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SEARCHES AND THE FOURTH AMENDMENT

The Fourth Amendment

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

What is a “search”?

What is a “reasonable” search?

Tracking Movements Through Cell Site Location Information

Police suspected Tim of being involved in several appliance store robberies in multiple locations in two neighboring states. The police did not have enough information to arrest him, but wanted to gather more information that might link him to these crimes. After obtaining his cell phone number and learning that Sprint was his cell phone provider, the police requested and received from Sprint records of cell site location information (CSLI) that would determine the whereabouts of Timothy's cell phone 24/7 over a four month period in the past.

Cell phones tap into the wireless network through a set of radio antennas mounted on towers called "cell sites." Cell sites typically have several directional antennas that divide the covered area into sectors. Cell phones scan their environment looking for the best signal, which typically comes from the closest cell site. Most smartphones tap into the wireless network several times a minute whenever their signal is on, even if the owner is not using the phone. Each time that a cell phone connects to a cell site, the cell phone provider logs a time-stamped record of the cell site and particular sector that was used, which is called Cell Site Location Information (CSLI). The precision of this information depends on the size of the geographic area covered by the cell site. In more compact coverage areas, such as cities, the delineated area is more precise, but can still range between a dozen and several hundred city blocks. In more rural areas, the area of the sector covered can be up to 40 times more imprecise.

With the CSLI information, the police were able to produce maps that placed Tim's phone near several of the robberies. This evidence was introduced at trial. Tim was convicted on several robbery counts and sentenced to more than 100 years in prison.

Tim is challenging the introduction of the CSLI records at his trial, arguing that the police violated the Fourth Amendment in obtaining them, because the obtaining of the records was a "search" under the Fourth Amendment, for which they had neither probable cause nor a warrant. He is arguing that the CSLI evidence be suppressed and the case be retried without this evidence.

You are the law clerk to Justice Ginsburg-Thomas. What should she decide?

Questions

- 1. Do you think that the police's obtaining of the CSLI is a "search" under the Fourth Amendment?**
- 2. To whom does the CSLI information belong? Does this make a difference to your answer?**
- 3. Should the *amount* or *type* of information that the police obtained make a difference to your answer?**
- 4. Does it make any difference how *precise* the location information is?**
- 5. Does it matter to you that the CSLI is created automatically once a person turns on her cell phone, and that the user does not choose whether to disclose her location to the cell phone service provider?**