No. 20-6194

In the Supreme Court of the United States

IN RE BRIAN E. VODICKA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court's unanimous decision in *Riley v. California* 134 S. Ct. 2473 (2014) held that the warrantless search and seizure of digital contents of a cell phone during an arrest is unconstitutional. This Court's decision in *Carpenter v. United States* 138 S. CT. 2206 (2018) held that a warrant is required for police to access cell site location information from a cell phone company. Without warrants, the above searches and seizures constitute violations of Fourth Amendment right to be free from unreasonable searches. The trial court ordered the enforcement of a subpoena issued by a private citizen debt collector and served on Petitioner's cell phone company to search and seize the digital content (including cell site location information) related to Petitioner's cell phone. Simultaneously, the trial court entered an order granting the private citizen the authority to disclose third parties any document obtained from the cell phone company. Upon requests for review, the state appellate court denied Petitioner's petition for writ of mandamus followed by the state supreme court denying Petitioner's petition for writ of mandamus. The questions presented are:

1. Whether, in holding that a private citizen can lawfully search and seize the digital contents of a cell phone without a warrant, the state supreme court decision directly conflicts with this Court's decisions in *Riley* and *Carpenter.*

2. Whether the state supreme court's denial of the petition for writ of mandamus was arbitrary and capricious.

PARTIES TO THE PROCEEDINGS

Petitioner Brian E. Vodicka was a defendant in the trial court and a relator in the court of appeals and supreme court.

Respondent Michael B. Tobolowsky, Executor of the Estate of Ira E. Tobolowsky, was the plaintiff in the trial court, a real party in interest to this mandamus petition in the court of appeals, and a non-participating real party in interest to this mandamus petition in the supreme court.

Respondent Honorable Judge Donald J. Cosby was the trial court presiding judge and a non-participating respondent to this mandamus petition in the court of appeals and supreme court.

Respondent Stephen C. Schoettmer was the counsel of record for the trial court plaintiff and a non-participating counsel for real party in interest to this mandamus petition in the supreme court.

Respondent Steven B. Aubrey was a defendant in the trial court, a real party in interest to this mandamus petition in the court of appeals, and relator to this mandamus petition in the supreme court.

RELATED PROCEEDINGS

14th District Court Dallas County, Texas:

Tobolowsky v. Aubrey and Vodicka, No. DC-15-08135 (Aug. 22, 2019) (granting motion for reconsideration)

Tobolowsky v. Aubrey and Vodicka, No. DC-15-08135 (Aug. 22, 2019) (granting motion for reconsideration)

Fifth Court of Appeals of Texas:

In re Brian E. Vodicka, No. 05-19-01067-CV (Sept. 10, 2019) (granting motion to stay trial court's orders granting reconsideration and modification)

In re Brian E. Vodicka, No. 05-19-01067-CV (Jan. 10, 2020) (denying petition for writ of mandamus and lifting the stay orders)

Texas Supreme Court:

In re: Brian E. Vodicka and Steven B. Aubrey, No. 20-0042 (Jan. 30, 2020) (granting motion to stay the trial court's order granting reconsideration)

In re: Brian E. Vodicka and Steven B. Aubrey, No. 20-0042 (Feb. 4, 2020) (granting motion to stay the trial court's order granting modification)

In re: Brian E. Vodicka and Steven B. Aubrey, No. 20-0042 (June 5, 2020) (denying petition for writ of mandamus and lifting the stay orders)

In re: Brian E. Vodicka and Steven B. Aubrey, No. 20-0042 (July 31, 2020) (denying motion for rehearing)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

State Statutes

Rules

Constitutional Provisions

Other Authorities

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No. _____

IN RE BRIAN E. VODICKA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

Petitioner Brian E. Vodicka respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Texas in this case.

INTRODUCTION

This case involves a trial court authorizing a debt collector to execute third-party subpoenas on cell phone providers to search and seize private and confidential digital contents of a cell phone. While this Court held that warrantless search and seizure of cell phone digital content during an arrest by police is unconstitutional, the state courts have ruled that bill collectors are not held to the same standard as law enforcement and without probable cause or warrants, subpoenas served by a lawyer is sufficient to search and seize the same content. This petition is being presented because of glaring conflict between this Court's decisions and the recent rulings in state courts, which if not corrected, promotes a dangerous legal precedent that upends long established industry standards precluding debt collectors from collection efforts that violate a debtor's "reasonable expectation of privacy." *See Katz v. United States*, 389 U.S. 347 (1967).

OPINIONS BELOW

The memorandum opinion of the court of appeals is attached as Appendix B (App. 2a-3a). The orders of the trial court are attached as Appendix C (App. 4a-5a) and Appendix D (App. 6a-7a). The order of the court of appeals to stay the trial court's orders is attached as Exhibit G (App. 12a). The orders of the supreme court to stay the trial court's orders are attached as Exhibit H (App. 13a) and Exhibit I (App. 14a).

JURISDICTION

The judgment of the supreme court was entered on June 5, 2020 (App. 8a-9a). A timely petition for rehearing was thereafter denied on July 31, 2020 (App. 11a). The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fundamental Right to Privacy:

> The right to privacy refers to the concept that one's personal information is protected from public scrutiny. U.S. Justice Louis Brandeis called it "the right to be left alone." While not explicitly stated in the U.S. Constitution, some amendments provide some protections.

United States Constitution, Amendment IV:

> 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 persons or things to be seized.

STATEMENT OF THE CASE

A. Factual Background

In May 2017, Petitioner, a Florida resident, became an out of state judgment debtor following a trial in Texas, which he was unable to attend. The plaintiff in the trial court case, Respondent Michael B. Tobolowsky, Executor of the Estate of Ira E. Tobolowsky ("Respondent"), became the judgement creditor.

In September 2018, Respondent and his counsel began serving sixteen (16) third-party subpoenas duces tecum on Petitioners financial institutions, email provider, cell phone providers, and crossed over four (4) state borders to serve one on Petitioner's landlord in Florida, all in search of assets to satisfy the debt. The aggressive subpoenas sought 34 months of historical digital records from each of the companies, which included: Sprint Spectrum, L.P.; Verizon Wireless Telecom, Inc.; and T-Mobile USA, Inc. The subpoenas commanded that if the cell phone providers failed to produce the following documents for inspection and copying, they would be in contempt of court:

> "1. **Specialized Location Records:** All call, text and data connection location information, related to all specialized carrier records that may be referred to as NELOS (Network Event Location System), RTT (Real Time Tool), PCMD (per Call Measurement Data), TDOA or Timing Advance Information (also known as TrueCall), Mediation Records, E9-1-1, and/or historical GPS/Mobile Locate Information which shows GPS location (longitude and latitude) and Cell-Site and sector of the device in relationship to the network when connected to the network for the above referenced number.
>
> 2. **Call / Text / Data Detail Records:** All records associated with the identified mobile number 512-659-7636, also to include all numbers that communicate with this listed number relating to all delivered. and undelivered inbound and outbound calls, text messages, and text message content to any of the above listed numbers, all voice mail and

all data connections from January l, 2016 to October 1, 2018, and to include Cell-site and sector, date, time, direction, duration, number called or text to and/or received from, and bytes up/down, information related to each call, text or data connection, all text message content, and voicemails, as well as Call to Destination / Dialed Digits search for all numbers listed above, Please preserve all cell-site and sector information related to each call, text, or data connections.

3. **Electronically Stored Records:** All records associated with the identified mobile number 512-659-7636, to include all stored communication or files, including voice mail, text messages, including numbers text to and received from and all related content, e-mail, digital images (e.g., pictures), contact lists, video calling, web activity (name of web site or application visited or accessed), domain accessed, data connections (to include Internet Service Providers (ISPs), Internet protocol (IP) addresses, (IP) Session data, (IP) Designation Data, bookmarks, data sessions, name of web sites and/or applications accessed), date and time when all web sites, applications, and/or third party applications were accessed and the duration of each web site, application, and/or third party application was accessed, and any other files including all cell site and sector information associated with each connection and/or , record associated with the cell number identified as 512-659-7636.
4. **Carrier Key** related to call detail, text messages, data connections, IP logs, IP Sessions, web site and/or application connections, and cell site information.
5. **Cell Site List(s)**: List of all cell-sites for the period January 1,2016 to October 1, 2018, for all state(s) in which the above records used cell locations. Cell site lists to include switch, cell-site number, name, physical address, longitude and latitude, all sectors associated with each cell-site, azimuth, and beam-width of each related sector."

In November 2018, the trial court conducted a hearing to rule on various filed motions to quash the third-party subpoenas. Citing Petitioner's right to privacy was at risk, the trial court entered an order granting his motions to quash Respondent's subpoenas served on Sprint Spectrum, L.P., Verizon Wireless Telecom, Inc., and T-Mobile USA, Inc. The presiding judge included a handwritten note on the order

stating that Petitioner's documents to be obtained would contain confidential information that shall remain confidential and not be disclosed to third parties.

On August 14, 2019, ten (10) months later and at the request of Respondent, the trial court conducted a hearing to reconsider the motions that quashed the third-party subpoenas served on Petitioner's cell phone providers. On August 22, 2019, the trial court entered two orders reversing the order it entered the prior year. One order denied Petitioner's motions to quash, which were previously granted, and ordered the cell phone providers to comply within a quick twenty-one (21) days. (App. 4a-5a.) The second order modified the judge's handwritten note, authorizing Respondent to disclose the confidential documents to any third party of his choice upon agreement by the third party to execute a confidentiality agreement. (App. 6a-7a.) Respondent proceeded to enforce the subpoenas and seize years of Petitioner's cell phone data including: location records, historical GPS/mobile locate information, digital images, text messaging content, electronically stored records, and much more.

B. The federal question was reviewed by the trial court

On August 12, 2019, two days prior to the hearing and ten days prior to entering the orders authorizing enforcement of Respondent's subpoenas duces tecum, Petitioner filed the first supplement to his response to Respondent's motion for reconsideration and modification of the trial court's November 2018 order. For the trial court's consideration, the first supplement raised and preserved, in the original trial court proceedings, the same federal question and U.S. Supreme Court decisions as is presented here including, in part:

> The United States Supreme Court in *Carpenter v. United States* 138 S. Ct. 2206 (2018) reviewed the role of cell phones in society and the rights of the government to obtain such information. The Supreme Court reversed the holding of the federal Sixth Circuit, which had previously held Carpenter lacked a reasonable expectation of privacy in cell phone information known as location information collected by the FBI because he had shared that information with his wireless carriers. The Supreme Court in *Carpenter* held that Carpenter did have a reasonable expectation of privacy *vis a vie* governmental seizure of records.
>
> The Court ruled that the cell phone information constituted a Fourth Amendment search requiring a warrant based upon probable cause. "The Fourth Amendment protects not only property interests but certain expectations of privacy as well. *Katz v. United States* 389 U.S. 347, 351." "The "basic purpose of this Amendment," our cases have recognized, "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Municipal Court of City and County of San Francisco,* 387 U.S. 523 (1967). The Founding generation crafted the Fourth Amendment as a "response to the reviled `general warrants' and `writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Riley v. California* 134 S. Ct. 2473 (2014)
>
> Tobolowsky, a private citizen cannot assert "official intrusion" under the Fourth Amendment. Chief Justice Roberts, writing for the Court, stated: "When an individual "seeks to preserve something as private," and his expectation of privacy is "one that society is prepared to recognize as reasonable," we have held that official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause. *Smith v, Maryland,* 442 U.S., at 740, 99 S. Ct. 2577 (internal quotation marks and alterations omitted). *Carpenter*, at 2213. "First, that the Amendment seeks to secure "the privacies of life" against "arbitrary power." *Boyd v. United States,* 116 U.S. 616 (1886).

Petitioner lives approximately 1,300 miles from the trial court location, yet, just like his multiple other motions requesting to appear at the hearings by telephone, the motion Petitioner filed for the August 14, 2020 hearing was denied. The trial court's reasoning for granting such an abusive invasion of Petitioner's privacy is unknown. The trial court's orders do not contain statements of reasoning. Careful

inspection of the reporter's record and searching specific words reflects that throughout the hearing the judge spoke the word "privacy" twice, in relation to stipulations imposed on Respondent regarding disclosure of Petitioner's the cell phone data. The judge stated: "Everybody is entitled to some confidentiality with respect to personal information." However, reading and searching for the names "Riley" and "Carpenter" comes up empty. None of this Court's decisions or cases submitted in Petitioner's filings were discussed at the hearing and not even the names "Supreme Court," "U.S.," or "United States" are mentioned throughout the hearing.

The federal question seeking review was timely and properly raised in the original trial court case, prior to the court's rulings that authorized the warrantless search and seizure of Petitioner's cell phone information.

C. The federal question was reviewed by the court of appeals

On September 4, 2019, Petitioner filed his Motion for Emergency Stay with the court of appeals requesting the court stay enforcement of the trial court's August 22, 2019 orders pending resolution of Petitioner's concurrently filed Petition for Writ of Mandamus. The first issue presented in the petition stated:

> "The trial court abused its discretion by entering orders to serve subpoenas on third parties to produce Relator's personal, private, privileged, and confidential information, violating Relator's U.S. Constitutional right to privacy pursuant to *Carpenter v. United States* 138 S. CT. 2206 (2018)."

Petitioner argued that the trial court abused its discretion when it entered its orders that authorized Respondent to seize confidential cell phone data and disclose

it with minimal stipulation. Petitioner argued the fundamental constitutional right to privacy through this Court's decisions in *Griswold* v. *Connecticut* 381 U.S. 479 (1965), holding that the various Bill of Rights and the 1st, 3rd, 4th, 5th and 9th Amendments create a "zone of privacy" for every citizen to be left alone and in *Carpenter*, holding that that the government violates the Fourth Amendment to the United States Constitution by accessing historical records containing the physical locations of cell phones without a search warrant. After *Carpenter*, government entities must obtain a warrant in order to access the information.

On September 10, 2019, the court of appeals granted Petitioner's motion to stay the trial court's orders. (App. 12a.)

On October 14, 2019, Respondent filed his response in the case and argued that Petitioner could not rely on *Carpenter*. Respondent proposed that a party to a criminal action possess greater rights to privacy than a party to a civil action, stating:

> "*Carpenter* protects *criminal defendants* from unreasonable searches and seizures under the Fourth Amendment. However, Fourth Amendment rights do not apply in civil proceedings and Relator cites no case law for the proposition that Fourth Amendment standards governing criminal matters govern discovery in civil cases."

On January 10, 2020, the court of appeals entered an order denying Petitioner's petition for writ of mandamus and lifted the stay it issued on September 10, 2020. (App. 1a.) On the same date, the court of appeals issued a memorandum opinion. (App. 2a-3a.) The court's memorandum opinion had very little reasoning and it skirted the federal question, simply stating;

> "relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. After reviewing the petition, the

> mandamus record, and real party's response, we conclude relator has not shown he is entitled to the relief requested." (App. 2a-3a.)

The federal question seeking review was timely and properly raised in the court of appeals, which had jurisdiction pursuant to Section 22.221 of the Texas Government Code to "issue writs of mandamus and all other writs necessary to enforce the jurisdiction of the Court." The court's jurisdiction to issue writs of prohibition was also conferred by Article V, Section 5(c) and 6 of the Texas Constitution. This Court has jurisdiction to review the judgment on a writ of certiorari.

D. The federal question was reviewed by the supreme court

On January 21, 2020, Petitioner filed his Motion for Emergency Stay with the supreme court requesting the court stay enforcement of the trial court's August 22, 2019 orders pending resolution of Petitioner's concurrently filed Petition for Writ of Mandamus. The first issue presented in the petition stated:

> "Under *Riley* and its progeny and under *Carpenter* and its progeny, did the trial court abuse its discretion when it granted a private citizen access to historical cellphone location records after the U.S. Supreme Court determined that acquisition of such records is a Fourth Amendment search?"

Petitioner briefed the supreme court on the constitutional implications of this Court's decisions in *Riley, Carpenter, Katz,* and *Smith,* rights to privacy, and warrantless search and seizure of cell phone digital content.

On January 30, 2020, the supreme court granted Petitioner's motion to stay the trial court's order that authorized enforcement of the subpoenas duces tecum.

(App. 13a.) As well, the order requested Respondent to respond to the petition for writ of mandamus on or before February 10, 2020.

On January 30, 2020, one of the third-party providers contacted Petitioner and informed him that the company had already produced all of the documents responsive to Respondent's subpoena. With knowledge that Respondent was in possession of private and confidential information, Petitioner filed another Motion for Emergency Stay with the Court, intending to stop Respondent from disclosing and distributing the constitutionally protected information.

On February 4, 2020, the supreme court granted Petitioner's motion to stay the trial court's order that authorized Respondent to freely disclose the documents and information responsive to the subpoenas. (App.14a.)

On February 24, 2020, Respondent filed a letter in the case and informed the supreme court that the third parties had already complied with the trial court's order, rendering the issues raised in the case, moot. Petitioner believes this issue is only temporarily moot as Respondent is likely to serve a new round of subpoenas on the same third parties at some time in the future.

On June 5, 2020, the supreme court published orders on causes and listed Petitioner's case under the heading: The Following Petitions for Writ of Mandamus are Denied. (App. 8a-10a.) Notations to Petitioner's case reflect that the supreme court lifted the two stay orders it had previously issued.

On June 22, 2020, Petitioner timely filed a motion for rehearing in the supreme court appeal. Though there no longer exists potential relief for Petitioner because his

private and confidential cell phone information has already been seized without a warrant. However, the rulings of the lower courts that boldly conflict with the decisions of this Court, could potentially have widespread deleterious effects on the practices of the substantial debt collection industry, those who are in debt and own cell phones, and the courts.

On July 31, 2020, the supreme court denied Petitioner's request for rehearing. (App. 11a.)

The supreme court had jurisdiction over this case under Government Code Section 22.001(a)(3) and (6) because this case presented jurisprudentially important questions regarding the constitutionality of subpoenas that sought digital content and historical cellphone location records without search warrants.

The federal question was timely and properly raised with the trail court, court of appeals and supreme court. This Court has jurisdiction to review the judgment on a writ of certiorari.

REASONS FOR GRANTING THE PETITION

Today, approximately 1 in 3 U.S. adults or 77 million people have debt in collections. Consumer debt grew to almost $14 trillion in 2019, and debt collection cases continue to dominate court dockets. Most civil cases today are brought by businesses against individuals for money owed. This case is not just about Petitioner; it is about the other 77 million citizens whose lives are already difficult. If the federal question here is not reviewed and corrected by this Court, Pandora's box will have

been opened and 77 million people will likely resist vehemently a debt collector's warrantless Fourth Amendment seizure of the content stored on his or her cell phone.

A. The court of appeals relied on Respondent's interpretation of *Carpenter*: A person suspected of a crime has greater rights and protections under the U.S. Constitution a than a citizen who is not suspected of a crime

Carpenter clearly establishes *every* person's right to be free from the Fourth Amendment searches and seizures created and caused by Respondent and the trial court. With total disregard for this Court's opinion, Respondent (a lawyer) took a left turn and traveled down a very unexpected and bizarre path. In his response to Petitioner's petition for writ of mandamus, filed in the court of appeals, Respondent asserts that *Carpenter* is not specific to rights of a person and instead, applies the rights of court proceedings, specifically criminal proceedings, stating:

> "Fourth Amendment rights do not apply in civil proceedings and Relator cites no case law for the proposition that Fourth Amendment standards governing criminal matters govern discovery in civil cases."

In other words, if Respondent had been a police officer and he suspected Petitioner of criminal activity, under *Carpenter,* Respondent would be required to have probable cause and a search warrant to access and seize Petitioner's cell phone data. However, because Respondent is not a police officer and Petitioner is not suspected of criminal activity, under *Carpenter*, Respondent can rightfully access, seize, and disclose to third parties, Petitioner's cell phone data. Respondent's interpretation of *Carpenter* is ludicrous.

Carpenter does not offer constitutional protections for legal proceedings; it establishes rights and protections for people. And the protections apply to everyone's cell phones, even Respondent's. In *Carpenter*, **a person** does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary, "what [one] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Katz*, 389 U. S., at 351–352. A majority of this Court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements. *Jones*, 565 U. S., at 430 (ALITO, J., concurring in judgment); *id.*, at 415 (SOTOMAYOR, J., concurring). Prior to the digital age, law enforcement might have pursued a suspect for a brief stretch, but doing so "for any extended period of time was difficult and costly and therefore rarely undertaken." *Id.*, at 429 (opinion of ALITO, J.). For that reason, "society's expectation has been that law enforcement agents and others would not— and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period." *Id.*, at 430.

Carpenter goes straight to the heart of the federal question at issue in this case. In *Carpenter*, mapping a cell phone's location over the course of 127 days provides an all-encompassing record of the holder's whereabouts. 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." *Id.*, at 415 (opinion of SOTOMAYOR, J.). These location records "hold for many Americans the 'privacies of life.' *Riley*, 573

U. S., at ___ (slip op., at 28) (quoting *Boyd*, 116 U. S., at 630). And like GPS monitoring, cell phone tracking is remarkably easy, cheap, and efficient compared to traditional investigative tools. With just the click of a button, the Government can access each carrier's deep repository of historical location information at practically no expense.

Respondent and the trial court's order were far more aggressive than the 127 days of mapping a cell phone's location. Respondent's subpoenas duces tecum and the trial court's order retrieved 1,030 days of mapping Petitioner's cell phone location.

The court of appeals offered scant reasoning in the only opinion for this Court to study, stating:

> "relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. After reviewing the petition, the mandamus record, and real party's response, we conclude relator has not shown he is entitled to the relief requested." (App. 2a-3a.)

Carpenter and other cases decided by this Court that establish a person's rights to privacy were presented to the court of appeals in the petition and the mandamus record with ripe with *Carpenter, Riley*, *Katz* and others. So if "after reviewing the petition, the mandamus record, and real party's response," the court of appeals concluded Petitioner had not shown he was entitled to the relief requested, then the court of appeals only relied on Respondent's response, which opposed the petition for writ of mandamus based on the interpretation that *Carpenter* is a protection for criminal proceedings, which was wrong.

B. The orders and opinions of the trial court, court of appeals, and supreme court have decided an important federal question in a way that conflicts with relevant decisions of this Court

The orders and opinions of the three (3) state courts' decided a federal question that is important to many people in a way that completely contradicts this Court's decision. This Court held that cell phone data and location information is private and cannot be seized by a debt collector with a subpoena. The state courts decided that Carpenter is only relevant to proceedings and that because this case is civil, Carpenter does not establish any rights or protections for Petitioner thereby rendering his cell phone information unprotected by the Fourth Amendment.

The Stored Communications Act (SCA), part of the Electronic Communications Privacy Act (ECPA), creates privacy protections for the content of stored communications and the related non-content information. Orders made under Section 2703(d), known as 2703(d) orders, can compel the production of the content of stored communications or related non-content information, when "specific and articulable facts show[] that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation." This standard of suspicion is considerably lower than the probable cause required for a typical warrant.

With respect to CSLI, he points out that "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 a footnote, Roberts notes that that court does not specifically hold on whether fewer days of CSLI could be accessed without a warrant (a weeks' worth of records were accessed in Carpenter). "[W]e need not decide whether there is a limited period for which the Government may obtain an individual's historical CSLI free from Fourth Amendment scrutiny, and if so, how long that period might be. It is sufficient for our purposes today to hold that accessing seven days of CSLI constitutes a Fourth Amendment search. "A warrant is required for police to access cell site location information from a cell phone company—the detailed geolocation information generated by a cellphone's communication with cell towers.

At issue in this case was whether cell-site location information (CSLI), could be accessed by law enforcement without a warrant. CSLI is generated when a phone communicates with a cell tower. Roberts concludes by emphasizing once again "the deeply revealing nature of CSLI, its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection," writing that "the fact that such information is gathered by a third party does not make it any less deserving of Fourth Amendment protection."

Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans "the privacies of life," *Boyd v. United States*, 116 U.S. 616 (1886)

The federal question was timely and properly raised with the trail court, court of appeals and supreme court. This Court has jurisdiction to review the judgment on a writ of certiorari.

C. The court of appeals failed to apply the proper legal standard in its memorandum opinion, holding that Petitioner failed to "show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy"

Precedent regarding access to cell phone data was established by this Court's decisions. Only law enforcement with a search warrant can access the same cell phone content and information that Respondent accessed with a subpoena. And Respondent is a lawyer, not a police officer.

The trial court abused its discretion by entering orders that were so clearly a violation of Petitioner's rights. Not only were the trial court's decisions and orders erroneous, they were outlandish. The orders entered are voidable because: (1) they violate Tex. R. Civ. P. 329b; (2) they grossly violate Petitioner's constitutional rights to privacy; (3) they exceed the jurisdiction of the court; and (4) the court acted in a manner inconsistent with due process of law.

When attacking a void order by mandamus, it is not necessary to show no adequate remedy at law exists. See *In re Southwestern Bell Telephone Co.*, 43 Tex. Sup. Ct. J. 1007 WL 854253 (Tex. June 29, 2000) (per curiam). Mandamus will lie to correct a void order, that is, an order the trial court had no power or jurisdiction to render. *See Urbish v. 127th Judicial Dist. Court*, 708 S.W.2d 429, 431 (Tex. 1986) (orig. proceeding). If an order is void, the relator need not show he lacks an adequate appellate remedy, and mandamus relief is appropriate. *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000) (orig. proceeding).

D. Mandamus is appropriate to correct the clear and indisputable legal errors of the trial court, court of appeals, and supreme court.

Of the three (3) state courts, only the court of appeals offered a scintilla of reasoning to support the orders granting access to Petitioner's cell phone information or the orders and opinion denying review of the trial court tragedy. The state courts shied away from the obvious federal question and the wisdom and simplicity in *Carpenter*, presented at length in the petition for mandamus and presented in the mandamus record court. Instead the court relied on Respondent's assertion that *Carpenter* has no relevance in civil proceedings. The legal errors are indisputable and mandamus is appropriate to correct the errors.

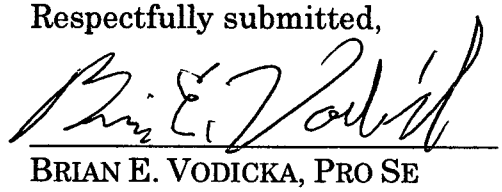
Finally, the decision below threatens to cause serious and immediate repercussions in the debt collection industry. It creates incentives for overly aggressive creditors to invade private citizen's most intimate "zone of privacy" using the courts to seize Fourth Amendment protected information.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated this 29th day of October 2020.

Respectfully submitted,



BRIAN E. VODICKA, PRO SE