Carpenter v. U.S.

Jul 05, 2018

Categories:

Publications

Cell phone users have a legitimate expectation of privacy in historical cell tower location data held by the user's wireless company and a government search of those records is protected by the Fourth Amendment. In *Carpenter v. United States,* 2018 WL 3073916, *9 (June 22, 2018), the Supreme Court held that the government's acquisition of Timothy Carpenter's cell-site location information (CSLI) from his wireless company without a search warrant was a Fourth Amendment search. As such, the government was required to obtain a search warrant supported by probable cause. Carpenter was convicted of a string of robberies based upon seven days of location information obtained by prosecutors from his wireless company. Mr. Carpenter appealed the conviction, arguing that the CSLI collection required a warrant under the Fourth Amendment. A divided Supreme Court, in a 5-4 opinion, agreed.

> The fundamental premise of the Fourth Amendment is that "people have the right to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." The Fourth Amendment protections have been extended over the years to include invasion of a person's body or property. The government cannot conduct a search of where that person has a "reasonable expectation of privacy" without first obtaining a warrant based upon probable cause that a crime has been committed or is imminent.

Even where a reasonable expectation of privacy exists, there are exceptions, including the "in public" and "third-party" exceptions. The public exception applies to information that is plain view, such as observations made by police officers of a suspect walking down the street. Additionally, the Court has declined to acknowledge an expectation of privacy as to information voluntarily shared with third parties, a doctrine referred to as the "third-party" doctrine." For example, a search warrant is not required to obtain checking account records (shared with the bank) or a list of telephone numbers that a person has called (shared with the telephone company).

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

In this case, the government had argued that Carpenter did not have a reasonable expectation of privacy in the location information because he had voluntarily shared that information with his wireless carriers. While the Court acknowledged that the third-party doctrine applies to telephone numbers and bank account records, the Court declined to extend this logic to cell-site records:

> When [the earlier cases] were decided in 1979, few could have imaged a society in which a phone goes wherever its owner goes, conveying to the wireless carrier not just dialed digits, but a detailed and comprehensive record of a person's movements....We decline to extend [earlier precedent] to cover these novel circumstances. Given the unique nature of cell phone location records, the fact that the information held by a third party does not by itself overcome the user's claim to Fourth Amendment protection. Whether the Government employs its own surveillance technology … or leverages the technology of a wireless carrier, we hold that an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI. The location information obtained from Carpenter's wireless carriers was the product of a search.

In holding that the government will generally need a warrant to access CSLI, it also acknowledged that exigent circumstances could nevertheless support a warrantless search.

In its 2014 decision in *Riley v. California*, 134 S.Ct. 2473, the Court unanimously held that police could not conduct a warrantless search of the contents of a cell phone incident to arrest. In so doing, the Court recognized that cell phones were "qualitatively different" than other items found on a person, given their "immense storage capacity" and the nature and types of information that are frequently stored on them, including highly sensitive personal information. Further, that the Court was concerned that the "sum of an individual's private life" can be reconstructed through the photos labeled with dates, locations and descriptions that are often found on them.

As this latest decision shows, the Supreme Court continues to be mindful of the effects of new technology on Fourth Amendment

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

precedent. When considering new technologies, the Court is willing to engage in what some scholars refer to as "equilibrium adjustment" – an analysis by which the Court looks at the impact of new technology on the balance of government power and adjusts the legal powers of government to act as a counterweight to the way that the pendulum is swinging.

Writing for the majority, Chief Justice Roberts recognized this:

> [As] Justice Brandeis explained in his famous dissent, the court is obligated –as "[s]ubtler and more far-reaching means of invading privacy have become available to the Government"—to ensure that the "progress of science" does not erode Fourth Amendment protections. Here the progress of science has afforded law enforcement a powerful new tool to carry out its important responsibilities. At the same time, this tool risks Government encroachment of the sort the Framers, "after consulting the lessons of history," drafted the Fourth Amendment to prevent.

As technology continues to evolve, we can expect the Court to consider existing precedent through the lens of new technology and the impacts that extending existing precedents to new technology will have on individuals' privacy rights. Although Carpenter was a criminal case, we can expect similar "equilibrium adjustments" from the Court on civil privacy litigation as well.

For more information, please contact any other attorney in Frost Brown Todd's Privacy and Information Security Law Practice Group.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons