

No. 21-7277 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
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SUPREME COURT, U.S.

SADEEN JONES - PETITIONER

VS.

KATHY BRITTIAN - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI
FROM THE PENNSYLVANIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- A. Is this matter so identical to Carpenter v. United States, 138. S. Ct. 2206 (2018) that like that case, this Petition for WRIT OF CERTIORARI should be reviewed, and granted relief.
- B. A United States Supreme Court ruling requires a warrant for obtaining Cell Site Location Information (CSLI).
- C. The application for Petitioner's CSLI records was not the equivalent of an application for a search warrant, and the Court Order authorizing their release was not the equivalent of a finding of probable cause.
- D. The Search Warrant CSLI records were not the product of "**Inevitable discovery**," but rather the product of the "**Initial illegal Search**."

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:

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OPINIONS BELOW

The Opinions of the State Superior Court Of Pennsylvania, denying relief, and The Supreme Court Of Pennsylvania, denying Allowance of Appeal at No. 677 MAL 2020, same in both courts and both cases were non-published.

JURISDICTION

The Judgment of the court of the Superior Court Of Pennsylvania was entered on June 28, 2021 and the Supreme Court Of Pennsylvania was entered on May 4, 2021. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1). The petition is timely filed pursuant to 28 U.S. § 2101 (c).

Statutory And Constitutional Provision Involved

This case involves the United States Constitutional Amendment IV.

The right of the people to be secure in their Person, Houses, Papers, and Affects. Against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation. Particularly describing the place to be search, and the person or thing to be seized.

This case involves the United States Constitutional Amendment V.

Prohibiting the deprivation of liberty without Due Process of law: No person shall be deprived of life, liberty, or property without Due Process of Law.

This case involves the United States Constitutional Amendment XIV.

Procedural Due Process and Equal Protection Clauses: Section 1... 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 it's jurisdiction the equal protection of this article.

28 U.S.C §2254

(a) The Supreme Court, a Justice thereof, a circuit Judge, or a District Court shall entertain an application for a Writ Of Habeas Corpus on behalf of a person in custody pursuant to the judgment of a state court onlyt on the ground that he is in custody in violation of the constitution or laws or treaties of the United States.

(b) An application for a Writ Of Habeas Corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim.

- (1) Resulted in a decision that was contrary to, or involves an unreasonable application of, clearly established federal law, as determined by The Supreme Court of the United States or
- (2) Resulting in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings.

Statement Of The Case

Petitioner is currently serving a sentence of 70 to 140 years incarceration in a state correctional institution.

On November 16, 2017, Petitioner was arrested and charged by the Newtown Township Police Department with numerous offenses in connection with a home invasion robbery that occurred on August 21, 2017. His two (2) co-defendants were similarly charged.

On February 5, 2018 Petitioner appeared for a preliminary Hearing at Magisterial District Court. Petitioner waived the hearing and the charges were bound over for trial to the Bucks County Of Common Pleas. The case was docketed at CP-09-CR-0000806-2018.

On November 7, 2018, Petitioner and his co-defendants appeared before The Honorable Raymond F. Mchugh for pre-trial hearings. Relevant to this appeal, Petitioner and his co-defendants relied on *Carpenter v. United States*, 138 S. Ct. 2206 (2018), to support their position that the CSLI records should have been suppressed, the motion was taken under advisement and the court ordered briefs to be filed.

On January 17, 2019, The Judge Mchugh entered an order, dated January 14, 2019, denying in relevant part, Petitioner motion to suppress the CSLI records, cell phone content and DNA evidence. His co-defendant's motions were also denied.

On January 22, 2019, Petitioner and his co-defendants filed a petition for permission to appeal Interlocutory Order. That same date, Petitioner and his co-defendant appeared before The Honorable Diane E. Gibbons to commence a jury trial. Judge Gibbons, after reviewing

Judge Mchugh's ruling, denied Petitioner and his co-defendant's request for an Interlocutory Appeal. Petitioner and co-defendant Brandon Davis proceeded with a jury trial. Co-defendant Raymond Daniels entered a guilty plea prior to trial.

With regards to Petitioner, The Commonwealth elected to proceed with the following charges at trial: Five(5) counts of Robbery - Threaten immediate serious injury (18 Pa. C.S. §3701(a)(1)(ii) - F1); Conspiracy - Robbery - Threaten immediate serious bodily injury (18 Pa. C.S. §903 - F1); Five(5) counts of Robbery - Commit or Threaten 1s/2nd Degree Felony (18 Pa. C.S. §3701(a)(1)(iii) - F1); Conspiracy - Robbery - Commit or Threaten 1st/2nd Degree Felony (18 Pa. C.S. §903 - F1); Burglary - Overnight Accomodation, person present (18 Pa C.S. §3502(a)(1)(i) - F1); Conspiracy - Burglary (18 Pa. C.S. §903 - F1); Five(5) counts of Simple Assault (18 Pa C.S. §2701(a)(3) - M2); Five(5) counts of Recklessly Endangering Another Person (18 Pa. C.S. §2705 - M2); False Imprisonment of a minor (18 Pa C.S. §2903(b) - F2); Unlawful Imprisonment (18 Pa. C.S. §2903(a) - M2); False Imprisonment of a minor (18 Pa. C.S. §2903(b) - F2); Unlawful Restraint of a minor (18 Pa. C.S. §2902(b)(1) - F2); Four(4) counts of False Imprisonment (18 Pa. C.S. §2903(a) - M2); Four(4) counts of Unlawful Restraint (18 Pa C.S. §2902(a)(1) - M1); Theft by Unlawful Taking (18 Pa C.S. §3921(a) - F2); Theft by Extortion (18 Pa. C.S. §3923(a)(7) - F2); And Criminal Coercion (18 Pa C.S. §2906(a)(1) - M1); All remaining offenses previously charged were *Nolle Prossed*. The jury ultimately convicted Petitioner on all counts. Sentencing was deferred.

On May 23, 2019, Petitioner appeared before the Trial Court for Sentencing, Petitioner was sentenced as follows:

- On counts 1, 35-38, Robbery - Threaten Immediate Serious Injury; A Mandatory 10 to 20 years incarceration on each count running consecutive to each other;

- On count 2, Conspiracy - Robbery; A Mandatory 10 to 20 years incarceration consecutive to the Robbery counts;
- On 10, Burglary; A Mandatory 10 to 20 years incarceration consecutive to the previous counts;
- Count 16, False Imprisonment of a minor; 5 to 10 years incarceration concurrent to the other counts;
- Count 24, 45, 46, and 47, False Imprisonment; 1 to 2 years incarceration on each count, concurrent to the previous counts and concurrent to each other; And
- Count 30-34, Simple Assault; 1 to 2 years incarceration on each count, consecutive to each other but concurrent to the previous counts.

Petitioner's aggregate sentence is 70 to 140 years incarceration. He was also ordered to register as a Tier 1 offender under the Sexual Offender Registration And Notification Act. (SORNA)

May 31, 2019, Petitioner filed a Post-Sentence Motion which challenged both his sentence and the pretrial ruling denying suppression of the CSLI records. On June 18, 2019 the trial court ordered the parties to file briefs. The Post-Sentence Motion was denied on October 18, 2019, and a timely appeal to the Superior Court filed on November 14, 2019, The Superior Court affirmed on November 6, 2020. December 5, 2020 Petitioner filed Allowance Of Appeal to Supreme Court. May 4, 2021 the Supreme Court denied allowance of appeal. May 17, 2021 Petitioner filed for Application for Reconsideration to Supreme Court. June 28, 2021 the Supreme Court denied Petitioner's Application for Reconsideration.

Reason For Granting Writ Of Certiorari

This matter is almost identical to Carpenter v. United States, 138 S. Ct. 2206 (2018) and like that case this petitioner for Writ should be granted, with the relief given as the United States Supreme Court rendered it's ruling in Carpenter v. United States, (Stare Decisis).

Petitioner raised in at the Suppression Hearing, and both the Superior Court of Pennsylvania, and in the Supreme Court of Pennsylvania: "Whether "Historical" Cell Site Location Information, (CSLI) obtained under the Pennsylvania Wiretap Act satisfies the search warrant requirement pursuant to Carpenter v. United States, 138 S. Ct. 2206 (2018)? Police obtained CSLI pursuant to 18 U.S.C §2703(d) and 18 Pa. C.S. §5473. After police seized the CSLI, the United States Supreme Court issued it's opinion in Carpenter v. United States, which required such information be seized only after a neutral magistrate made a finding of probable cause and authorized a search warrant. Carpenter, 138 S. Ct. 2221-23. The police, months later obtained a search warrant after it obtained the illegal court order, then copy-pasted the illegal court order information to the search warrant, absent an independent source. The police admitted to altering and deleting information from the Court Order in an attempt to cure the Search Warrant requirement after the United States Supreme Court rendered it's decision in Carpenter v. United States. The Superior Court found that the authorization to seize the CSLI pursuant to 18 U.S.C. §2703(d) and 18 Pa. C.S. §5473 was equivalent in form to Carpenter's warrant requirement. This matter raises issues similar to that in Carpenter, therefore, like the United States Supreme Court ruling in that case should also be applied as the "Stare Decisis" in Petitioner's appeal to this court for relief.

1. A United States Supreme Court ruling requires a warrant for obtaining cell site location information.

Accessing Petitioner's cell site location informations without a search warrant was a violation of his Fourth Amendment rights under the United States Constitution and Article I, § 8 of the Pennsylvania Constitution. In Carpenter v. United States, 138 S. Ct. 2206 (2018), the United States Supreme Court held the government must obtain a search warrant before it can access cell site location information. Carpenter explicitly ruled that a court order similiar to CS-3 is insufficient. 138 S.Ct. at 221. The Commonwealth cannot cure a violation of the Fourth Amendment to the United States Constitution and Article I, Section 8 of the United States Constitution by obaining a warrant after it acquires evidence. The Superior Court's decision did not shurg off Carpenter's warrant requirement --- it ignored it. There are no doubt dozens, if not hundreds or prosecutions, intiated before Carpenter and concluded afterwards.

The purpose of the Fourth Amendment and Article I, § 8 of the Pennsylvania Constitution is to protect an individual's expectation of privacy. Once the government breaches an individuals' privacy, it it forever lost. Approving cures of government violations of individuals' privacy by application for and procuement of warrant after

such violation eviscerates the protections of the state and federal constitutional warrant requirements protectting our privacy. Those guarantees require a probable cause determination by a netural and detached magistrate before a search. See: Commonwealth v. Chandler, 477 A.2d 851, 855 (Pa. 1984). "From the perspective of the citizen whose rights are at stake, an invasion of privacy, in good faith or bad, is equally intrusive. This is true whether it occurs through the actions of the legislative, executive, or judicial branch of government." Commonwealth v. Edmunds, 586 A.2d 887, 905 (Pa. 1991). Carpenter held government acquisition of cell site location information constitutes a search under the Fourth Amendment and thus requires the government to obtain a search warrant to compel the wireless carrier to surrender such information the government; at 138 S.Ct. 2206.

In Carpenter, prosecutors applied for court oders to obtain the celluar telephone records for Timothy Carpenter pursuant to the Stored Communications Act, 18 U.S.C. § 2703(d). The Stored Communications Act allows the Government to compel disclosure of telecommunications information 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 investigation." Id. at 2212; 18 U.S.C. 2703 (d).

As a result of the court oders, the Federal Bureau of Investigation obtained 12,898 locations points tracking Carpenter's movement. Carpenter, 138 S.Ct. 2213. Carpenter filed a motion to suppress arguing that the FBI violated his Fourth Amendment rights

by obtaining the records without probable cause. Id. Carpenter's suppression motion was denied, and he was sentenced to more than 1000 years in prison. After the United States Court of Appeal for the Sixth Circuit affirmed that decision, the United States Supreme Court reversed.

Carpenter, addressed the application of the Fourth Amendment to CSLI. Chief Justice Robert's opinion held that an individual has a legitimate expectation of privacy in the record of his physical movements when tracked through CSLI. 138 S.Ct. 2221. Obtaining location information from Carpenter's wireless carrier was a search under the Fourth Amendment. 138 S.Ct. at 2221-22. "Having found that the acquisition of Carpenter's CSLI was a search, we also conclude that the Government must generally obtain a warrant supported by probable cause before acquiring such records." Id. at 2221.

2. The application for Petitioner's CSLI records was not the equivalent of an application for a search warrant, and the court order authorizing their release was not the equivalent of a finding of probable cause.

In this instance, The Commonwealth obtained a court order --- not a search warrant --- for use of the device pursuant to 18 Pa. C.S. § 5773; generally the Commonwealth of Pennsylvania was persuasive in referring to active, real time surveillance of ongoing communications, but this does not cover the gathering of records of past communications.

§5773 requires a finding of "probable cause to believe that information relevant to an ongoing investigation will be obtained from the targeted telephone." The applications for the orders were supported by "affidavits of probable cause." The panel grounded its conclusion that the § 5773 order was equivalent to a warrant in the ruling of Dalia v. United States, 441 U.S. 238, 255 (1979), that a court order, that by statute had to be supported by probable cause, met the Fourth Amendment's warrant requirement got authorizing a surreptitious break-in to plant electronic listening devices.

The Commonwealth's reliance on Dalia, is misplaced. Dalia, decision was before the existence and widespread application of the mobile communication technology that records wherever a person is carrying an operative cell phone is standing or moving.

The United States Supreme Court in Carpenter emphasized:

"that its decision was "narrow" and indicated that it was not expressing a view on real-time cell-site location information or "tower dumps" ("a download of information on all the devices that connected to a particular cell site during interval"). *Id.* at 2220. The Court added that its decision was not calling into question "conventional surveillance techniques and tools, such as security camera... or business records that might incidentally reveal location information."

This is the difference between the Commonwealth's argument of real-time, and their violation of the petitioner's Fourth Amendment right of privacy concerning his past-time / historical communication without a valid search warrant.

Petitioner, invoked his Fourth Amendment and he cited Carpenter; in that, the court held that law enforcement must first obtain a search warrant supported by cause

in order to obtain historical cell-site location information from wireless service providers, absent a specific exception to the warrant requirement; *Id.* at 2216 (applying Fourth Amendment to a "new phenomenon: the ability to chronicle a person's past movements through the record of his cell phone signals.").

This Court explained when confronting new concerns wrought by digital technology, this Court has been careful not to uncritically extend existing precedents; See: Riley V. California, 573 U.S. {373} at 386 (2014) ('A search of the information on a cell phone bears little resemblance to the type of brief physical search considered [in prior precedents].'); Carpenter, 138 S.Ct. at 2222.

In this instance, the Commonwealth in this case did not supply an affidavit from the detective upon whose statement the application for the CSLI records was based;

The application contains an affidavit from an assistant district attorney that states only that the detective has "reasonable ground" to believe the information sought is "relevant" to the law enforcement inquiry. The "affidavit from the detective is not notarized, and there is no records that prior to the issuance of the order for the CSLI records the detective appeared before a magistrate to swear or affirm the truth of the averments in his statement;

Nowhere in the application for the court order does the Commonwealth pretend that the information it rises to the level of probable cause, and the Court order

authorizing the seizure of the records does not state it looked for or found "probable cause" for the issuance of its order. The statute underlying the order issued in Dalia, also required a judicial finding of "probable cause," Dalia 441 U.S. at 241, 270 n. 16. The Commonwealth failed to secure a search warrant before obtaining Petitioner's cell site location information from Sprint. Instead, the Commonwealth relied on the same statutory scheme to access Petitioner's cellular telephone records, as the FBI did in Carpenter, which required cell site location information to be suppressed.

The Commonwealth applied for a court order of Petitioner's cell site location information pursuant to 18 PA C.S. § 5743(c) and 18 U.S.C. § 2703 (b), (c), and (d). Ex. CS-3. Both statutes state the requirements for government access to cellular telephone records. The Pennsylvania statute is nearly identical to the Federal statute that the Supreme Court held was insufficient to satisfy the Fourth Amendment's requirements. The Pennsylvania statute provides:

(c) Records concerning electronic communication service or remote computing service ---

(1) Deleted by 2008 Oct. 91 P.L. 1403. No. 111.3. effective in 60 days [Dec. 8 2008].

(2) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of the service, not including, the contents of communications covered by subsection (a) or (b), to an investigative or law enforcement officer only when the investigative or law enforcement officer.

(i) uses an administrative subpoena authorized by a statute or a grand jury subpoena;

(ii) obtains a warrant issued under the Pennsylvania Rules of Criminal Procedure;

(iii) obtains a court order for the disclosure under subsection (d); or (iv) has the consent of the subscriber or customer to the disclosure.

(3) An investigative or law enforcement officer receiving records or information under paragraph (2) is not required to provide notice to the customer or subscriber.

(d) Requirements for court order.-- a court order for disclosure under subsection (b) or (c) shall be issued only if the investigative or law enforcement officer shows that there are specific and articulable facts showing 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. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify the order if the information or records requested are unusually voluminous in nature or compliance with the order would otherwise cause an undue burden on the provider. 18 Pa. C.S. §5743

The Federal statute reads as follows:

Required disclosure of customer communications or records

(c) Records concerning electronic communication service or remote computing service,--(1) a governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity--

(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction;

(B) obtains a court order for such disclosure under subsection (d) of this section;

(C) has the consent of the subscriber or customer to such disclosure;

(D) submit a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or

customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 21325 of this title); or

(d) Requirements for court order.--A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing 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. In the case of State governmental authority, such State, a court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature nor compliance with such order otherwise wopuld cause an undue burden on such provider. 18 U.S.C §2703.

The commonwealth's and federal procedures for obtaining court orders for CSLI information are identical, neither requiring a showing or magisterial or judicial finding of probable cause.

Chief Justice Roberts wrote:

The Government acquired the cell-site records pursuant to a court order issued under the Stored Communications Act, which required the Goverment to show "reasonable grounds" for believing that the records were "relevant and material to an ongoing investigation." 18 U.S.C. §2703(d). That showing falls well short of the probable cause required for a warrant. The Court usually requires "some quantum of individualized suspicion" before a search or seizure may take place.

United States v. Martinez-Fuerte, 428 U.S. 543, 560-561 (1976). Under the standard in the Stored Communications Act, however, law enforcement need only show that the cell-site evidence might be pertinent to an ongioing investigation---a "Gigantic" departure from the probable cause rule, as Government explained below. [] Consequently, an order issued under Section 2703(d) of the act is not a permissible mechanism for accessing historical cell-site records. *Before compelling a wireless carrier to turn over subscriber's CSLI, the Government's obligation is a familiar one---- GET A WARRANT.*

Carpenter, 138 S. Ct. 2221 (emphasis added). The government must obtain a

warrant to acquire such records. Since the Commonwealth failed to secure a warrant and used a procedure identical to that, Carpenter found inadequate, the Petitioner's cell site location information should have been suppressed.

When the government fails to obtain a search warrant, the search is deemed unreasonable unless the search is conducted pursuant to a recognized exception to the warrant requirement.

Carpenter v. United States, 138 S. Ct. at 2313. None of the recognized exceptions to the warrant requirement exist in this case. There is no exception under the Fourth Amendment or Article I, §8 of the Pennsylvania Constitution that allows the government to avoid the warrant requirement by asserting it had probable cause to conduct the search after it obtained evidence without a warrant. A search without a warrant violates the Fourth Amendment and Article I, §8 of the Pennsylvania Constitution.

The Commonwealth posited below that the evidence was obtained lawfully because the Commonwealth established probable cause to obtain the record when it applied for the court order. Even, in cases where the Commonwealth established probable cause and law enforcement took steps to obtain a warrant, appellate courts have suppressed evidence if the warrant was invalid. In Commonwealth v. Chandler, a state trooper presented an application for a search warrant and an affidavit in support of the search warrant.

It was undisputed that the application contained facts establishing probable cause. Yet, the district justice failed to sign the warrant. The state trooper executed the warrant

without checking to make sure the warrant was signed and discovered controlled substances. *Commonwealth v. Chandler*, 477 A.2d at 853-55.

Despite the existence of probable cause and no misconduct on behalf of law enforcement, the Pennsylvania Supreme Court suppressed the evidence. *Id.* at 854-55. "it is not enough, absent exigent circumstances, that a policeman believe the facts he has are probable cause for a search warrant.

The people of this state and nation are constitutionally entitled to an independent judicial determination of probable cause before they must open to the policeman's knock at the door in the night." *Id.* at 854. When President Judge Wallace H. Bateman, Jr. signed the court order on October 31, 2017, he was neither asked nor required to make a probable cause determination. Instead the order was signed pursuant to the standards articulated in 18 Pa. C.S. §5743 and 18 U.S.C. §2703. R. 134a, 138a.

In *Carpenter*, the Supreme Court declared these standards well-below the standard required for probable cause. "Consequently, an order issued under Section §2703(d) of the Act is not a permissible mechanism for accessing HISTORICAL cell-site records." *Carpenter*, 138 S. Ct. at 221. Even if the affidavit in support of the court order was supported by probable cause, the cell site location information must be suppressed in accordance with *Carpenter*. The Commonwealth attempted to cure the constitutional violation by applying for a search warrant on July 3, 2018 after it obtained and analyzed the cell site location information.

Detective Christopher Bush stated that the affidavit he used for the search warrant was virtually the same he used for the court order, and a comparison of the two documents supported his testimony. However the Detective statement/testimony is not true, because he tainted with the evidence and altered it by copying and pasting various parts to manipulate the evidence;

No one bothered to obtain a separate warrant for DNA and cell phone evidence seized from the Petitioner pursuant to a December 20, 2017 warrant, even though the warrant for that evidence referenced only the illegally seized CSLI records obtain without a showing, nor finding of probable cause.

The purpose of the Fourth Amendment and Article I, Section 8 of the Pennsylvania Constitution is to protect an individual's expectation of privacy. Once the government intrudes upon that privacy, it is forever lost. To allow the government to violate an individual's privacy and obtain a warrant after such an intrusion eviscerates the goals of the Fourth Amendment and Article I, §8 of the Pennsylvania Constitution. A probable cause determination by a neutral and detached magistrate must be made before the search occurs. *Commonwealth v. Chandler*, 477 A.2d 851 (Pa. 1984).

3. The Search Warrant CSLI records were the product of "Inevitable Discovery," but rather the product of the illegal search.

The Superior Court's memorandum opinion acknowledges that the initial seizure of the

Petitioner's records was the result of inevitable discovery because the warrant it obtained was based upon information purged of any taint of exploitation of the records it obtained through the process made illegal by Carpenter. This is an issue worthy of this Court's attention and review, because it allows circumvention of Carpenter's warrant requirement. After the Supreme Court issued the Carpenter decision, Detective Chris Bush was instructed to obtain a search warrant using the exact information he used to obtain a court order in July 2017. He described his preparation for the warrant, as "Cutting and Pasting" the information he had placed in the application for the court order. In its response to the Petitioner's suppression motion, the Commonwealth argued that discovery of the CSLI records was "Inevitable." In the Commonwealth's Pre-trial Motion it pressed that argument at the Suppression Hearing. The Suppression Court, however, made no factual findings accepting or bolstering the Commonwealth's argument that discovery of the CSLI records was inevitable. The scope of review includes only the evidence the Commonwealth offered at the suppression hearing.

Commonwealth v. Singleterry, 169 A.3d at 83.

The commonwealth presented no evidence at the suppression hearing--- such as the testimony of a detective uninvolved in the investigation prior to the issuance of the November 1, court order --- to establish that anyone would have sought a warrant for the CSLI records. The Commonwealth only can avoid suppression using the inevitable discovery doctrine by demonstrating a truly independent source from both the tainted evidence and the police or investigation team which failed to respect the protections of the Fourth Amendment and Article I, §8 of the Pennsylvania Constitution.

In Commonwealth v. Perel, 107 A.3d 185, 195 (Pa. Super. 2014) (warrantless search of luggage and shaving kit could not be justified by inevitable discovery doctrine solely on the grounds that at the time of the search, grounds for a warrant existed). One detective--- Chris Bush--- signed the request for court authorization for the CSLI records and all the subsequent warrants. He admitted that he made no attempt to develop independent sources for the information in his search warrant--- he "CUT AND PASTED" what he had in the pre-Carpenter application and placed it in the search warrant affidavit.

"[T]he doctrine of inevitable discovery [is not] an invitation for appellate courts to overlook patently unconstitutional searches whenever the police *could* have complied with the Constitution's warrant requirement, but instead consciously disregarded it. Commonwealth v. Perel, 107 A.3d at 195. Moreover, there was little excuse for the

Commonwealth to not know that a warrant would likely be required for CSLI records, and to either ask for one. Carpenter was certainly not a bolt from the blue to the Commonwealth.

The writ of certiorari in Carpenter was granted on June 5, 2017--- five (5) months before the October 31, 2017 court order at issue in this matter--- and the opening briefs of the parties and amici (including the National District Attorneys Association) were all filed by October 2, 2017. The matter was argued on November 29, 2017. This gave the Commonwealth plenty of time to apply for a search warrant. Instead it obviously ignored the likely result in Carpenter, exploiting the wrongfully obtained CSLI records to obtain search warrants for the search of petitioner's phone and DNA. Once Carpenter was issued the Commonwealth could have commenced an independent investigation untainted by the illegality, complying with the mandate that, "Police must demonstrate that the evidence would have been discovered absent the police misconduct, not simply that they somehow could have lawfully discovered it. "Commonwealth v. Perel, 107 A.3d at 196. (emphasis in original).

This result is compelled by Article I, §8 of the Pennsylvania Constitution. Article I, §8 of the Pennsylvania Constitution yields the same result as the Fourth and Fourteenth Amendments. Pennsylvania has protected its citizens against unreasonable searches and seizures since more than a decade before the enactment of the Constitution and fifteen (15) years before the Fourth Amendment became law.

The Pennsylvania Constitution's warrant requirement has remained virtually intact, in word and spirit, since its enactment more than 240 years ago in 1776. The Superior Court "has stated repeatedly in interpreting Article I, §8, that provision is meant to embody a

strong notion of privacy, carefully safeguarded in this Commonwealth for the past two (2) centuries.

As we stated in [Commonwealth v. Sell, 450 A.2d 457, (pa. 1983)]: "the survival of the language now employed in Article I, Section 8 through over 200 years of profound change in other areas demonstrates that the paramount concern for privacy first adopted as part of our organic law in 1776 continues to enjoy the mandate of the people of this Commonwealth. *Id.*, 470 A.3d at 467." Commonwealth v. Edmunds, 586 A.2d 887, 897 (Pa. 1991) Commonwealth v. Perel specifically relies on Article I, §8 of the Pennsylvania Constitution for its holding that the police cannot simply move information from one place to an affidavit of probable cause and the claiming retroactive compliance with the requirement for a search warrant. Commonwealth v. Perel, 107 A.3d at 194.

As the CSLI records were seized without a search warrant, and without a showing or magisterial or judicial finding of probable cause, their introduction at trial, was improper. The Petitioner is entitled to a new trial where that evidence will neither be used nor exploited.

THE CONCLUSION

WHEREFORE, the undersigned Pro-se Litigant, respectfully requests this Honorable Court to Grant the Writ of Certiorari, reverse the erroneous judgments of the state court, and remand with directions to afford the Petitioner a dismissal of all charges for the violation of his Fourth Amendment, or a new trial, and/or in the alternative grant Order for an evidentiary hearing to correct the error, in which was set forth in *Carpenter, v. United States*, 138 S.Ct. 2206.

Respectfully submitted,



Mr. Sadeen Jones,

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SADEEN JONES — PETITIONER
(Your Name)

VS.

KATHY BRITTAINE — RESPONDENT(S)

PROOF OF SERVICE

I, SADEEN JONES, do swear or declare that on this date, JANUARY 27TH, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

ATTORNEY GENERAL OFFICE AT STRAWBERRY SQUARE, 16TH
HARRISBURG, PA 17120

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JANUARY 27TH, 2022

Sadeen Jones
(Signature)