

21-7100

ORIGINAL

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ALKIOHN DUNKINS — PETITIONER
(Your Name)

vs.

Commonwealth of Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF PENNSYLVANIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ALKIOHN DUNKINS # NS0632
(Your Name)

SCI WAYMART 11 Fairview Drive
(Address)

WAYMART, PA 18472
(City, State, Zip Code)

484-542-8886
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Whether the Lower Court's erred by Denying Mr. DUNKINS Fourth Amendment Motion to Suppress the Cell-site information under this Courts opinion in Carpenter?
- 2.) Whether the Lower Court's opinion in this Case Substantially depart's from this Courts decision in Carpenter becuase the Cell Site information is a Distinction Without a Difference?
3. Whether the College Compulsory Waiver Policy is Unconstitutional Under the 4th Amendment, becuase it was invidiously obtained without the student being aware of its illegality at the time of Execution that makes it insufficient on its Face?
- 4.) Whether the rights preserved by the Fourth Amendment to the United States Constitution, the right to be secure in their persons protects individuals from the Government obtaining CSLI DATA through tower Dumps without a Warrant Supported by probable Cause?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

COMMONWEALTH V. DUNKINS, No. 45 MAP2020, SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT. Judgement entered Nov. 17, 2021.

COMMONWEALTH V. DUNKINS, No. 1003 EDA 2019, SUPERIOR COURT OF PENNSYLVANIA EASTERN DISTRICT. Judgement entered Feb. 12, 2020.

COMMONWEALTH V. DUNKINS, No. CP-48-CR-0001577-2017, COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY PENNSYLVANIA. Judgement entered Jan. 4, 2019.

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2A. 3d 1174, 1190 (Pa. 2010)

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United States v. Jones, 34,
565 U.S. 400 (2012)

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☒ reported at COMMONWEALTH V. DUNKINS (PA.2020); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the SUPERIOR COURT OF PENNSYLVANIA court appears at Appendix B to the petition and is

- ☒ reported at COMMONWEALTH V. DUNKINS (Pa. Super. 2020) or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Court of Common Pleas of Northampton County, Pennsylvania Court appears at Appendix C. to the petition and is Unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Nov. 17, 2021.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE FOURTH AMENDMENT to the United States Constitution States:

The right of the people to be Secured 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.

THE FOURTEENTH AMENDMENT to the United States Constitution States:

1. All persons born or naturalized in the United States, and Subject to the jurisdiction thereof, are Citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; Nor deny to any person within its jurisdiction the equal protections of the law.

STATUTES AND RULES

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18 Pa. C.S.A. 903 A1 - 18 Pa. C.S.A. 3701 A1T . . . 11,

18 Pa. C.S.A. 2701 A1 11,

18 Pa. C.S.A. 3701 A1 (ii) 11,

18 Pa. C.S.A. 3925 A 11,

28 U.S.C. § 1257(a) 3,

OTHER

BLACKS LAW DICTIONARY, 18, 29,

342 (8th Ed. 2004

On the date DUNKINS was indicted under this Section, 18 Pa. C.S.A. 903 A1 - 18 Pa. C.S.A. 3701A1I stated in pertinent part:

A person is guilty of 'Conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its Commission he:

- (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or Solicitation to Commit Such crime; or
- (2) agrees to aid such other person or persons in the planning or Commission of Such crime or of an attempt or Solicitation to Commit Such crime.

On the date DUNKINS was indicted under this Section, 18 Pa. C.S.A. 2701A1 stated in pertinent part:

Did intend to attempt to Cause or intentionally, knowingly or recklessly Cause bodily injury to another.

On the date DUNKINS was indicted under this Section,
18 Pa. C.S.A 3701A1 (ii) stated in pertinent part:

In the course of committing a theft, threaten
another with or intentionally put another in
fear of immediate serious bodily injury.

On the date DUNKINS was indicted under this Section,
18 Pa. C.S.A 3925A stated in pertinent part:

Intentionally receive, retain or dispose of
movable property of another, knowing that it had
been stolen, or believing that it had probably
been stolen, unless the property is received,
retained or disposed, without the intent to
restore it to the owner.

STATEMENT OF THE CASE

At approximately 2:00am On February 2, 2017, two Masked Men posed as Campus Safety officers to gain entry to the dorm room shared by Greg Farina and William Reilley in the Hassler dormitory building On the Moravian College Campus in Bethlehem PENNSYLVANIA. The Men held Farina and Reilley at gunpoint and stole \$1000 and a jar of Marijuana from Reilley's footlocker. Reilley reported the robbery to Campus officials around 11:00am and, thereafter, Campus police requested that Moravian College's Director of Systems Engineering, Christopher Laird, analyze it's WIFI connection records to compile a list of Students logged On to the Campus WIFI in the Hassler building at the time of the robbery. Laird discovered Only three Moravian College Students logged on to the Campus WIFI at that Location who did not reside in the Hassler building; two were females and the other was Petitioner, AlKiohn Dunkins.

Campus police relayed this DATA to Detective James Ruvolo of the Bethlehem police Department. In the course of his investigation, Detective Ruvolo interviewed Reilley, Petitioner Dunkins and Colin Zarzecki, another Moravian College Student. While petitioner Dunkins, denied being involved in the robbery and told Detective Ruvolo he had not entered the Hassler building since October 2016. Colin Zarzecki told Detective Ruvolo that on February, 3, 2017, the day after the Robbery, petitioner Dunkins bragged to him about Money he stole by posing as Campus Safety officers. Based on the above information, Petitioner Dunkins was arrested and charged with robbery, Conspiracy to Commit robbery, receiving stolen property, and Simple assault.

Prior to trial, Petitioner filed a Motion to Suppress in which he claimed the Campus Police Conducted an illegal Search by obtaining the Hassler Building WIFI Connection records Without a Warrant. During a hearing on the Motion, Laird testified Moravian College Students access the College's WIFI Network by entering their individual usernames and passwords, and that Students may choose to have their devices automatically log on to the network without having to re-enter their username and password each time they want

WIFI access.

The parties also acknowledged Petitioner assented to Moravian College's Computing Resource Policy. The trial Court, Northampton County Court of: Common Pleas denied Petitioner's Suppression Motion and a jury later convicted him of the aforementioned charges. Thereafter, the "trial" Court denied Petitioner's motion for Extraordinary relief requesting the same pursuant to this Court's ruling in Carpenter and sentenced Petitioner to an aggregate term of five to ten years' imprisonment. Following the denial of his Post-Sentence motion, Petitioner filed a direct Appeal in the Superior Court of Pennsylvania and raised the following 6 issues for review on appeal: (1) Whether the Court erred by denying [Appellant's] Motion to Suppress the Cell-Site location information purportedly tracking his Cell-phone and/or his Motion for Extraordinary Relief requesting the same? (2) Whether the evidence at trial was insufficient to sustain the Commonwealth's burden with respect to all charges as there was insufficient evidence to indicate that [Appellant] conspired with another to commit the instant offense? (a.) Whether there was sufficient evidence as to [Appellant's] identity as one of the perpetrators and/or conspirators?

(3) Whether the Verdict was against the Weight of the evidence as while there was evidence that [APPELLANT'S] Cell-phone was in the Vicinity of the Robbery there was no evidence that [APPELLANT] had the phone at the time of the Robbery Nor was there any evidence that [APPELLANT] was present at the scene and (a.) The Witness who proffered that [APPELLANT] admitted to a robbery was unworthy of belief. (4.) Whether the Court erred by denying Mr. Dunkins request to interview the juror consistent with the Sealed hearing notes. (a.) Whether the Court erred by refusing to provide Mr. Dunkins with a copy of the notes of testimony for said In Camera hearing.

In a Unanimous, Published opinion, a three Judge panel of the Superior Court affirmed the "Trial" Courts denial of Suppression. *Commonwealth v. Dunkins*, 229 A.3d 622

In distinguishing *Carpenter* the panel noted the "action by Campus Police in this case is akin to a 'tower pump'". The panel further opined, regardless of whether *Carpenter* was applicable to the present case, [APPELLANT'S] Fourth Amendment claim failed because he abandoned any purported expectation of privacy in the WIFI Connections records due to the fact that he consented to the "Computer Resource" Policy, which expressly authorizes the College to collect and disclose internet data "Composed, transmitted, or received" through the Campus WIFI.

The panel additionally relied on State Law COMMONWEALTH V. SODOMSKY, 939 A.2d 363, 369 (Pa. Super. 2007), which held "If a person is aware of, or freely grants to a third party, potential access to his Computer Contents, he has knowingly exposed the Content to the public and has lost any reasonable expectation of privacy in those Contents" and Federal Case law holding "a defendant Can Voluntarily Consent in advance to a Search as a Condition of receiving Contracted Services." *Id.*, (quoting United States V. Adkinson, 916 F.3d 605, 610 (7th Cir. 2019))

The panel Concluded appellant was not entitled to Suppression because he (1) agreed to Surrender Some privacy rights (2) He was not required to log in or Maintain a Constant Connection and (3) The Campus police Search was akin to a "Tower Dump".

In addressing Petitioner's insufficient evidence claim the Panel based its analysis *Moreso* on the records of the Court, Viewed in light Most favorable to the Verdict winner, (The prosecution). The panel held however, a perpetrator's identity may be established with Circumstantial evidence. *Baumgartner, Supra*. The Panel relied On Precedent of PENNSYLVANIA SUPERIOR COURT'S ruling in COMMONWEALTH V. Ovalles, 144 A.3d 957, 969

(Pa. Super. 2016) (citing COMMONWEALTH V. JONES, 954 A.2d 1194, 1197 (Pa. Super. 2008)) Stating: "This Court has recognized that" "evidence of Identification need not be positive and Certain to Sustain a Conviction." The Panel noted the Moravian Network access records along with the trial testimony of Colin Zarzecki, and Reilley "the Victim" who was interviewed by police, he acknowledged that he knew Petitioner from a previous encounter where Petitioner had "Ripped him off" by taking Marijuana without payment. N.T., 9/5/18, at 41, 49. The Panel agreed with the "trial Court's assessment that there was Sufficient evidence to show Petitioner was one of the perpetrators in the Robbery.

The appellate Court failed to give a analysis On: Whether the Court erred by denying Mr. Dunkins request to interview the Juror Consistent with the Sealed hearing notes. Nor did they analyze or investigate: Whether the Court erred by refusing to provide Mr. Dunkins with a Copy of the Notes of testimony for Said In Camera hearing. The appellate Court also failed to address or investigate the Circumstances of The Contamination by Extraneous influences of the Jury.

The appellate Court also failed to address any analysis on the perjured testimony of Colin Zarzecki who admitted he lied under oath at the preliminary hearing and was convicted with lying under oath.

Petitioner filed a petition for allowance of appeal to the Supreme Court of Pennsylvania through Counsel. On August, 4, 2020 Petitioner was granted allowance to appeal. The Commonwealth granted allocatur *Commonwealth v. Dunkins*, 237 A.3d 415 (Pa. 2020) (Per Curiam) to review: Whether the trial Court erred by denying Suppression of Wireless internet Network (WIFI) Connection records obtained by Police without a Warrant from the Information Technology Department of Moravian College. The Supreme Court of Pennsylvania held Petitioner Dunkins "abandoned any purported expectation of privacy by assenting to the "Computer Resource Policy" and "logging on to the Moravian College WIFI network on his Cell-phone. Thereafter, [Appellant] Specifically agreed he "Cannot and should not have any expectation of privacy with regard to any data... Created or stored on Computers within or connected to the institution's network." Computer Resource Policy.

The COMMONWEALTH held that "these acts by appellant provide clear intent to relinquish any purported expectation of privacy in the WIFI Connection records."

The COMMONWEALTH stated: "Accordingly, we have little difficulty concluding [Appellant] abandoned any purported expectation of privacy in the WIFI records and his Suppression Motion was properly denied" and "To be clear, we do not 'contemplate just one fact' in holding [Appellant] voluntarily abandoned any purported expectation of privacy." "Our analysis recognizes Moravian College required [Appellant] to sign the Computer Policy, which outlined the consequences of using the Network." "However, our analysis also takes into consideration the fact that appellant then voluntarily used the WIFI network on his Cell phone." "Those two facts, taken together, constitute a voluntary abandonment." The Supreme Court of PENNSYLVANIA affirmed the order of The Superior Court ON November, 17, 2021.

Justice Wecht, dissented highlighting that "Considering all circumstances in their totality, and operating under a presumption against Waiver, as we must, the circumstances

of this Case do not suggest that Dunkins' Waiver was knowing, intelligent, or Voluntary."

Also in dissenting he went on to Conclude "The Waiver resembles a Contract of adhesion more than it resembles a Voluntary and intelligent agreement."

See Chepkovich v. Hidden Valley Resort, L.P., 2A.3d 1174, 1190 (Pa.2010) ("An adhesion Contract is a 'standard-form Contract prepared by one party, to be Signed by the party in a weaker position, usually a Consumer who adheres to the Contract with little choice about the terms.'" (quoting BLACK'S LAW DICTIONARY 342 (8th Ed. 2004))

REASONS FOR GRANTING THE PETITION

I. Introduction

The issue should be settled as it has National importance as to whether a college student loses his Fourth Amendment right of privacy, upon the admission into an education institution system under an invalid Waiver provision the School has invidiously influenced on unsuspecting pupils in favor of Law Enforcement officials, in which the Lower Courts has taken sides with the prosecution in a direct contradiction with this Courts decision in Carpenter, and several other Court holdings, by concluding that a college student abandons their Constitutional right through a Compulsory Waiver Policy Fiat, Regardless of the fact the Lower Court glosses over prior analysis and determination of a person's Constitutional rights, without engaging into the required analysis. The Lower Court's predicated Ruling amounts to a gross abuse of discretion.

The nature of the fundamental protection against Constitutional Violations of a Fourth Amendment right and its history both Weigh in favor of taking up this appeal and answering the questions presented in the affirmative. Moreover the holding adopted by the Supreme Court of Pennsylvania thwarts any protection under the 4th Amendment Petitioner May have had. The opinion of the Lower Courts Contradicts Commonwealth precedence or the LACK thereof. This case clearly presents a distinction Without a difference. Accordingly, the questions in this appeal has taken on Constitutional Significance, and this Court should therefore, issue a Writ of Certiorari to the Supreme Court of Pennsylvania.

The Fourth Amendment states:

Protection from Unreasonable Search and Seizure.
"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 Warrant shall issue, but upon probable Cause, supported by oath or affirmation, and particularity describing the place to be Searched, and the person or things to be Seized."

"The Fourth Amendment protects not Only property interest but Certain expectations of privacy as well" Katz v. United States, 389 U.S. 347, 351. Thus, when an individual "Seeks to preserve something as private," and his expectation of privacy is "one that Society is prepared to recognize as reasonable," "official intrusion into that sphere generally qualifies as a Search and requires a Warrant Supported by probable Cause." Smith v. Maryland, 442 U.S. 735, 740. The analysis regarding which expectation of Privacy are entitled to protection is informed by historical Understandings "of what was deemed an un-reasonable Search and Seizure when the Fourth Amendment was adopted." Carroll v. United States, 267 U.S. 132. "These Founding era Understandings Continue to inform this Court when applying the Fourth Amendment to innovations in Surveillance tools." See, e.g., Kyllo v. United States, 533 U.S. 27. Pp 47.

The Fourth Amendment to the United States Constitution embodies the Colonial revulsion against Searches by executive officers Without a Warrant or under broad administrative Warrants, or general Warrants, that had been used in England and the Writs of assistance used in the Colonies. See, e.g., Stanford v. Texas, 379

U.S. 476, 482-85 (1965); Boyd v. United States, 116 U.S. 616 (1886). If the Lower Courts ruling is upheld it would eliminate the protections of the Fourth Amendment this nation was founded on. The Government will have a green light to access any digital footprint it desires or the historical movement of anyone whether there is reason to suspect their involvement in criminal activity or a mere hunch. The Lower Court's decision here is the digital equivalent of the invasive tyranny our Founding Fathers fought so hard to be free from - the unrestricted oversight and prying eye of the Crown into citizen's lives, homes, and most private affairs. This Court's holding in Carpenter should be extended to this case as well, because the school is acting in a law enforcement capacity, under an invidious umbrella of contract law.

The police in petitioner's case did not obtain a search warrant nor court order for the cell site location information ("CSLI"). Petitioner's records were used for the investigation and subsequent trial without judicial review. Instead, the police were given insight into petitioner's exact movements on the night of the

robbery without any showing of probable cause, suspicion or articulable facts of the relevance. In the most basic of terms Carpenter v. United States, 138 S.Ct. 2206, 201 L.Ed. 2d 507 (2018) is on all fours. Without the facts of this case it would still clearly present a fact without a difference. Therefore, the CSLI or geo-tracking information should be and should have been suppressed and the lower court's erred in their holding.

The lower court's reliance on the third-party doctrine is misplaced. The lower court ruled that petitioner did not have an expectation of privacy and abandoned any purported expectation of privacy by assenting to the language of the "Computer Resources" policy of the student handbook, which provides in pertinent part:

Logging into or otherwise connecting to the campus network implies acceptance of this Moravian College and Moravian Theological Seminary policy.

The institution's computing equipment and network resources are dedicated to Moravian business to enhance and support

the educational mission of Moravian College. These resources include all Computers, Workstations and Multi-user Computer systems along with local area networks and Wireless networks as well as connections to other Computer networks via the internet.

The Lower Court held that the "Computer Resource" plain language "informs users of the Campus Wireless network that any connections made to that network are subject to inspection by the College at any time, as well as to disclosure to law enforcement, and that users have no expectation of privacy in that electronic information."

Warrantless searches are per se unreasonable under the Fourth Amendment unless the government can show that the search falls within one of the carefully defined sets of exceptions. One of the established exceptions to the warrant requirement is a search that is conducted pursuant to an individual's valid consent. Because the favored practice is search pursuant to a warrant, and waivers are disfavored, the government has the burden of proving a valid, voluntary consent

by a preponderance of the evidence.

Whether or not the Government has established that Consent to Search was given Voluntarily is a question of fact that turns on the totality of the Circumstances. Relevant Circumstances include age, education, experience, intelligence, and Knowledge of the right to withhold Consent. A Court should also Consider whether the Consenting party advised of his or her Constitutional rights and whether permission to Search was obtained by Coercive means or under inherently Coercive Circumstances. Consent must be a product of the individuals free and Unconstrained Choice, rather than a mere acquiescence to a Show of authority.

In Weighing the totality of the Circumstances and Specifically the Moravian College Compulsory Waiver policy. Petitioner at the time of his Matriculation into Moravian College was (18) years old. Petitioner is a African American which graduated High School in 2015. Petitioner has no prior education or experience with Waivers, Cell phone towers, Network data, Wifi-data, or CSLI Data. Nor does the Moravian "Computer Resources" Policy provide petitioner or students with

"Knowledge of the right to Withhold Consent" as required by law under a totality of Circumstances analysis.

During petitioner's Suppression hearing and at trial, Counsel presented the Student Handbook and Several Moravian College Staff members. John B. Conrad, the Vice president of Human Resources at Moravian College, testified that Students are required to Sign and acknowledge-ment of the handbook at the time of Matriculation. Mr. Conrad further testified that the handbook at the time of Matriculation does not inform students that they will be Subject to Geo-locating or tracking of any kind. Furthermore, it was made clear at the hearing that Students are never informed at any point of Such tracking by Moravian College nor that this location tracking information could be Shared with Law enforcement. Not one Moravian College Staff member or police officer testified that Petitioner was informed of "the right to Withhold Consent." Nor is petitioner's Signature affixed to an acknowledgement of Such.

Justice Wecht noted in dissenting:

"After years of working building a resume worthy of College acceptance, and after being admitted to the School, a student is provided with a handbook that requires a Signature before the Student's College Career can begin."

"It is a Compulsory agreement." "The Student, having no ability to Negotiate, is in the Weakest imaginable position."

"The Student has no choice but to Sign the form if he or she wants to be a student at the School."

Under the totality of Circumstances Petitioner does not find it Constitutional to deem waivers such as these to represent a Willful and Voluntary choice. "In actuality, the College effectively strong-arms the Student into Signing the Waiver." Petitioner had no other choice but to Sign a Waiver that lacked the plain language to inform him of Geo-tracking and failed to inform him that he was Waiving his Fourth Amendment Constitutional right. This Court Can not allow a third party Private organization to be the affirmative authority in deciding who

and who is not protected under our constitution.

Could petitioner had asked to Sign-up as a Moravian Student and be Matriculated for the College but not agree to the whole College policy Waiver, especially Waiving his Fourth Amendment right? To obtain a education or degree? Petitioner was Constrained to Sign the Waiver, If he wanted to bearly attend Moravian College. A Court should also Consider whether the Consenting party was advised of his or her Constitutional right. Nowhere in the record or no evidence was ever provided in this Case to account that petitioner was advised of his Constitutional rights. Next Courts should Consider whether permission to Search was obtained "Under inherently Coercive Circumstances. According to Justice Necht of the PENNSYLVANIA SUPREME court's opinion and Petitioner Concedes to Such; "The Moravian "Computer Resource" policy waiver" "resembles a Contract of adhesion more than it resembles a Voluntary and intelligent agreement." See Chepkovich v. Hidden Valley Resort, L.P., 2 A.3d 1174, 1190 (Pa. 2010) ("An Adhesion Contract is a 'standard-form Contract prepared by one party, to be Signed by the party in a weaker position, usually a Consumer, who adheres to the Contract

With little choice about the terms." (quoting BLACK'S LAW DICTIONARY 342 (8th Ed. 2004)).

In its holding the Lower court clearly departed from their own Courts precedent. Furthermore, the Pennsylvania Supreme Court stated: "Finally, in Neither Medlock nor Adkinson did the Seventh Circuit Contemplate the Validity of the purported Waivers based upon their Compulsory nature". "The Court in both cases assumed without analysis that the Waivers were Valid and then applied them in the Fourth Amendment Context." The Lower Court in this case did the same; Noting that: "As Neither Medlock nor Adkinson are binding or particularly instructive, and with no clear guidance from our own prior decisions, we are left to apply our traditional Standards of review for assessing the Validity of a Waiver of Constitutional rights."

assuming arguendo the Lower Courts analyzed the "Compulsory Waiver policy" it did not analyze "the totality of Circumstances" in accordance with this Courts reasoning in finding petitioner waived his rights. Moravian College in this case Operated as a Authority. They are a private institution who has there own Moravian Police

department.

Moravian College police as testified to by officer Appleman are responsible for ensuring Campus Safety and investigating Crimes. N.T., 4/19/18, at 58. Officer Appleman indicated that Campus officers were permitted to take any action "that a police officer for a Municipality or a State policeman could do." With Moravian's Security measures, staff members high ranking positions, police officers, and a police force presence it can not be understated that a student enrolling into the Moravian College institution such as Petitioner could reasonably sign such "Compulsory Waiver policy" as a mere acquiescence to a show of authority.

Petitioner respectfully implores this Court to exercise its Sound Discretion and entertain the claim that the change in case Law directly effects the Constitutionality of his trial and Verdict. The Carpenter Opinion from this Court establishes that the admission of the Cell-site location information ("CSLI") and geo-location in petitioners trial Violated his

right to privacy guaranteed by the Constitution. The evidence should have been suppressed because it was illegally obtained. This Case is a Case with nearly a distinction without a difference to the identical 4th Amendment issue in Carpenter.

In Carpenter, during the trial for multiple robberies, evidence of historical Cell-Site records was presented. The Cell-Site records placed Carpenter's phone near four of the robberies at nearly the exact time they occurred. *Id.* at 2213. The Government obtained Court orders for the records under the Stored Communications Act, which "permits the Government to compel the disclosure of certain tele-communications records when it offers 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." *Id.* (quoting 18 U.S.C. § 2703 (d)).

This Court ruled that the government's request for CSLI constitutes a search for Fourth Amendment purposes, thus requiring a

a Warrant. In doing so, this Court held that an individual maintains a legitimate expectation of privacy in their physical movements, for Fourth Amendment purposes. This Court has already reasoned that there is a right to privacy in a person's physical movements as captured through CSLI, despite the third-party doctrine, which is "different" than any other shared information. The Lower Courts in this Case erred in applying the third-party doctrine to Petitioner's Case:

The rationale underlying the third-party doctrine - Voluntary exposure - [Fails to] hold up when it comes to CSLI. Cell-phone location information is not truly "shared" as one normally understands the term. Riley, 573 U.S., at ___, 134 S.Ct. at 2484.

This Court expressly articulated that location tracking of a person's Cell-phone is unlike the sharing of any other type of data. Therefore, even if a person was aware that all the data transmitted through their phone was subject to Warrantless Search, the tracking of that phone's movements is different and

Would require specific language.

The language that the Lower Court's relied on in this case was the "Plain language" of the "Computer Resource" policy. Not the required "Specific language" as this Court stated in Carpenter. According to this Court, a ruling such as the Lower Courts ruling in this matter, would be akin to the School attaching ankle monitors to each student and turning the information over to police without a warrant. *Id.* at 2218. Such a position is reminiscent of a Brave New World and is Orwellian in nature.

Therefore, such a notice, as the one in the Student Handbook, cannot be said to encompass notice of location tracking or the relinquishment of the right to privacy in one's person. The lower Courts relied on the Student handbook in initially finding that Petitioner did not have a reasonable expectation of privacy. The ruling and reasoning in Carpenter leads this Court to the exact opposite outcome. Therefore, as in Carpenter, a warrant supported by probable cause was required to obtain the Geo-tracking of Petitioner's phone.

The tracking evidence used here and in Carpenter provides nearly infallible evidence unmatched by even the best eye witness. *Id.* at 2219. Law enforcement cannot be given unconstrained access into the past movements of every citizen simply because we have become more reliant on technology. As technology has advanced courts have had to reevaluate the limitations of the Constitution time and again. See Riley v. California, 134 S.Ct. 2473 (2014) (ruling that the search-incident-to-arrest doctrine does not permit warrantless searches for data on cell phones); United States v. Jones, 565 U.S. 400 (2012) (ruling that GPS tracking of all of the movements of a car over an extended time was a "search" under the Fourth Amendment.)

In Carpenter, as with petitioner, third-parties were able to collect data simply by the cell-phones connection to the third-party's network. These connections inadvertently allow the third-party to track the movements of the cellphone. As this Court explains, "when the Government tracks the location of a cell phone it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone's user." *Id.* at 2217.

Here, the data collection is even greater than that determined to be unconstitutional and impermissible in Carpenter. Here, the University has 1200 antennas. Mr. Laird testified that as a person walks through the Campus, the Cell phone connection moves from one antenna to another. Thereby giving the University the ability to physically track the movements throughout the Campus as the person moves. The geo-location precision alarming the Carpenter Court pales in comparison to the numerous antennas in the limited geographical area of the College, which allows for nearly perfect location tracking. The information in Carpenter allowed law enforcement to narrow down the Cellphone's location to roughly a square mile, while the Moravian College's network allows law enforcement to narrow a device's location to an area of 15 feet. (R. 405a) The College's system allows the Government to know exactly which building, which floor, and even in some cases which room a device is in at any given time. (R. 374a)

Access to this type of monitoring is a "Sweeping mode of Surveillance," involving a methodology that is "detailed, encyclopedic, and

effortlessly Compiled," and that "provides an all-encompassing record of the [person's] whereabouts" Well beyond that Contemplated by this Court. While petitioner concedes that the Moravian College Wi-Fi network is Confined to the College Campus, the Court failed to address the fact that Moravian College is designed so that the students never have to leave campus. The students eat, sleep, use the bathroom, socialize, and attend classes all within the confines of the school's campus. The student's entire lives are confined to those six (6) blocks with roughly 1,200 antennas tracking their every movements at the government's unbridled disposal. Law enforcement was able to pry into petitioner's privacy and review the intricate mosaic of his life without judicial review. Giving law enforcement an unfettered ability to pry into a person's life without judicial scrutiny brings Orwellian images into reality.

Additionally, the Wi-Fi network connection here is more intrusive and tracks a student's movements far beyond that of CSLT addressed in Carpenter. CSLT inadvertently tracks a phone only when the phone is being utilized. The phone user must make a conscience decision to use the phone in such a way that requires

a Connection. Only once that Connection is made, by virtue of placing a Call or sending a text Message, or utilizing data, does the Wireless Company have data on the approximate location of a device. Moreover, depending on the density of population in an area and the locations of the towers, a person could Connect to a tower twenty (20) miles away from their location.

Contrarily, Moravian College's WI-FI network has over a Thousand Connection points on Campus. Once a device is Connected to the Moravian network - Unlike Cell towers - the device Maintains a Connection to the network, and therefore is tracked, regardless of the phone being utilized. The phone is automatically tracked Merely by being powered on. According to trial testimony this can narrow a device's location down to ten to fifteen (10-15) feet and track a person as they walk incredibly short distances without utilizing the device. Therefore, this type of geo-tracking is far more intrusive than narrowing a location to within 1-20 miles only when the operator chooses to utilize the device. The rationale of the Carpenter Court certainly should have been applied here as the Facts are not Only analogous but the Search in petitioner's

Case was far more intrusive than that contemplated by the Carpenter Court due to the specificity of the tracking.

The ruling of the Trial Court allowing the admission of evidence obtained in violation of petitioner's Constitutional rights directly resulted in a Verdict of guilt. The CSLT evidence was so central to the prosecution of petitioner that its admission could not be ruled as harmless error. Without the CSLT, the Commonwealth had nothing more than the word of a convicted ~~perjurer~~. Therefore, the Verdict is a direct violation of both State and Federal Constitutional due process and fundamental fairness and cannot stand.

Therefore, the Lower Court's erred in denying petitioner's Motion to Suppress and Subsequent Motion For Extraordinary relief. This Court should grant petitioner's writ of Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Al Kioko Dunkins

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