**Warrant Required for Cellphone Tracking Data**

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Full Text:

WASHINGTON -- In a major statement on privacy in the digital age, the Supreme Court ruled on Friday that the government generally needs a warrant to collect troves of location data about the customers of cellphone companies.

''We decline to grant the state unrestricted access to a wireless carrier's database of physical location information,'' Chief Justice John G. Roberts Jr. wrote for the majority.

The 5-to-4 ruling will protect ''deeply revealing'' records associated with 400 million devices, the chief justice wrote. It did not matter, he wrote, that the records were in the hands of a third party. That aspect of the ruling was a significant break from earlier decisions.

The Constitution must take account of vast technological changes, Chief Justice Roberts wrote, noting that digital data can provide a comprehensive, detailed -- and intrusive -- overview of private affairs that would have been impossible to imagine not long ago.

The decision made exceptions for emergencies like bomb threats and child abductions. ''Such exigencies,'' he wrote, ''include the need to pursue a fleeing suspect, protect individuals who are threatened with imminent harm or prevent the imminent destruction of evidence.''

In general, though, the authorities must now seek a warrant for cell tower location information and, the logic of the decision suggests, other kinds of digital data that provide a detailed look at a person's private life.

The decision thus has implications for all kinds of personal information held by third parties, including email and text messages, internet searches, and bank and credit card records. But Chief Justice Roberts said the ruling had limits.

''We hold only that a warrant is required in the rare case where the suspect has a legitimate privacy interest in records held by a third party,'' the chief justice wrote. The court's four more liberal members -- Justices Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor and Elena Kagan -- joined his opinion.

Each of the four other justices wrote a dissent, with the five opinions running to more than 110 pages. In one dissent, Justice Anthony M. Kennedy said the distinctions drawn by the majority were illogical and ''will frustrate principled application of the Fourth Amendment in many routine yet vital law enforcement operations.''

''Cell-site records,'' he wrote, ''are uniquely suited to help the government develop probable cause to apprehend some of the nation's most dangerous criminals: serial killers, rapists, arsonists, robbers and so forth.''

In a second dissent, Justice Samuel A. Alito Jr. wrote that the decision ''guarantees a blizzard of litigation while threatening many legitimate and valuable investigative practices upon which law enforcement has rightfully come to rely.''

The case, Carpenter v. United States, No. 16-402, arose from armed robberies of Radio Shacks and other stores in the Detroit area starting in 2010.

Witnesses said that Timothy Ivory Carpenter had planned the robberies, supplied guns and served as lookout, typically waiting in a stolen car across the street.

''At his signal, the robbers entered the store, brandished their guns, herded customers and employees to the back, and ordered the employees to fill the robbers' bags with new smartphones,'' a court decision said, summarizing the evidence against him.

Prosecutors also relied on months of records obtained from cellphone companies to prove their case. The records showed that Mr. Carpenter's phone had been nearby when several of the robberies happened. He was convicted and sentenced to 116 years in prison.

Mr. Carpenter's lawyers said cellphone companies had turned over 127 days of records that placed his phone at 12,898 locations, based on information from cellphone towers. The records disclosed whether he had slept at home on given nights and whether he attended his usual church on Sunday mornings.

Chief Justice Roberts wrote that the information was entitled to privacy protection.

''Mapping a cellphone's location over the course of 127 days provides an all-encompassing record of the holder's whereabouts,'' he wrote, going on to quote from an earlier opinion. ''As with GPS information, the time-stamped data provides an intimate window into a person's life, revealing not only his particular movements, but through them his 'familial, political, professional, religious and sexual associations.'''

In dissent, Justice Kennedy wrote that GPS devices provide much more precise location information than do cell towers. Chief Justice Roberts responded that cell tower technology is developing quickly.

''As the number of cell sites has proliferated,'' he wrote, ''the geographic area covered by each cell sector has shrunk, particularly in urban areas. In addition, with new technology measuring the time and angle of signals hitting their towers, wireless carriers already have the capability to pinpoint a phone's location within 50 meters.''

Chief Justice Roberts left open the question of whether limited government requests for location data required a warrant. But he said that access to seven days of data is enough to raise Fourth Amendment concerns.

The legal question for the justices was whether prosecutors violated the Fourth Amendment, which bars unreasonable searches, by collecting without warrant vast amounts of data from cellphone companies that showed Mr. Carpenter's movements.

In a pair of recent decisions, the Supreme Court expressed discomfort with allowing unlimited government access to digital data. In United States v. Jones, it limited the ability of the police to use GPS devices to track suspects' movements. And in Riley v. California, it required a warrant to search cellphones.

Chief Justice Roberts wrote that both decisions supported the result in the new case.

As his opinion in Riley pointed out, he wrote, ''cellphones and the services they provide are 'such a pervasive and insistent part of daily life' that carrying one is indispensable to participation in modern society.''

And the Jones decision, he wrote, addressed digital privacy in the context of location information.

''The question we confront today,'' he wrote, ''is how to apply the Fourth Amendment to a new phenomenon: the ability to chronicle a person's past movements through the record of his cellphone signals. Such tracking partakes of many of the qualities of the GPS monitoring we considered in Jones. Much like GPS tracking of a vehicle, cellphone location information is detailed, encyclopedic and effortlessly compiled.''

Technology companies including Apple, Facebook and Google filed a brief urging the Supreme Court to continue to bring Fourth Amendment law into the modern era. ''No constitutional doctrine should presume,'' the brief said, ''that consumers assume the risk of warrantless government surveillance simply by using technologies that are beneficial and increasingly integrated into modern life.''

Older Supreme Court decisions offered little protection for information about businesses' customers. In 1979, for instance, in Smith v. Maryland, the Supreme Court ruled that a robbery suspect had no reasonable expectation that his right to privacy extended to the numbers dialed from his landline phone. The court reasoned that the suspect had voluntarily turned over that information to a third party: the phone company.

Relying on the Smith decision's ''third-party doctrine,'' federal appeals courts have said that government investigators seeking data from cellphone companies showing users' movements do not require a warrant.

But Chief Justice Roberts wrote that the doctrine is of limited use in the digital age.

''While the third-party doctrine applies to telephone numbers and bank records, it is not clear whether its logic extends to the qualitatively different category of cell-site records,'' he wrote. ''After all, when Smith was decided in 1979, few could have imagined 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 the person's movements.''

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

A federal law, the Stored Communications Act, does require prosecutors to go to court to obtain tracking data, but the showing they must make under the law is not probable cause, the standard for a warrant. Instead, they must demonstrate only that there were ''specific and articulable facts showing that there are reasonable grounds to believe'' that the records sought ''are relevant and material to an ongoing criminal investigation.''

That was insufficient, the court ruled. But Chief Justice Roberts emphasized the limits of the decision. It did not address real-time cell tower data, he wrote, ''or call into question conventional surveillance techniques and tools, such as security cameras.''

''Nor do we address other business records that might incidentally reveal location information,'' the chief justice wrote. ''Further, our opinion does not consider other collection techniques involving foreign affairs or national security.''

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CAPTION(S):

PHOTO: The Supreme Court's decision will protect ''deeply revealing'' records associated with 400 million electronic devices. (PHOTOGRAPH BY TOM BRENNER/THE NEW YORK TIMES) (A16)

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