carriers. SCOTUS has reversed.

- Under the Fourth Amendment, an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI; thus, the State must generally obtain a search warrant supported by probable cause before acquiring CSLI from a wireless carrier.

The Court considered the application of the Fourth Amendment to a new phenomenon: the ability to chronicle a person's past movements through the record of his cell phone signals, cell-site location information (CSLI). The Court noted that such tracking has many qualities of the GPS monitoring considered in *United States v. Jones*, 565 U.S. 400 (2012) (holding that GPS tracking is a search). Much like GPS tracking of a vehicle, cell phone location information is detailed, encyclopedic, and effortlessly compiled. But at the same time, the fact that the individual continuously reveals his location to his wireless carrier implicates the third-party principle of *Smith v. Maryland*, 442 U. S. 735 (1979) and *United States v. Miller*, 425 U. S. 435, 443 (1976). But the Court declined to extend *Smith* and *Miller* to cover these novel circumstances. The Court noted that given the unique nature of cell phone location records, the fact that the information is held by a third party does not by itself overcome the user's claim to Fourth Amendment protection. The Court thus concluded that whether the State employs its own surveillance technology as in *Jones* or leverages the technology of a wireless carrier, an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI. However, the Court noted its decision was narrow and did not disturb the application of *Smith* and *Miller* or call into question conventional surveillance techniques and tools such as security cameras, neither did it address other business records that might incidentally reveal location information nor consider other collection techniques involving foreign affairs or national security. The Court concluded that the State must generally obtain a warrant before acquiring such records; in the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement. There, the Government acquired the cell-site records pursuant to a court order issued under the Stored Communications Act, which has a standard well short of the probable cause required for a warrant.

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