

Divided Supreme Court Rules Police Need a Warrant for Cell Phone Location Data

June 22, 2018 - The US Supreme Court has decided that police need to obtain a search warrant to gain access to cell phone location data. Most police agencies have been using simple subpoenas to request this data from telecommunications carriers. The ruling means that police agencies now need to show probable cause to a judge in order to obtain this data.

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The court was sharply divided on this issue. The ruling was 5 to 4 but it wasn't along the typical partisan lines that have been common on the court in recent years. The majority opinion was written Chief Justice John Roberts. He was joined by justices Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor and Elena Kagan.

Roberts wrote, "We decline to grant the state unrestricted access to a wireless carrier's database of physical location information." While the decision is good for matters of personal privacy, it is also likely to cause a lot of confusion. That's because Roberts made clear that there are acceptable exceptions to it. He wrote, "Such exigencies include the need to pursue a fleeing suspect, protect individuals who are threatened with imminent harm or prevent the imminent destruction of evidence." It will be up to police and the courts to decide when "such exigencies" exist.

The decision was a significant departure from what many people thought was established law. Until this decision, the court had always held that personal records held by third parties - in this case, location data held by a cellular phone company - weren't private. The theory was that anyone who knowingly provided information to a third party didn't have an expectation of privacy. But Roberts wrote, "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." That line indicates that a wide variety of other electronic records may also be covered.

In what could be a prophetic dissent, Justice Samuel Alito wrote that he decision all but "guarantees a blizzard of litigation while threatening many legitimate and valuable investigative practices upon which law enforcement has rightfully come to rely."

The decision overturns the conviction of Timothy Ivory Carpenter of Detroit, MI. Carpenter was convicted of planning and participating in several armed robberies. Police were able to place him near the scene of the crimes by using subpoenaed cell phone location data. His conviction wasn't entirely because of the phone data but there is no doubt that it was a major consideration. Carpenter had been sentenced to 116 years in prison. Prosecutors will now need to decide

if they have enough evidence to retry him without the cell phone data.

byJim Malmberg

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