Justices ponder need for warrant for cellphone tower data

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In this Feb. 17, 2016, file photo an iPhone is seen in Washington. The Supreme Court is hearing a case on Nov. 29, 2017, about privacy in the digital age that tests whether police generally need a warrant to review cellphone tower records. Police use the records to help place suspects in the vicinity of crimes. Rights groups across the political spectrum, media organizations and technology experts are among those arguing that it is too easy for authorities to learn revealing details of Americans' lives merely by examining the records kept by cellphone service companies. (AP Photo/Carolyn Kaster, File)

Like almost everyone else in America, thieves tend to carry their cellphones with them to work.

When they use their phones on the job, police find it easier to do their jobs. They can get cellphone tower records that help place suspects in the vicinity of crimes, and they do so thousands of times a year.

Activists across the political spectrum, media organizations and technology experts are among those arguing that it is altogether too easy for authorities to learn revealing details of Americans' lives merely by examining records kept by Verizon, T-Mobile and other cellphone service companies.

On Wednesday, the Supreme Court hears its latest case about privacy in the digital age. At issue is whether police generally need a warrant to review the records.

Justices on the left and right have recognized that technology has altered privacy concerns.

The court will hear arguments in an appeal by federal prison inmate Timothy Carpenter. He is serving a 116-year sentence after a jury convicted him of armed robberies in the Detroit area and northwestern Ohio.

Investigators helped build their case by matching Carpenter's use of his smartphone to cell towers near Radio Shack and T-Mobile stores that had been robbed. The question is whether prosecutors should have been required to convince a judge that they had good reason, or probable cause, to believe Carpenter was involved in the crime. That's the standard set out in the Constitution's Fourth Amendment, which also prohibits unreasonable searches. Prosecutors obtained the records by meeting a lower standard of proof.

The American Civil Liberties Union, representing Carpenter, said in court papers that the records "make it possible to reconstruct in detail everywhere an individual has traveled over hours, days, weeks or months."

In Carpenter's case, authorities obtained cellphone records for 127 days and could determine when he slept at home and where he attended church on Sunday, said the ACLU's Nathan Freed Wessler.

Courts around the country have wrestled with the issue. The most relevant Supreme Court case is nearly 40 years old, before the dawn of the digital age, and the law on which prosecutors relied to obtain the records dates from 1986, when few people had cellphones.

The judge at Carpenter's trial refused to suppress the records, and a federal appeals court agreed. The Trump administration said the lower court decisions should be upheld.

Nineteen states supporting the administration said the records "are an indispensable building block" in many investigations. There is no evidence the records have been used improperly and requiring a warrant for them would result in more crimes going unsolved, the states said.

The administration relied in part on a 1979 Supreme Court decision that treated phone records differently than the conversation in a phone call, for which a warrant generally is required.

The court said in Smith v. Maryland that telephone users have no privacy right to the numbers they dial. Not only must the phone company complete the call using its equipment, but it also makes a record of calls for billing and other purposes, the court said.

But that case involved a single home telephone.

More recently, the justices have acknowledged that the wonders of technology also can affect Americans' privacy, and also struggled with striking the right balance.

Speaking in New Zealand last summer, Chief Justice John Roberts said he and his colleagues are not experts in the rapidly changing field. But he also reaffirmed his view as expressed in a 2014 opinion that generally requires police to get a warrant to search the cellphones of people they arrest.

"I'll say it here: Would you rather have law enforcement rummaging through your desk drawer at home, or rummaging through your iPhone?" Roberts asked. "I mean, there's much more private information on the iPhone than in most desk drawers."

Justices Samuel Alito and Sonia Sotomayor also have written about their concerns over technology's effect on privacy.

In that same 2014 case, Alito said Congress is better situated than the courts to address the concerns. Two years earlier, Sotomayor said the court may need to bring its views in line with the digital age. "I for one doubt that people would accept without complaint the warrantless disclosure to the Government of a list of every Web site they had visited in the last week, or month, or year," she wrote in a 2012 case about police installation of a tracking device on a car without a warrant.

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