No. 25-___

In the
Supreme Court of the United States

AARON RAYSHAN WELLS,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition for a Writ of Certiorari to the Texas Court of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

CHRISTINA DEAN
DALLAS COUNTY PUBLIC DEFENDER'S OFFICE
133 N. Riverfront Boulevard, Suite 2
Dallas, Texas 75207

ERIN GLENN BUSBY
Counsel of Record
LISA R. ESKOW
UNIVERSITY OF TEXAS SCHOOL OF LAW SUPREME COURT LITIGATION CLINIC
727 East Dean Keeton Street
Austin, Texas 78705
ebusby@law.utexas.edu
(713) 966-0409

QUESTIONS PRESENTED

Fourth Amendment rights vary among circuits and state high courts, as well as intrajurisdictionally between Texas federal and Texas state courts, regarding "geofence" warrants. These warrants demand the digital location-history data of companies' customers—here, Google users—without identifying a suspect. *Compare United States v. Smith*, 110 F.4th 817 (5th Cir. 2024), *with*, *e.g.*, Pet. App. 1a-54a. Instead, law enforcement defines a temporal and geographical parameter regarding a crime scene and collects data for all users' devices present within the geofence. Initial data returns are anonymized, but the typical three-step geofence warrant—like the one in petitioner's case—gives advance authorization for increasingly invasive requests at the officer's sole and judicially unsupervised discretion, culminating in disclosure of a user's identifying information and, as here, even six months of IP history for devices that the officer selects from the initial returns.

The Questions Presented are:

1. Does law enforcement's collection of digital location-history data pursuant to geofence warrants like the one in petitioner's case violate the Fourth Amendment?

2. Should the exclusionary rule apply to evidence derived from the geofence warrant?

PARTIES TO THE PROCEEDINGS

Petitioner Aaron Rayshan Wells was the defendant in the Dallas County Criminal District Court, the appellant in the Court of Appeals for the Fifth District of Texas at Dallas, and the appellant in the Texas Court of Criminal Appeals. The State of Texas was the plaintiff in the district court, the appellee in the court of appeals, and the appellee in the Texas Court of Criminal Appeals.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *State of Texas v. Wells*, No. F19-75986 in the Criminal District Court No. 4, Dallas County, Texas (Findings of Fact and Conclusions of Law in re Defendant's Motion to Suppress Electronic Customer Data Evidence Acquired Through Geofencing issued September 30, 2021, Pet. App. 92a);
- *Wells v. State of Texas*, No. 05-21-00855-CR in the Court of Appeals for the Fifth District of Texas at Dallas (Opinion issued August 23, 2023, Pet. App. 55a);
- *Wells v. State of Texas*, No. PD-0669-23 in the Texas Court of Criminal Appeals (Opinions issued April 23, 2025, Pet. App. 1a-54a, and rehearing denied June 18, 2025, Pet. App. 94a).

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Page

CASES:

CONSTITUTION AND STATUTES:

OTHER AUTHORITIES:

OPINIONS BELOW

The Texas Court of Criminal Appeals affirmed the judgment of the Court of Appeals for the Fifth District of Texas at Dallas through opinions published at 714 S.W.3d 614 (Pet. App. 1a-54a). The opinion of the Court of Appeals is published at 675 S.W.3d 814 (Pet. App. 55a-90a). Unpublished by the Criminal District Court No. 4 at Dallas County, Texas, but included at Pet. App. 92a-93a, are Findings of Fact and Conclusions of Law in re Defendant's Motion to Suppress Electronic Customer Data Evidence Acquired Through Geofencing.

JURISDICTION

The Texas Court of Criminal Appeals entered its opinions and judgment on April 2, 2025 (Pet. App. 1a). After extending the deadline for petitioner to seek rehearing, that court considered and denied his petition for rehearing on June 18, 2025 (Pet. App. 94a). On September 2, 2025, Justice Alito granted petitioner's application to extend the time to file this petition for a writ of certiorari until October 16, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment provides: "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." U.S. CONST. amend. IV.

STATEMENT

I. GEOFENCE WARRANTS

A geofence warrant "allows police investigators to search location history data for compatible mobile devices located within a specified area during a specified period of time." Pet. App. 62a. Unlike traditional search warrants "related to known suspects, geofence warrants are issued specifically because a suspect cannot be identified." *Id.* 1a n.1 (Yeary, J., announcing the court's judgment) (quoting Note, *Geofence Warrants and the Fourth Amendment*, 134 HARV. L. REV. 2508, 2509 (2021)). Accordingly, geofence warrants are said to "work in reverse" from traditional search warrants. *Id.* 42a-43a, 43a n.15 (Newell, J., concurring in part and dissenting in part).

Compelled by geofence warrants, "companies conduct sweeping searches of their location databases and provide a list of cell phones and affiliated users found at or near a specific area during a given timeframe, both defined by law enforcement." *Id.* 1a-2a n.1 (Yeary, J.) (quoting Note, *supra*, at 2509). The specified area and given timeframe together form the "geofence." *Id.* For example, in petitioner's case, the geofence warrant listed a timeframe of 2:45-3:10 a.m. and described a designated "polygon" using

"latitude/longitude coordinates" and an image of the location. *Id.* 103a. The warrant ordered Google to search users' location data and turn over to law enforcement "GPS, WiFi or Bluetooth sourced location history data" generated within that geofence by any Google user. *See id.* 102a-103a.

Google frequently receives geofence warrants like the one in petitioner's case, describing them as "a new and increasingly common form of legal process." Brief of Amicus Curiae Google LLC Supporting Neither Party at 11, *United States v. Chatrie*, No. 3:19-cr-00130-MHL, 2020 WL 4551093 (E.D. Va. May 22, 2020). The requests require Google to look through its entire database of all users' location-history entries: "Google has no way to identify which of its users were present in the area of interest without searching the LH [location-history] information stored by every Google user who has chosen to store that information with Google." *Id.* at 12-14.

Google collects location-history data pursuant to users' opt-ins and consent, Pet. App. 45a (Newell, J.), but users are "bombarded multiple times" and "across multiple apps" with location-tracking requests tied to performance benefits—not to privacy warnings. *See United States v. Smith*, 110 F.4th 817, 835 (5th Cir. 2024), *petition for cert. filed* (No. 24-7237). At the time Google received the geofence warrant in petitioner's case, Pet. App. 102a, Google stored all of

its users' location-history data in a "vast" repository known as the "Sensorvault." *See id.* 82a.[1]

The location-history data that law enforcement obtains through geofence warrants is personal and precise. Google describes it as "a history or journal that Google users can choose to create, edit, and store to record their movements and travels." Google Amicus, *supra*, at 6. This history "can be considerably more precise than other kinds of location data," including cell-site location information (CSLI). *Id.* at 10. While CSLI "typically reflects location on the order of dozens or hundreds of city blocks in urban areas," Google location history can estimate a person's location within meters, *id*., and even locate "the specific floor in a building where a person might be." *United States v. Chatrie*, 136 F.4th 100, 121 (4th Cir. 2025) (en banc) (per curiam) (Wynn, J., concurring in the judgment), *petition for certiorari filed* (No. 25-112).

The geofence warrant at issue in petitioner's case has the typical three-step structure through which law enforcement directs Google to disclose users' location-history data pursuant to a single warrant.[2]

---

[1] In 2023, Google announced plans to modify storage of users' location-history data, PETER G. BERRIS & CLAY WILD, CONG. RSCH. SERV., LSB11274, GEOFENCE WARRANTS AND THE FOURTH AMENDMENT 1 (2025); but the federal government "is still seeking Google geofences" and may pursue geofence warrants to search other companies' user-location-history data. *Id.* at 1-2. Apple, Lyft, Uber, and Snapchat also have received geofence-warrant requests. *Smith*, 110 F.4th at 821 n.2.

[2] *Compare* Pet. App. 102a-106a, *with*, *e.g.*, *Chatrie*, 136 F.4th at 143-44 (Berner, J., concurring), *and Smith*, 110 F.4th at

Google has described that three-step procedure as follows. At Step One, Google provides law enforcement an anonymized list of all users whose location-history information matches the geofence parameters. Google Amicus, *supra*, at 12-13. At Step Two, law enforcement reviews the returns, decides which devices are potentially relevant, and may compel Google to produce additional anonymized location information beyond the warrant's original area and time limitations so that law enforcement may determine the consistency of a device's movement with other evidence. *Id.* at 13-14. At Step Three, Google provides account-identifying information for the devices law enforcement deems relevant, typically including at least the name and email address associated with each account, *id.* at 14, and often more.

In petitioner's case, for example, the warrant commanded Google at Step Three to provide the subscriber's information, including "name, email addresses, services subscribed to, last 6 months of IP history, SMS account number, and registration IP." Pet. App. 105a; *see also, e.g.*, *Smith*, 110 F.4th at 827 (same requests). At no point between Step One and Step Three did the geofence warrant in petitioner's case require further authorization from or consultation with a judge before law enforcement unilaterally could demand that Google produce users'

824-29, *and Jones v. State*, 913 S.E.2d 700, 704-05 (Ga. 2025) (all describing geofence warrants at issue). As of this filing, petitions are pending in *Chatrie* (No. 25-112) and *Smith* (No. 24-7237).

identifying information and even six months of prior IP history. *See* Pet. App. 6a-7a (Yeary, J.), 102a-106a.

II. FACTUAL AND PROCEDURAL BACKGROUND

Law enforcement investigating a June 24, 2018 robbery and murder failed to identify any of four individuals captured on surveillance video near the crime scene. *See id.* 2a-4a (Yeary, J.), 57a. So a detective sought and obtained a geofence warrant commanding Google to search its vast location-history Sensorvault to identify Google users' devices within the warrant's temporal and geographical parameters. *See id*. 2a-4a (Yeary, J.), 82a, 102a-106a. Pursuant to the warrant's commands, Google identified three devices within the geofence and produced identifying information for each. *See id.* 10a; Suppl. C.R.: State's Exhibit 237, *Texas v. Wells*, 675 S.W.3d 814 (Tex. App.—Dallas 2023) (No. 5-21-00855-CR).[3] Of those, the detective concluded that petitioner's device was involved in the offense. Pet. App. 10a. The detective used the identifying information produced by Google to obtain an additional warrant seeking further information about petitioner and his cell-phone records. *See id*. Petitioner was prosecuted for capital

[3] Opinions below highlight the detective's ultimate focus on petitioner's device, *see* Pet. App. 10a, 65a, but by that time Google already had revealed the identities, email addresses, account information and more for three devices within the geofence—including two non-suspect Google users swept into the search. *See* State's Exhibit 237, *supra*.

murder during the course of a robbery, convicted, and sentenced to life without parole. *See id.* 4a.

In a trial-court motion to suppress, on appeal, and before the Texas Court of Criminal Appeals, petitioner argued that the execution of the geofence warrant constituted an unreasonable search in violation of the Fourth Amendment. *See id.* 1a-2a, 10a-12a (Yeary, J.). In denying the motion to suppress, the trial court observed that "the present law is unsettled," and "the issue may be decided in favor of legislation or case law outlawing geofence warrants altogether." *Id.* 93a. But the court did not exclude the evidence. *Id*. It stated that the warrant and application had "sufficient particularity to be valid." *Id.* The court did not question the application's "Probable Cause Statement," which asserted, without citing support, that: "It is likely that at least one of the four suspects who committed this offense had an Android device on him during the commission of this offense," and that "[i]t is common practice that home invasion robbery suspects keep an open line with someone outside of the residence while committing this type of offense to keep an eye out for responding police officers." *Id.* 113a; *see id.* 92a-93a. The application did not state that there was surveillance video or other evidence indicating that any suspect possessed or used a phone within the geofence. *See id.* 107a-116a.

The court of appeals affirmed the denial of the motion to suppress. *Id.* 75a. Without deciding whether a search occurred, the court concluded that

the warrant "satisfie[d] the requirements of the Fourth Amendment" and, alternatively, that the detective reasonably relied on the warrant. *See id.* But the court of appeals "share[d] the concern of other courts that 'current Fourth Amendment doctrine may be materially lagging behind technological innovations.'" *Id.* 75a n.5 (quoting *Chatrie*, 590 F. Supp. 3d at 925).

Through three opinions with no majority rationale, the Texas Court of Criminal Appeals affirmed the judgment of the court of appeals. *See id.* 1a-2a (Yeary, J., announcing affirmance of the judgment below), 27a (Finley, J., concurring), 37a (Newell, J., concurring and dissenting). Judge McClure dissented without opinion. *Id.* 1a, 97a.[4]

That court did achieve a majority consensus in one respect: Five judges concluded that no search occurred at Steps One and Two of the geofence warrant. *Id.* 27a-28a (Finley, J.), 37a-38a (Newell, J.).

In Judge Finley's view, writing for himself and Judge Parker, no search occurred during any of the three steps because petitioner "did not have a reasonable expectation of privacy in the information he voluntarily turned over to a third party." *Id.* 27a-28a. He distinguished Google location history from

[4] Presiding Judge Schenck was on the intermediate court of appeals when petitioner's case was argued but not when that court's opinion issued. Pet. App. 55a n.1. He did not participate in that opinion, *id.*, or in the opinion below from the Texas Court of Criminal Appeals. *Id.* 1a.

the CSLI data at issue in this Court's decision in *Carpenter v. United States*, *id.* 33a (quoting 585 U.S. 296, 311 (2018)), describing location data as "more akin" to "short-term public movements," while also highlighting the "limited timeframe" of the warrant and the ability of Google users to opt out of location sharing. *Id.* 33a-35a. For Judges Finley and Parker, therefore, "[l]aw enforcement did not need a warrant to obtain that information." *Id.* 36a.

Judge Newell, writing for himself and Judges Richardson and Walker, agreed that no search occurred at Steps One and Two due to a lack of expectation of privacy in the "temporally and spatially limited location history data" sought at these two steps. *Id.* 37a-38a. These three judges concluded that "[t]he State did not seek 'enough' information through these steps that it can be said to have violated a legitimate expectation of privacy," and the data "did not implicate the type of 'privacies of life' that were at the center of the Court's concern in *Carpenter*." *Id.* 44a. They accordingly "concur[red] with upholding at least the first two steps authorized by the geofence warrant." *Id.* 38a.

For these three judges, however, the constitutional analysis shifted at Step Three. Although recognizing that location data, unlike the CSLI data in *Carpenter*, involves "an affirmative action" of sharing and "[a]rguably" therefore "a greater assumption of the risk than merely using a cell phone," they "question[ed] whether turning on location services to be able to use a particular app or even ask your phone

for directions to a particular location is the same thing as agreeing to be surveilled for an extended period of time." *Id.* 45a. Therefore, they "would hold that Appellant did have a reasonable expectation of privacy in the information sought by the warrant's third step, which included six months of prior IP history" and "identifying subscriber information." *Id.* 38a, 46a. In addition to determining that a search occurred at Step Three, these three judges "d[id] not agree that there is probable cause supporting any of the steps authorized by the warrant, especially the third." *Id.* 47a. Accordingly, they dissented from affirmance of the court of appeals's judgment overall. *Id.* 38a.

Judge Yeary's opinion announcing that affirmance had assumed without deciding that a search occurred and then deemed the warrant sufficient to satisfy Fourth Amendment requirements, including probable cause. *See id*. 1a-2a, 26a.[5] But Judge Newell, along with Judges Richardson and Walker, expressly rejected that analysis as impermissibly crediting "boilerplate language" and "[c]onclusory allegations" that "are generally insufficient to establish probable cause." *Id.* 48a-49a, 52a. In particular, they pointed to the detective's speculation that it is "likely" one of the suspects carried an Android phone and that

[5] Judges Finley and Parker joined Judges Yeary and Keel in finding probable cause, Pet. App. 1a, 26a, while also separately concurring based on the third-party doctrine and—"[a]ssuming, *arguendo*" the warrant's invalidity—the good-faith exception. *Id.* 28a, 32a n.2. No other judges joined either conclusion. *See id.* 1a.

home-invaders "commonly communicate with someone outside the residence." *Id.* 48a. "Here, there were no specific facts connecting the Google location history database to the alleged offense beyond a conclusory statement about the likelihood a suspect carried an Android phone. There was no basis for that conclusion." *Id*. 49a. Dissenting in part, these judges emphasized that the "ubiquitous nature of cell phones" could not provide the "required nexus" to the offense because the mere prevalence of cell phones "does not establish a fair probability that evidence of a crime will be discovered by searching phones located near the scene of a crime." *Id.* 53a-54a.

Additionally, the partial dissent cautioned that "Judge Yeary's opinion allows for the idea that anyone identified via a device located within the search warrant parameters would necessarily be a suspect or a witness," and "by definition a witness is not involved in the crime." *Id.* 52a. "Introducing the idea of probable cause to believe that a 'witness' has evidence of a crime significantly lowers the specificity required to obtain a warrant." *Id.* 53a.

Although Judge McClure did not join any opinion, his dissent from affirmance necessarily reflects that no probable cause supported any search that occurred and that the good-faith exception to the exclusionary rule did not apply. *See id.* 1a, 75a, 97a-98a.

Despite the fragmented opinions underlying the affirmance and a five-judge majority agreeing only that no search occurred at Steps One and Two, *see supra* pp. 8-9, the Texas Court of Criminal Appeals

denied rehearing. Pet. App. 94a. Assessing that decision, Judge Newell questioned the wisdom of affirming the court of appeals through the "circular-firing-squad nature of what we handed down," but he nonetheless concurred in the denial of rehearing with this somber appraisal: "We simply can't do any better." *Id.* 100a-101a.

REASONS TO GRANT THE PETITION

The decision below exacerbates a conflict among federal circuits and state high courts as to whether warrants authorizing searches for data generated by unknown devices and unknown individuals within a law-enforcement-defined "geofence" satisfy Fourth Amendment requirements. The Fifth Circuit has held that geofence warrants are "general warrants categorically prohibited by the Fourth Amendment," *Smith*, 110 F.4th at 838, but they remain available in state courts in Texas (Pet. App. 1a-2a) and Georgia (*Jones*, 913 S.E.2d at 703-04), as well as in the Fourth Circuit (*Chatrie*, 136 F.4th at 100-01).

By rejecting the Fifth Circuit's categorical prohibition, the Texas Court of Criminal Appeals created an intrajurisdictional conflict that causes Fourth Amendment rights to vary within Texas itself. Federal courts in Texas are now bound by *Smith*'s categorical prohibition; but in Texas state courts, individuals' location history remains vulnerable to geofence-warrant searches. And this untenable situation creates uncertainty for

law enforcement too, potentially undermining cooperation within state-federal task forces.

By resolving the split over geofence warrants, this Court would provide much-needed guidance on how *Carpenter*'s Fourth Amendment analysis of CSLI searches applies to other forms of digital-location history captured by rapidly emerging technologies. Questions abound in lower courts regarding the applicability of the third-party doctrine and particularity and probable-cause requirements for geofence searches. And private companies like Google, Meta, Uber, and X Corp. are struggling to balance compliance with government demands alongside the privacy promised in terms of service. This case is an excellent vehicle to resolve these questions—falling squarely within the intrajurisdictional split, and with a warrant typical of those at issue across jurisdictions.

On the merits, this Court should hold that the geofence warrant in petitioner's case violated the Fourth Amendment. A search occurred—both at Steps One and Two, involving location-history data more pervasive and precise than the CSLI in *Carpenter*, and at Step Three, involving identifiers and private information beyond location. Moreover, the warrant itself was constitutionally deficient in multiple respects: It was an impermissible general warrant; and it functioned as a blank check—pre-approving three steps of increasingly invasive searches at the officer's sole discretion—based on

individuals' proximity to the crime scene and insufficient particularity and probable cause overall.

Finally, Fourth Amendment protections should not be tossed aside because geofence warrants may be helpful for law enforcement. Nor should new technology provide a free pass from the exclusionary rule. It would be obvious to any officer that the warrant here was unconstitutional on its face—whether viewed as a general warrant, as a blank check pre-authorizing an officer's increasing demands, or as impermissibly lacking particularity and implausibly resting probable cause on crime-scene proximity and phone-use generalizations.

The Court should grant the petition and resolve the conflict over the constitutionality of geofence warrants.

I. Federal Courts Of Appeals And State High Courts Conflict Over The Constitutionality Of Geofence Warrants.

A. In Federal Courts Within The Fifth Circuit, Geofence Warrants Are Categorically Unconstitutional.

As a result of *Smith*, federal courts in the Fifth Circuit can no longer authorize geofence warrants seeking to obtain unnamed and unknown individuals' location-history data. "Given the intrusiveness and ubiquity of Location History data," and the fact that geofence warrants allow "law enforcement to rummage through troves of location data from

hundreds of millions of Google users without any description of the particular suspect or suspects to be found," the Fifth Circuit held that executing a geofence warrant constitutes a search and "that geofence warrants are general warrants categorically prohibited by the Fourth Amendment." *Smith*, 110 F.4th at 837-38.

As that court reasoned, "geofence location data is invasive for Fourth Amendment purposes." *Id.* at 834. "Of particular concern is the fact that a geofence will retroactively track anyone with Location History enabled, regardless of whether a particular individual is suspicious or moving within an area that is typically granted Fourth Amendment protection." *Id.* It "provides more precise location data than either CSLI or GPS," *id.* at 833, able to "follow a person from the interior of their home, among the rooms of their dwelling, to the location of a crime, then to a place of worship." *Id.* (citation omitted).

Moreover, the Fifth Circuit held that "per *Carpenter*, the third-party doctrine does not apply." *Id.* at 836. Although the Google user in *Smith* had enabled location history, the court observed that, "[a]s anyone with a smartphone can attest, electronic opt-in processes are hardly informed and, in many instances, may not even be voluntary." *Id.* at 835 (highlighting the "ubiquity—and necessity—in the digital age of entrusting corporations like Google, Microsoft, and Apple with highly sensitive information"). Indeed, "users are bombarded multiple times with requests to opt in across multiple apps,"

fielding prompts that "typically innocuously promise app optimization" without warning that Google may share stored location data with law enforcement. *Id.* Accordingly, "a user simply cannot forfeit the protections of the Fourth Amendment for years of precise location by selecting 'YES, I'M IN' at midnight while setting up Google Assistant, even if some text offered warning along the way." *Id.* at 836 (quoting *Chatrie*, 590 F. Supp. 3d at 936).

For the Fifth Circuit, the geofence search raised another "quintessential problem": These warrants "*never* include a specific user to be identified, only a temporal and geographic location where any given user *may* turn up post-search." *Id*. at 837. Indeed, the search occurs "while law enforcement officials have *no idea* who they are looking for." *Id.* So "[t]hese geofence warrants fail at Step 1," seeking "location data from hundreds of millions of Google users without any description of the particular suspect or suspects to be found." *Id.* at 837-38.[6]

After holding that geofence warrants are categorically unconstitutional general warrants, the Fifth Circuit nonetheless affirmed the denial of the motion to suppress based on the good-faith exception. *Id.* at 840. It pointed to the "novelty of the technique" and excused inspectors' "mistaken belief" about a

[6] The court emphasized that Fourth Amendment protections apply to this "general, exploratory rummaging" because "all of Google's actions, including at Step 1, are conducted in response to legal compulsion and with the participation or knowledge of [a] government official." 110 F.4th at 837, 838 n.12 (internal quotation marks and citations omitted); *see infra* p. 34.

reference to "further legal process." *Id.* at 840, 840 n.14.

Judge Ho separately concurred, acknowledging that geofence searches may offer expediency to law enforcement, but "our rights are priceless." *Id.* at 841. Indeed, "hamstringing the government is the whole point of our Constitution." *Id.* "Our Founders recognized that the government will not always be comprised of publicly spirited officers—and that even good faith actors can be overcome by the zealous pursuit of legitimate public interests." *Id.* (discussing THE FEDERALIST No. 51, at 349 (J. Cooke ed., 1961)). "Our panel decision today endeavors to apply our Founding charter to the realities of modern technology, consistent with governing precedent." *Id.*

B. The Texas Court of Criminal Appeals Rejects The Fifth Circuit's Categorical View, Keeping Geofence Warrants Available In Texas State Courts.

A majority of judges on Texas's high criminal court concluded that Steps One and Two of the three-step geofence warrant in petitioner's case did not result in a search. Pet. App. 27a-28a (Finley, J., with Parker, J.), 37a-38a (Newell, J., with Richardson and Walker, J.J.). That consensus conflicts with the Fifth Circuit's categorical repudiation of geofence warrants in *Smith*, which identified a Fourth Amendment violation with a search beginning at Step One. *See* 110 F.4th at 837-38.

Within the majority of judges who rejected arguments that a search occurred at Steps One and Two, two slightly different rationales emerged. Judges Finley and Parker concluded that the third-party doctrine applied due to the opt-in nature of location-history tracking on Android devices and with Google services. *See* Pet. App. 27a-28a.[7] Judge Newell, joined by Judges Richardson and Walker, instead focused on the nature of the information revealed at Steps One and Two. In their view, it "did not implicate the type of 'privacies of life' that were at the center of the Court's concern in *Carpenter*" and was not expansive temporally and spatially. *Id.* 37a-38a, 44a.

Judge Yeary's opinion for four judges assumed a search occurred and concluded that probable cause supported the entire warrant. *Id.* 1a, 26a. These judges accepted generalizations about the prevalence of cell phones and their likely use by home robbers as sufficient for probable cause. *Id.* 21a-23a. By contrast, the Fifth Circuit in *Smith* had highlighted absence of particularity as a "quintessential problem" with geofence warrants, which by nature "*never* include a specific user to be identified, only a temporal and geographic location where any given user *may* turn up post-search." 110 F.4th at 837.

Judges Newell, Richardson, and Walker disagreed that probable cause existed, criticizing Judge Yeary's opinion for crediting conclusory assertions that lacked "specific facts connecting the Google location history

[7] These two judges adopted the same rationale to conclude that no search occurs at Step Three either. Pet. App. 27a-28a.

database to the alleged offense." Pet. App. 47a-54a. Although these judges found no search at Steps One and Two, they did at Step Three due to the intrusive nature of the identifying information and IP history requested. *Id.* 46a-47a. And because the warrant lacked probable cause, they dissented in part from affirmance. *Id.* 37a-38a.

C. As in Texas State Courts, Geofence Warrants Remain Available In The Fourth Circuit After *Chatrie*'s En Banc Collapse.

Unlike the Fifth Circuit, the Fourth Circuit does not categorically prohibit geofence warrants as unconstitutional general warrants. Instead, as in Texas state courts, geofence warrants remain available in the Fourth Circuit following its fractured, en banc, per curiam affirmance of a district court's judgment upholding the denial of a motion to suppress evidence obtained through a three-step geofence warrant. *See Chatrie*, 136 F.4th at 100.

Notwithstanding the absence of a majority en banc opinion in *Chatrie*, the Fourth Circuit confirmed through eight concurrences that a majority of judges on that court—like a majority of judges on the Texas Court of Criminal Appeals, *see supra* Part I.B—reject the Fifth Circuit's holding that geofence warrants are categorically unconstitutional at Step One. *See* 136 F.4th at 143-44 (Berner, J., concurring) ("Unlike our colleagues on the Fifth Circuit, I do not believe that geofence warrants are categorically

unconstitutional"—reasoning instead that a search occurred at Steps Two and Three but not at Step One);[8] *id.* at 109 (Wilkinson, J., concurring) (concluding no search occurred without differentiating steps);[9] *id.* at 138-39, 138 n.14 (Richardson, J., concurring) (focusing on Steps One and Two in concluding no search occurred).[10]

That said, of the judges who rejected the Fifth Circuit's categorical prohibition, six (Judge Berner joined by five) plus Judge Harris[11] nonetheless concluded that a search occurred pursuant to the geofence warrant in *Chatrie*. *See id.* at 115 (Wynn, J., concurring); *id.* at 143, 156 (Berner, J., concurring). Judge Berner's opinion relied on this Court's analysis in *Carpenter* to reason that Steps Two and Three implicated "highly revealing" location history for which voluntary disclosure had not been definitively shown. *Id.* at 148-49 (discussing 585 U.S. 296).

Because the geofence search was not categorically invalid from the outset—*contra Smith*, 110 F.4th at 838—Judge Berner (joined in this portion by four judges) proceeded to analyze probable cause and found it lacking at Steps Two and Three. *See Chatrie*,

---

[8] Joining in full were Judges Wynn, Thacker, Benjamin, and Gregory; Judge Heytens joined that part of the concurrence.

[9] Joined by Judges Niemeyer, King, Agee, and Richardson.

[10] Joined by Judges Quattlebaum and Rushing in addition to Judge Wilkinson and every judge joining Judge Wilkinson's concurrence. *See supra* note 9.

[11] Judge Harris joined Judge Wynn's opinion concluding a search occurred but not Judge Berner's express rejection of the Fifth Circuit's categorical holding.

136 F.4th at 153 (Berner, J., concurring).[12] These judges emphasized that probable cause "must be evaluated at the time of the warrant application, not in light of subsequent developments." *Id.* "Before the first request to Google, the detective could make a single representation about the Google users he would ultimately search: they would be among those near the crime scene." *Id.* As this concurrence reiterated, quoting *Ybarra v. Illinois*, 444 U.S. 85, 91 (1971), "[a] person's mere proximity to suspected criminal activity 'does not, without more, give rise to probable cause to search that person.'" *Id.* Yet, as Judge Wynn separately elaborated, a geofence warrant "can uncover the Location History of an unlimited number of individuals, *none* of whom were previously identified or suspected of any wrongdoing." *Id.* at 122 (Wynn, J., concurring).

In the end, however, the Fourth Circuit affirmed the district court's denial of the motion to suppress based on the good-faith exception to the exclusionary rule. *Id.* at 101 (Diaz, J., concurring); *id.* at 114 (Niemeyer, J., concurring); *id.* at 115 (King, J., concurring); *id.* at 115 n.1 (Wynn, J., concurring); *id.* at 142-43 (Heytens, J., concurring).

Judge Gregory dissented, concluding that the good-faith exception should not apply. *Id.* at 157. He explained that an investigator "could not have reasonably believed that the liberty authorized by the warrant was constitutional," *id.* at 159, because the

[12] Judge Heytens did not join that portion of the opinion. *See* 136 F.4th at 143.

warrant "gave law enforcement broad discretion to request and obtain a seemingly unlimited amount of data associated with devices identified at Step One," entirely "without any additional judiciary oversight." *Id.* at 158. Moreover, "[i]t is well-settled that, to be valid, a warrant must include the particular person, place, or thing to be searched." *Id.* at 160. If officers can take a "let's-wait-until-it's-decided approach," the "Fourth Amendment protections would become a nullity in the face of rapidly emerging technology." *Id.* (quoting in part *United States v. Leon*, 468 U.S. 897, 912 n.9 (1984)).

D. Geofence Warrants Remain Available Under The Georgia Supreme Court's Decision In *Jones*.

Like the Texas Court of Criminal Appeals and the Fourth Circuit, the Supreme Court of Georgia has not categorically prohibited geofence warrants as unconstitutional general warrants. Instead, after assuming a search occurred, a seven-Justice majority concluded that the three-step geofence warrant at issue, along with a subsequent warrant obtained by the investigating officer, satisfied the Fourth Amendment's probable-cause and particularity requirements. *See Jones,* 913 S.E.2d at 703-04, 706 n.1, 711.[13] The court pointed to details in the warrant application that linked the location-data request to

[13] Two justices, concurring specially, stated that they would have decided the case by revisiting Georgia state law that makes a "mess" of exceptions to the exclusionary rule. 913 S.E.2d at 711-12 (Peterson, P.J., concurring specially, joined by La Grua, J.).

the murder at issue by referencing surveillance video showing someone talking on a cell phone and entering and leaving the victim's home on the night of her murder. *Id.* at 707. And the court highlighted that, after receiving location data from Google at Steps One and Two, the detective refrained from asking Google for the identifying information authorized in Step Three until he completed an updated warrant application and received a second warrant for that information. *Id.* at 705.

The court left open the possibility that a warrant authorizing an officer's overly expansive geofence request "not reasonably calculated to lead them to the device held by the unknown suspect or that suspect's identity" would be unconstitutionally "overbroad." *Id.* at 709-10. However, it contemplated that possibility as arising only within the context of a specific warrant application, rejecting arguments that the inherent nature of Google's location-history database and the three-step process rendered geofence warrants categorically unconstitutional. *Compare id.* at 708-10, *with Smith*, 110 F.4th at 838.

II. This Case Provides An Excellent Vehicle For This Court To Answer An Important And Unresolved Question Regarding The Constitutionality Of Geofence Warrants.

A. The Conflict Within Texas Highlights The Urgency Of Resolving Courts' Inconsistent Protection Of Location History.

After the decision below, geofence warrants can be sought in Texas state courts but are prohibited as

categorically unconstitutional in Texas federal courts under *Smith*. *Compare* Pet. App. 1a-2a, *with* 110 F.4th at 838. While the evidence in *Smith* was ultimately admitted under the good-faith exception to the exclusionary rule, *id.* at 840, that decision means no federal court within the Fifth Circuit can issue a valid geofence warrant after the *Smith* opinion. At the same time, the decisions in *Chatrie* and *Jones* allow continued use of geofence warrants in the Fourth Circuit and in Georgia state courts—consistent with the decision below. *See supra* Parts I.B-D. So Fourth Amendment protections vary within Texas and also across jurisdictions.

The cross-jurisdictional split is an untenable situation made especially dire by the state-federal conflict within Texas. Whether a geofence warrant is sought in state or federal court will change the rights of anyone whose device shows presence within the geofence—including passers-by. For example, if someone robs a bank on a Texas city block, federal officers could investigate, *see* 18 U.S.C. § 2113, and location history associated with devices near that crime scene would be protected from a geofence search. But if the thief instead targets a convenience store on the same block, and state investigators obtain a geofence warrant covering that area, *e.g.*, TEX. PENAL CODE § 31.03, the location history of devices swept into the geofence will be searched. *See* Pet. App. 1a-2a. Moreover, if the same person robs the bank and the convenience store, federal investigators might try to build on the state's

geofence-search returns—eliminating protection the Fifth Circuit's decision affords.[14]

On the flip side, state and federal officers may overcorrect for unpredictability and avoid cooperation on the important joint task forces on which numerous agencies rely. *See State and Local Task Forces*, U.S. DRUG ENF'T ADMIN., https://www.dea.gov/state-and-local-task-force (last visited Oct. 12, 2025) (317 federal-state-local DEA task forces); *Fugitive Task Forces*, U.S. MARSHALS SERV., https://www.usmarshals.gov/what-we-do/fugitive-investigations/fugitive-task-forces (last visited Oct. 12, 2025) (56 federal-local task forces); *Violent Gang Task Forces*, FED. BUREAU OF INVESTIGATION, https://www.fbi.gov/investigate/violent-crime/gangs/violent-gang-task-forces (last visited Oct. 12, 2025) (178 federal-state-local task forces). Whether viewed as an invitation to game or an obstacle to collaboration, the state-federal conflict within Texas warps effective law enforcement.

This case presents an excellent vehicle for this Court to resolve the status of geofence warrants. It is positioned squarely within the intrajurisdictional split and involves a three-step, temporally and geographically defined geofence warrant typical of those at issue in the conflict. *See infra* Part I.A-D. Therefore, a decision from this Court in petitioner's case would resolve inconsistent Fourth Amendment

[14] The geofence warrant in *Chatrie* was issued by a state magistrate judge, although the case was prosecuted in federal court. *See Chatrie*, 136 F.4th at 103 (Diaz, C.J., concurring).

protections concerning the most common type of geofence warrant.

B. The Petition Offers This Court An Opportunity To Give Much-Needed Guidance On *Carpenter*'s Application To Emerging Search Technologies Like Geofence Warrants.

Seven years have passed since *Carpenter* considered Fourth Amendment protections for digital data, reaffirming that "the Court is obligated—as '[s]ubtler and more far-reaching means of invading privacy have become available to the Government'—to ensure that the 'progress of science' does not erode Fourth Amendment protections." 585 U.S. at 320 (quoting *Olmstead v. United States*, 277 U.S. 438, 473-74 (1928) (Brandeis, J., dissenting)). But since *Carpenter*, lower courts have struggled to determine where and how this Court's analysis applies to new digital-data contexts that implicate the third-party doctrine and the probable-cause and particularity requirements for warrants seeking location-history information. Resolving the split over geofence warrants would not only answer the first question presented, but also provide much-needed guidance to lower courts trying to reconcile Fourth Amendment protections with rapidly evolving technologies that could erode "that degree of privacy against government that existed when the Fourth Amendment was adopted." *Carpenter*, 585 U.S. at 305 (quoting *Kyllo v. United States*, 533 U.S. 27, 34 (2001)).

Geofence warrants continue to be the subject of litigation. *See, e.g.*, *State v. Contreras-Sanchez*, 5 N.W.3d 151 (Minn. Ct. App. Apr. 1, 2024), *review granted* (Minn. May 29, 2024); *Nguyen v. State*, 2025 WL 1776134 (Tex. App. June 27, 2025), *petition for discretionary review filed* (Sept. 30, 2025); *United States v. Brown*, 2025 WL 1674283 (N.D. Ga. June 13, 2025). And beyond Google, "companies like Apple, Uber, Lyft, Microsoft, and Yahoo have received geofence warrants." *United States v. Davis*, 109 F.4th 1320, 1336 (11th Cir. 2024) (Jordan, J., concurring), *petition for cert. filed*, (U.S. July 15, 2025) (25-5189).

Moreover, the challenge of extending *Carpenter*'s analysis of the third-party doctrine to the geofence context is compounded by an absence of guidance on how to apply the warrant requirements of particularity and probable cause to digital searches—issues *Carpenter* did not address. Indeed, the disagreement below as to the warrant's sufficiency exemplifies lower courts' struggle with these questions. *Compare* Pet. App. 19a-26a (Yeary, J.), *with* Pet. App. 48a-54a, 97a (Newell, J.). Lack of clarity also may invite "overuse" of geofence requests in "run-of-the-mill cases that present no urgency or imminent danger." *In re Search of Info. Controlled by Google*, No. 20 M 297, 2020 WL 5491763, at *8 (N.D. Ill. July 8, 2020).

The absence of post-*Carpenter* guidance from this Court also affects private companies trying to protect users' privacy pursuant to terms of service while navigating law-enforcement requests for location-

history data and more—such as the identity, email, and IP history information requested at Step Three of the geofence warrant in petitioner's case. *See* Pet. App. 105a. In the most recent year on record, Google, for example, has dealt with 453,307 "[r]equests for disclosure of user information" from courts and law enforcement in the United States—a number that has steadily grown as more warrants and subpoenas are directed to databases.[15]

Google is not alone. The prevalence of law-enforcement requests for digital data has prompted companies like Uber and Meta—which owns Facebook and Instagram—to develop procedures for balancing legal compliance with obligations to users.[16] And X Corporation, which, like Google, "necessarily collects, processes, and stores multiple classes of sensitive user data" in order to provide its services, identifies the absence of post-*Carpenter* guidance as straining its business models and contractual agreements to safeguard users' data. *See* Brief for X Corp. as Amicus Curiae Supporting Petitioner at 1, 3-5, *filed in Chatrie v. United States* (*petition for cert. filed* July 28, 2025) (No. 25-112). Resolving the conflict

---

[15] *Global Requests for User Information*, GOOGLE TRANSPARENCY REPORT, https://transparencyreport.google.com/user-data/overview?hl=en (last visited Oct. 12, 2025) (combined totals from July 2023 to June 2024).

[16] *See Guidelines for United States Law Enforcement*, UBER (Dec. 21, 2023), https://www.uber.com/legal/en/document/?name=guidelines-for-law-enforcement&country=united-states&lang=en#kix.orb7eneiny95; *Information for law enforcement authorities*, META: SAFETY CENTER, https://www.meta.com/safety/communities/law/guidelines/ (last visited Oct. 12, 2025).

over the constitutionality of geofence warrants will therefore assist private companies along with lower courts in navigating law-enforcement demands for location-history data that the Constitution and a company's terms of service may protect.

III. THE GEOFENCE WARRANT IN THIS CASE VIOLATED THE FOURTH AMENDMENT.

A. The Geofence Warrant Authorized A Search.

By directing Google to disclose location-history data for any device present within the parameters of the geofence, the warrant at issue authorized an intrusion on petitioner's reasonable expectation of privacy and therefore conducted a search, notwithstanding that this data was in the hands of a third party. "A majority of this Court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements." *Carpenter*, 585 U.S. at 310 (discussing CSLI). Location-history data obtained through a geofence warrant, like the CSLI at issue in *Carpenter*, provides law enforcement with "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.'" *See id*. at 311 (quoting *United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring)). Since individuals "compulsively carry cell phones with them all the time," location history enables the government to conduct "near perfect surveillance," following an

individual "into private residences, doctor's offices, political headquarters, and other potentially revealing locales." *See id.* at 311-12. Further, "the retrospective quality" of historical location data "gives police access to a category of information otherwise unknowable." *See id.* at 312.

Indeed, as Google explains, its users' location history "can be considerably more precise than other kinds of location data, including the CSLI considered in *Carpenter*." Google Amicus, *supra*, at 10. For example, while CSLI data "typically reflects location on the order of dozens to hundreds of city blocks in urban areas," Google can estimate a device's location "within approximately twenty meters," *id*., or even place an individual on a particular floor within a building. *Chatrie*, 136 F.4th at 121 (Wynn, J., concurring). And Step Two of a geofence warrant like the one here lets a detective obtain up to two hours of data beyond the warrant's initial temporal parameters. *See* Pet. App. 104a-105a.

The intrusiveness of the search authorized at Step Three extends well beyond CSLI-analogous location history. Step Three's request can include the user's name, email address, subscribed services, and six months of IP history for any devices included in Step One that the investigating officer, without further judicial approval, determined were of interest. *See id*. 105a; *Smith*, 110 F.4th at 827. In this case, Google produced identifying data not only for petitioner's device, but also for the other two devices present in

the geofence that the detective did not conclude belonged to a suspect. *See* State's Exhibit 237, *supra*.

As with the CSLI at issue in *Carpenter*, 585 U.S. at 313-16, the fact that the geofence location-history data here was held by a third party (Google) does not mean that no search occurred. Knowingly sharing information with third parties may overcome an expectation of privacy, but only in limited circumstances that *Carpenter* distinguished. *See, e.g.*, *United States v. Miller*, 425 U.S. 435, 442-43 (1976) (no reasonable expectation of privacy in bank records containing information voluntarily exposed during course of business); *Smith v. Maryland*, 442 U.S. 735, 744-46 (1979) (applying same reasoning to dialed phone numbers in a pen register). This Court concluded that sharing cell-phone location information with third-party carriers was distinct for two significant reasons. First, CSLI creates a "detailed chronicle of a person's physical presence," implicating "privacy concerns far beyond those considered in *Smith* and *Miller*." *Carpenter*, 585 U.S. at 315. Second, CSLI is not truly voluntarily shared with third-party carriers because of the ubiquity of cell phones and the fact that CSLI data is recorded "without any affirmative act on the part of the user beyond powering up" their phone. *Id.*

Location-history data, akin to a "virtual journal," Google Amicus, *supra*, at 6, implicates similar reasoning regarding "digital technology" that tracks not only one person's location "but also everyone else's, not for a short period but for years and years." *See*

Carpenter, 585 U.S. at 313; Google Amicus, *supra*, at 21-22 (Location history "is far more revealing than the bank records or telephone pen register.").

Moreover, opting in to location-history tracking is neither meaningful nor fully informed. "[U]sers are bombarded multiple times with requests to opt in across multiple apps" through requests that "typically innocuously promise app optimization, rather than reveal the fact that users' locations will be comprehensively stored" by Google. *Smith*, 110 F.4th at 835 (citation omitted). Google acknowledges that a user's location history "might be collected multiple times per minute," and turning off some apps' location settings may leave tracking enabled in others. *See How Google Uses Location Information*, GOOGLE PRIVACY & TERMS, https://policies.google.com/technologies/location-data?hl=en-US (last visited Oct. 12, 2025).[17] Given this reality, users do not truly voluntarily share their location with Google, and the third-party doctrine should not negate users' expectation of privacy in the kind of "detailed chronicle of a person's physical presence" that *Carpenter* protected. *See* 585 U.S. at 315.

Additionally, "[j]ust because you entrust your data—in some cases, your modern-day papers and effects—to a third party may not mean you lose any Fourth Amendment interest in its contents." *Carpenter*, 585 U.S. at 400 (Gorsuch, J., dissenting).

---

[17] A cyclist tracking rides on RunKeeper, a non-Google app, discovered his location history nonetheless appeared in Google's returns under a geofence warrant. *See* Note, *supra*, at 2508.

Justice Gorsuch has contemplated the possibility of "substantial legal interests" in one's generated data, "including at least some right to include, exclude, and control its use," that may well "rise to the level of a property right." *Id.* at 406. "[T]he traditional approach asked if a house, paper or effect was *yours* under law," and "[n]o more was needed to trigger the Fourth Amendment." *Id.* at 397-98. Consistent with that view, Google describes a user's location-history information as "essentially a history or journal" that Google stores "primarily for the user's own use and benefit." Google Amicus, *supra*, at 6, 9. Accordingly, the government's intrusion upon that information constituted a search from a property perspective, in addition to being an invasion of petitioner's reasonable expectation of privacy.

B. The Geofence Warrant Failed to Satisfy Fourth Amendment Requirements For A Search.

The warrant at issue below was unconstitutional from the outset both because it was an impermissible general warrant and because the unbridled discretion it ceded to law enforcement violates the Fourth Amendment's particularity and probable-cause requirements.

As the Fifth Circuit held in *Smith*, geofence warrants are categorically unconstitutional, "present[ing] the exact sort of 'general, exploratory rummaging' that the Fourth Amendment was designed to prevent." 110 F.4th at 837 (quoting

Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971)). These warrants "allow law enforcement to rummage through troves of location data from hundreds of millions of Google users without any description of the particular suspect or suspects to be found." *Id.* at 837-38. As such, these warrants are "'emblematic of general warrants' and are 'highly suspect per se.'" *Id.* at 838 (quoting Note*, supra*, at 2520).

There is no exception just because the actual searching is done by Google. The Fourth Amendment protects against a search "[e]ffected by a private party" who "acted as an instrument or agent of the Government." *Skinner v. Ry. Lab. Execs.' Ass'n*, 489 U.S. 602, 614 (1989). And when complying with geofence warrants, "all of Google's actions, including at Step 1, are conducted in response to legal compulsion and with the participation or knowledge of [a] government official." *Smith*, 110 F.4th at 838 n.12 (internal quotation marks and citation omitted).

Moreover, geofence warrants like the one in petitioner's case lack sufficient particularity and probable cause to satisfy the Fourth Amendment. While the warrant sets out a three-step procedure for Google's production of increasingly invasive user information, the only judicial involvement is when the warrant is approved. Pet. App. 7a (Yeary, J.), 102a-106a. Once Google searched its Sensorvault and provided anonymized information about the devices that were within the geofence, law enforcement unilaterally determined the devices for which Google would supply more extensive location

history at Step Two and, finally, identifying information and six months of IP history at Step Three. *Id.* 46a (Newell, J.), 104a-105a. As such, the geofence warrant functioned as a blank check for law enforcement to control the extent of the search and demand increasingly invasive data with no intervening judicial oversight. *See id*. 103a-105a. Even if Google had any incidental search limits, that would merely and impermissibly "cede[] authority and decision-making from an independent judicial officer to a private corporation." *Chatrie,* 136 F.4th at 159 (Gregory, J., dissenting).

The blank-check search authorized by the geofence warrant is particularly problematic in petitioner's case, in which the supporting application was devoid of the particularity and probable cause required by the Fourth Amendment for *any* search. It represented only that it was "likely" one of the four suspects "had an Android device on him" and vaguely claimed that "[i]t is common practice that home invasion robbery suspects keep an open line" with a lookout. Pet. App. 113a. Judge Newell explained that "boilerplate language" and bare conclusions do not provide the "required nexus" to the offense or "establish a fair probability that evidence of a crime will be discovered by searching phones located near the scene of a crime." *Id.* 52a-54a. And subsequent developments cannot retroactively repair the Fourth Amendment defects present at the warrant's initial issuance. *See Chatrie*, 136 F.4th at 153 (Berner, J., concurring).

The three-step geofence warrant's blind ratification of an officer's discretion fails to "safeguard the privacy and security of individuals against arbitrary invasions by government officials." *Carpenter*, 585 U.S. at 303 (citation omitted). Instead, it gives law enforcement a free pass to search the private information of anyone within the geofence, suspect or not, without the requisite "quantum of individualized suspicion." *Id*. at 317 (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 560-61 (1976)); Pet. App. 103a-105a. Yet this Court has never approved a search based on a person's proximity to a crime scene. To the contrary, this Court has explicitly recognized that "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Ybarra*, 444 U.S. at 91. But through a geofence warrant, officers nonetheless "can uncover the Location History of an unlimited number of individuals, *none* of whom were previously identified or suspected of any wrongdoing." *Chatrie*, 136 F.4th at 122 (Wynn, J., concurring).

This Court "cannot forgive the requirements of the Fourth Amendment in the name of law enforcement." *Berger v. New York*, 388 U.S. 41, 62 (1967); *accord Carpenter*, 585 U.S. at 320 (obligating the Court to ensure technology "does not erode Fourth Amendment protections"). Denying digital shortcuts to investigating officers "is not costless. But our rights are priceless." *Smith*, 110 F.4th at 841 (Ho, J., concurring).

IV. THE GOOD-FAITH EXCEPTION TO THE EXCLUSIONARY RULE DOES NOT APPLY TO THIS CASE.

This Court should reaffirm that the good-faith exception to the exclusionary rule does not apply when an officer executes a warrant, like the geofence warrant here, that is "so facially deficient—*i.e.*, in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid." *Leon*, 468 U.S. at 923. Just as advances in new technologies do not eviscerate Fourth Amendment protections enshrined at the Founding, *see, e.g.*, *Kyllo*, 533 U.S. at 34, neither do they give prosecutors a free pass to admit evidence gathered by officers through warrants that plainly violate basic Fourth Amendment requirements.[18]

It is "not unclear what the Constitution demands of all warrants." *Chatrie*, 136 F.4th at 160 (Gregory, J., dissenting). And a lack of precedent regarding a new technology should not allow officers to ignore a warrant's facial unconstitutionality. As this Court warned in the context of the retroactivity of Fourth Amendment rulings, allowing this would "encourage police or other courts to disregard the plain purport of

[18] If this Court were to grant only the first question presented and hold that the geofence warrant in petitioner's case violated the Fourth Amendment, this Court could remand for consideration of the good-faith exception, as only two judges addressed it. Pet. App. 32a n.2. But to ensure complete and meaningful relief, petitioner urges this Court to grant both questions presented.

our decisions and to adopt a let's-wait-until-it's-decided approach." *United States v. Johnson*, 457 U.S. 537, 561 (1982) (citation omitted).

No matter the context, "[g]iven that the particularity requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that requirement was valid." *Groh v. Ramirez*, 540 U.S. 551, 563 (2004). Indeed, it has been well settled since the Founding that a general warrant allowing "an unrestrained search for evidence of criminal activity" is unconstitutional. *Carpenter*, 585 U.S. at 303-04.

It has been settled even longer that judges, not law-enforcement officers or private companies, have the exclusive province of weighing information and directing the execution of warrants. "As Lord Mansfield stated two centuries ago: 'It is not fit that the receiving or judging of the information should be left to the discretion of the officer. The magistrate ought to judge; and should give certain directions to the officer.'" *Malley v. Briggs*, 475 U.S. 335, 352 (1986) (Powell, J., concurring in part) (quoting *Leach v. Three of the King's Messengers*, 19 How.St.Tr. 1001, 1027 (1765)). But the warrant in petitioner's case left the investigating officer unilateral discretion to determine who would be subject to a search at Steps One and Two without ever having to return to a neutral magistrate for further review—even as the officer sought increasingly invasive information. Pet. App. 62a-66a.

Finally, "bare conclusion or speculation," *id.* 51a (Newell, J.), is inconsistent with the Fourth Amendment's requirement of probable cause. As *Leon* itself observed, the good-faith exception will not apply when an officer "rel[ies] on a warrant based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" 468 U.S. at 923 (citation omitted); *see* Pet. App. 49a (Newell, J.) ("Here, there were no specific facts connecting the Google location history database to the alleged offense beyond a conclusory statement about the likelihood a suspect carried an Android phone.").

CONCLUSION

This Court should grant the petition and reverse the judgment of the Texas Court of Criminal Appeals.

Respectfully submitted,

ERIN GLENN BUSBY
Counsel of Record
LISA R. ESKOW
UNIVERSITY OF TEXAS
SCHOOL OF LAW
SUPREME COURT
LITIGATION CLINIC
727 East Dean Keeton St.
Austin, Texas 78705
(713) 966-0409
ebusby@law.utexas.edu

CHRISTINA DEAN
DALLAS COUNTY
PUBLIC DEFENDER'S OFFICE
133 N. Riverfront Boulevard,
Suite 2
Dallas, Texas 75207

October 16, 2025

APPENDIX TABLE OF CONTENTS

Page

[SEAL]

In the Court of Criminal Appeals of Texas

No. PD-0669-23

AARON RAYSHAN WELLS, *Appellant*

v.

THE STATE OF TEXAS

On Appellant's Petition for Discretionary Review
From the Fifth Court of Appeals
Dallas County

OPINION

Filed April 2, 2025

YEARY, J., announced the judgment of the Court and filed an opinion in which KEEL, FINLEY, and PARKER, JJ., joined. FINLEY, J., filed a concurring opinion in which PARKER, J., joined. NEWELL, J., filed a concurring and dissenting opinion in which RICHARDSON and WALKER, JJ., joined. MCCLURE, J., dissented. SCHENCK, P.J., did not participate.

This case involves a question about the constitutionality of a "geofence" warrant.[1] We conclude that

[1] Succinctly put, geofence warrants have been described in this way:

> While traditional court orders permit searches related to known suspects, geofence warrants are issued specifically because a suspect cannot be identified. Law enforcement simply specifies a location and period of

use of the geofence warrant in this case to obtain location history data did not violate the Fourth Amendment of the United States Constitution.[2] Accordingly, the judgment of the court of appeals is affirmed.

I. THE OFFENSE

Jimmy Giddings was a drug dealer. He lived with his girlfriend, Nikita Dickerson, at a house at 4923 Veterans Drive in Dallas, across the street from Carver Heights Baptist Church. Dickerson and Giddings had a routine. When he returned home in the early morning hours, she would unlock the gate at their front door and greet him in the driveway. She would carry a .40 caliber Glock pistol because, while they lived in a nice house, she felt the neighborhood was unsafe.

At around 3 a.m. on the morning of the offense, June 24, 2018, Dickerson exited the gate outside the front door, as captured on the home's front-door security camera, pursuant to her and Giddings' routine.

> time, and, after judicial approval, companies conduct sweeping searches of their location databases and provide a list of cell phones and affiliated users found at or near a specific area during a given timeframe, both defined by law enforcement.

Note, *Geofence Warrants and the Fourth Amendment*, 134 HARV. L. REV. 2508, 2509 (May 2021).

[2] The first ground of review we granted is: "[w]hether the Court of Appeals correctly determined the legality of geofence warrants, an issue of first impression in Texas and an important question of state and federal law that has not been, but should be, settled by the Court of Criminal Appeals."

Security cameras from the church across the street recorded four men who had been loitering in the parking lot on the far side of the church from Veteran's Drive "for some hours" before the offense. When Giddings arrived home, the four men, wearing masks over their lower faces, rushed across the street toward Giddings and Dickerson brandishing pistols and a rifle.

In the melee that followed, Dickerson sustained five non-life-threatening gunshot wounds. She also dropped her pistol, and it was retrieved by one of the masked men. At the same time, Giddings fled into the house. Two of the assailants rushed in after him, and a third assailant marched the wounded Dickerson into the house at gunpoint. The fourth man, who turned out to be Appellant, quickly followed them.

All the men except for Appellant had visibly distinctive tattoos. Once inside, during the robbery, one of the assailants—the record does not definitively establish which one—shot Giddings in the neck, severing his spine. As a result of this gunshot wound, Giddings died.

Afterwards, the assailants fled back across the street to their vehicle in the church parking lot and drove off. As described by the court of appeals:

> Based on the security camera recording timestamp and footage showing that the men were in the area of the church immediately before and after the offense, [police] obtained a warrant to search Google's records for information on devices located within a

> rectangular geofence encompassing [Giddings and Dickerson's] house and the portion of the church directly across the street between 2:45 a.m. and 3:10 a.m. on June 24. Ultimately, a cellular phone associated with [A]ppellant was identified as being at the scene. Through [A]ppellant's phone records and a search of social media, police were able to identify Milton Prentice, Brian Groom, and Kiante Watkins as the other three men involved in the offense.

Wells, 675 S.W.3d at 819. Watkins testified as an accomplice witness against Appellant at trial, describing the robbery in some detail.

Appellant was charged with and convicted of the capital murder—during the course of a robbery—of Jimmy Giddings. TEX. PENAL CODE § 19.03(a)(2). Because the State did not seek the death penalty, Appellant received an automatic sentence of life without parole, without the necessity of a punishment hearing. TEX. PENAL CODE § 12.31(a)(2).

II. BACKGROUND

A. The Geofence Warrant

The warrant at issue in this case was directed to "Google LLC[.]" It ordered Google to turn over to the police "GPS, WiFi or Bluetooth sourced location history data" corresponding to "Initial Search Parameters" generated from devices that Google's electronic records showed to have been within certain,

particularly circumscribed time and location specifications.[3] The warrant required disclosure in three steps.

In Step One, the warrant commanded, "[f]or each location point within the 'Initial Search Parameters', Google shall produce anonymized information specifying the corresponding unique device ID, timestamp, coordinates, display radius, and data source, if available (the 'Anonymized List')[.]" Police were then to "analyze this location data to identify users who may have witnessed or participated" in the capital offense and "seek any additional information regarding these devices from Google."

In Step Two, the warrant provided that, "[f]or those accounts identified as relevant to the ongoing investigation through analysis of" the Anonymized List, Google "shall provide additional location history outside of the predefined area for those relevant accounts to determine path of travel." It then specified that, "[t]his additional location history shall not exceed 60 minutes plus or minus the first and last timestamp associated with the account in the initial dataset." This step was intended to aid the police in ruling out any devices flagged by the Anonymized List so that the identity of obvious non-witnesses and non-participants would not be revealed.

---

[3] The warrant purported to issue pursuant to former Article 18.21, Section 5A, of the Texas Code of Criminal Procedure. That statute was repealed in 2017, but the repeal was not effective until January 1, 2019. *See* Acts 2017, 85th Leg., ch. 1058, §§ 5.01(2), 6.03, pp. 4192-93, eff. Jan. 1, 2019. The warrant issued on December 7, 2018. There is no issue before us whether the warrant was properly issued pursuant to statutory authority.

Finally, in Step Three, the warrant ordered that, "[f]or those accounts identified as relevant to the ongoing investigation through an analysis of provided records, and upon demand," Google "shall provide the subscriber's information for those relevant accounts to include, subscriber's name, email address, services subscribed to, last 6 months of IP history, SMS account number, and registration IP."[4] In other words, only in the last step was sufficient information revealed

[4] Courts that have addressed geofence warrants refer to these "Step Three" records simply as *identifying information*. *See*, *e.g.*, *United States v. Smith*, 110 F.4th 817, 825 (5th Cir. 2024) (emphasis added) ("[A]t Step 3, law enforcement compels Google to provide *account-identifying information*[.]"); *United States v. Chatrie*, 107 F.4th 319, 324 (4th Cir. 2024), *reh'g granted en banc*, 2024 WL 4648102 (4th Cir. Nov. 1, 2024) (emphasis added) ("[A]t Step Three, law enforcement determines which individuals are relevant to the investigation and then compels Google to provide their *account-identifying information*[.]"); *Price v. Superior Court of Riverside County*, 93 Cal.App.5th 13, 22, 310 Cal. Rptr.3d 520, 529 (2023) (emphasis added) ("Geofence warrants allow law enforcement agencies to identify suspects and witnesses to crimes by obtaining location data and *identifying information*[.]"). Judge Newell worries that the warrant may have gone too far to authorize a search of Appellant's IP history. Concurring and Dissenting Opinion at 2, 11-12, 20. There is no suggestion in the record that police actually obtained Appellant's IP history pursuant to this warrant. *See Jones v. State*, ___ S.E.2d ___, No. S24A1085, 2025 WL 676862, at *8 n.5 (Ga. del. Mar. 4, 2025) ("[E]ven if the warrant's broader description of items to be seized might raise concerns about particularity, it would not invalidate the warrant here, because the police neither obtained nor used any evidence beyond what was needed to identify Jones."). In any event, to the extent that the information provided at Step Three in this case may suggest access to anything other than *identifying information*, that argument has not been raised in either the court of appeals or this Court, and we will not address it.

permitting law enforcement to identify witnesses to, or participants in, the capital offense under investigation. At no point during this three-step process were police required to return to the magistrate for incremental authorization.

B. The Warrant Affidavit

The warrant affidavit started out by providing the "Initial Search Parameters": a "[g]eographical area identified as a polygon defined by" four "latitude/longitude coordinates and connected by straight lines[,]" as specified.[5] The affidavit sought "GPS, WiFi or Bluetooth sourced location history data from devices that reported a location" within the described polygon at a window of time within which the capital murder occurred, namely: "June 24, 2018 0245 hrs (2:45 a.m.) to June 24, 2018 0310 hrs (3:10 a.m.) Central Time Zone[.]" Thus, the affidavit sought location history data for an area that encompassed no more than a part of the church and the church grounds, including the parking lot where the assailants waited, a small segment of Veterans Drive between the church and the house at 4923 Veterans Drive, and the house itself, including front and back yards, for a twenty-five minute interval corresponding to the approximate time of the offense.

---

[5] Both the affidavit and the warrant itself, besides providing a verbal description of the area included within the geofence, also incorporated a graphic representation of the polygon, which the court of appeals reproduced in its opinion. *Wells*, 675 S.W.3d at 822.

In a portion of the warrant affidavit explaining "Google Location Services and Relevant Technology[,]" the affiant, Detective Jeffrey Loeb, explained:

> Google has developed an operating system for mobile devices, including cellular phones, known as Android, that has a proprietary operating system. Nearly every cellular phone using the Android operating system has an associated Google account, and users are prompted to add a Google account when they first turn on a new Android device. Based on my training and experience, I have learned that Google collects and retains location data from Android-enabled mobile devices when a Google account user has enabled Google location services. Google can also collect location data from non-Android devices if the device is registered to a Google account and the user has location services enabled. The company uses this information for location-based advertising and location-based search results. This location information is derived from GPS data, cell site/cell tower information, and Wi-Fi access points.

In a portion of the affidavit styled "Probable Cause Statement[,]" Loeb next narrated the facts of the offense essentially as described above, concluding with the assertion that:

> [i]t is likely that at least one of the four suspects who committed this offense had an Android device on him during the

> commission of this offense. It is common practice that home invasion robbery suspects keep an open line with someone outside of the residence while committing this type of offense to keep an eye out for responding police officers.

Loeb also averred that he was:

> also familiar with Android based cellular devices reporting detailed location information to Google where the electronic data is then stored. This information is captured and recorded even when the user is not doing any specific action on the device. As a result, Affiant is requesting a list of any Google devices in a geographic area around the address of 4923 Veterans Drive, Dallas, Texas 75241 in Dallas County, Texas to help identify the suspects in this capital murder investigation.

The warrant affidavit concluded with a description of the three-step process by which Google releases information in response to geofence warrants, as depicted in the warrant itself and as described above.

C. Execution of the Warrant

The warrant was signed by a district court judge on December 7, 2018.[6] Pursuant to Step One of the

[6] As "Grounds for Issuance[,]" the warrant affidavit cited Articles 18.02(10) (evidentiary search warrants) and 18.02(13) (electronic customer data held in electronic storage) of the Texas Code of Criminal Procedure. TEX. CODE CRIM. PROC. arts. 18.02(10), 18.02(13). Former Article 18.21, Section 5A(b),

procedure, as outlined in both the warrant and the warrant affidavit, Google identified three devices within the geofence. Once the search was expanded via Step Two, Leob was able to determine that one of those three devices belonged to an individual who was involved in the offense. Step Three revealed that Appellant was that individual. From there, by separate warrants, Loeb was able to obtain Appellant's Google account information plus additional cell phone records to confirm his presence at the crime scene.

D. In the Trial Court

Appellant filed a pretrial motion to suppress evidence obtained pursuant to the geofence warrant. He argued that it constituted an unconstitutional general warrant in that it failed to identify a particular suspect and would thus only serve to invade the privacy of any number of individuals who had nothing to do with the capital murder in this case.[7] He also argued

---

authorized only district court judges to issue the latter type of warrant.

[7] At a hearing on the motion to suppress, counsel for Appellant argued:

> The geofence warrant in this case did not identify [Appellant] in any way. In fact, it did not identify anyone. Instead, the warrant operated in reverse. It required Google to identify a large cache of deeply private data and then allowed police the discretion to sift through it and obtain private information from devices of interest. * * * The process effectively filtered out the innocent through increasing levels of searches. But such a process illustrates that the searchers themselves knew that they were searching the innocent merely because they walked or drove through an area in which a crime was committed.

that the warrant affidavit lacked probable cause to believe any of the assailants were carrying a cell phone with a Google account.[8]

The State responded that, under the circumstances in this case, the Initial Search Parameters were so narrow that "every single device operating in th[e] area," would have to have been possessed by "either a suspect or a witness." The prosecutor argued that the geofence warrant was "specifically limited in order to maximize the possibility of returning evidence of a crime and minimize the possibility of intrusion on innocent people." The trial court ultimately ruled that the warrant affidavit and the warrant itself presented "sufficient particularity to be valid."

E. In the Court of Appeals

After canvassing the limited authorities (mostly federal cases) that have addressed geofence warrants, the court of appeals concluded:

> The geofence warrant cases to date can generally be divided into two categories—those in which the geofence search warrant was found constitutionally infirm because it

[8] At the hearing, counsel for Appellant maintained:

> [I]t is not enough to submit an affidavit stating that probable cause exists for a geofence warrant because, given broad cell phone useage [sic], it is likely the criminal suspect had a cell phone. If this were the standard, a geofence warrant could issue at almost any criminal investigation where a suspect is unidentified.

> was not sufficiently limited as to time and place so as to restrict the executing officer's discretion and minimize the danger of searching uninvolved persons, and those in which the warrant satisfied the Fourth Amendment because it established probable cause to search every person found within the geofence area.

Wells, 675 S.W.3d at 826-27. Because "the geofence warrant [in this case] was as narrowly tailored as possible to capture only location data for suspects and potential witnesses[,]" the court of appeals concluded that "the warrant here falls into the second category" as identified in the cases. *Id.*

Addressing Appellant's argument that the warrant affidavit failed to establish probable cause to believe that any of the suspects were carrying a device with enabled Google location services, the court of appeals invoked the well-known ubiquity of cell phones in modern society. *Id.* at 826. The court of appeals observed that, "[a]lthough it is possible the suspects were not carrying cell phones with enabled Google location services during the offense, probable cause is about 'fair probabilities,' not near certainties." *Id.* We agree.

III. Applicable Law

A. Probable Cause and Particularity

The Fourth Amendment provides:

> 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.

U.S. CONST. amend. IV. As the court of appeals did, *Wells*, 675 S.W.3d at 827, we will assume (without deciding) that for law enforcement to obtain Google cell phone location history data for a particular area at a particular time constitutes a "search" within the parameters of the Fourth Amendment.[9]

---

[9] The Fourth Circuit Court of Appeals and the Fifth Circuit Court of Appeals have recently disagreed on the question of whether the Government's acquisition of location history data by way of a geofence warrant constitutes a "search" for Fourth Amendment purposes. *Compare Chatrie*, 107 F.4th at 332 (applying the third party doctrine to hold that it does *not* constitute a search), *with Smith*, 110 F.4th at 836 (holding that the third party doctrine does *not* apply to geofence warrants and concluding that "law enforcement in this case *did* conduct a search when it sought Location History data from Google"); Pierre Grosdidier, *Courts Are Split: A Look at the Constitutionality of Geofence Warrants*, 87 TEX. B.J. 776 (Nov. 2024). The court of appeals in this case found it unnecessary to address this question. *Wells*, 675 S.W.3d at 827. In *Price v. Superior Court of Riverside County*, a case upon which the court of appeals relied heavily, the intermediate California appellate court likewise "assumed for purposes of discussion . . . that the search for location data and identifying information, as authorized by the geofence warrant, constituted a 'search' within the meaning of the Fourth Amendment." 93 Cal.App.5th at 37 n.9, 310 Cal.Rptr.3d at 541 n.9. We will too.

The United States Supreme Court has said that, generally, when law enforcement officers undertake a search for evidence of criminality, before that search may be deemed "reasonable" under the Fourth Amendment, they must first obtain a warrant. *Carpenter v. United States*, 585 U.S. 296, 316 (2018). Here, a warrant *was* obtained. The search pursuant to the geofence warrant was therefore reasonable so long as the warrant affidavit supplied probable cause to justify the search, and the warrant itself set out the place to be searched and the things to be seized with sufficient particularity to avoid granting the officers unguided discretion in conducting the search. *Dalia v. United States*, 441 U.S. 238, 255 (1979); *Steagald v. United States*, 451 U.S. 204, 220 (1981). *See Bonds v. State*, 403 S.W.3d 867, 874-75 (Tex. Crim. App. 2013) (listing "limiting the officer's discretion and narrowing the scope of the search" and "minimizing the danger of searching the person or property of an innocent bystander or property owner"

Judge Newell contends that the court of appeals in this case "erred" not to reach the threshold question of whether there was even a search for Fourth Amendment purposes. Concurring and Dissenting Opinion at 4 & n.5, 19. Even if this Court were to find that the court of appeals erred in its probable cause analysis, however, that would not mean it erred in failing to reach the threshold "reasonable expectation of privacy" question. *See Byrd v. United States*, 584 U.S. 395, 411 (2018) ("Because Fourth Amendment standing is subsumed under substantive Fourth Amendment doctrine, it is not a jurisdictional question and hence need not be addressed before addressing other aspects of the merits of a Fourth Amendment claim."); *Jones*, 2025 WL 676862, at *3 n.1. It would just mean that it would be necessary to remand the case to that court, which is what Judge Newell advocates anyway. Concurring and Dissenting Opinion at 19.

as among the objectives of the particularity requirement).

B. The Cases Addressing Geofence Warrants

Geofence warrants are a relatively new phenomenon, having only come into use "since 2016[.]" Note, *Geofence Warrants and the Fourth Amendment*, 134 HARV. L. REV. 2508, 2509-10 (May 2021). The few cases so far that have addressed their legitimacy have tended to emanate from lower federal courts and intermediate state appellate courts. And, as the court of appeals observed, those cases "can generally be divided into two categories[.]" *Wells*, 675 S.W.3d at 826-27.

Which category a given case falls into depends upon the size of the area covered by the requested geofence, the length of time specified, and the circumstances of the offense under investigation. Geofence warrants that are confined, covering a relatively small space over a relatively short time, in a remote or rural area, or at a time of day when only the perpetrators of the offense or witnesses would be likely to be present, have generally been found to pass constitutional muster.[10] But warrants that cover larger or more

[10] *See*, *e.g.*, *In re Search Warrant Application for Geofence Location Data Stored at Google Concerning an Arson Investigation ("Arson")*, 497 F.Supp.3d 345, 358 (N.D. Ill. 2020) ("Streets in the wee hours of the morning in the City of Chicago are generally sparsely populated by pedestrians, and roads have few cars traversing through them. Furthermore, the affiant has provided additional information obtained through the investigation to support the conclusion that location data from uninvolved individuals will be minimized."); *In re Search of Information that*

is Stored at Premises Controlled by Google LLC, 579 F.Supp.3d 62, 85-86 (D.D.C. 2021) ("[T]he geofence drawn here is located in an industrial area, not a 'congested urban area,' and no residences can be seen [within it, and] the target area is small and lightly trafficked enough to render the search reasonable."); *In re Search of Information that is Stored at Premises Controlled by Google*, No. 2:22-mj-01325, 2023 WL 2236493, at *12 (S.D. Tex. Feb. 14, 2023) ("The timing of the request indicates narrow tailoring to avoid collection of data at times when uninvolved devices, and the people possessing them, would likely be within the polygon. * * * The polygon itself is also narrowly tailored to ensure that Location History information, with a fair probability, will capture evidence of the crimes only."); *Price*, 93 Cal.App.5th at 43-44, 310 Cal. Rptr.3d at 546 ("The target location was limited to the front yard . . . where the shooting occurred, and the street in front of the house, for the length of two houses in each direction, where the two suspects were seen fleeing after the shooting. * * * Additionally, because the warrant sought first-stage location data after 10:00 p.m. in a suburban, residential neighborhood, it was likely that any individuals traversing the geofence were either suspects or witnesses to the shooting."); *Tomanek v. State*, 261 Md.App. 694, 715, 314 A.3d 750, 762 (2024) ("[B]y limiting the search area to within a 100-meter radius of the main residence [of a rural homestead], the police virtually ensured that any cell phone activity that met the [geofence] search's parameters would have had to come from within the property's boundaries. Given that the property was privately owned and included 'no trespassing' signs, and given that the property owner had claimed no family member had been to the property between April 4 and April 11, 2020, the chance that the search would result in any unauthorized or unnecessary invasion of privacy was almost non-existent."); *State v. Contreras-Sanchez*, 5 N.W.3d 151, 168 (Minn. Ct. App. 2024), *rev. granted* (May 29, 2024) ("The geofence did not include any buildings at all. The closest residence was over 1,200 feet away. And due to the remoteness of the area, the warrant's inclusion of a scarcely used road did not risk pulling in vast swaths of location-history data from drivers who just happened to be passing through this rural area."); *Jones*, 2025 WL 676862, at *7 ("[T]he time range matched the approximate time period when the suspect was seen at and around the [murder] victim's home, and the geographic

congested urban areas over a longer span of time generally have *not*, since they are much more likely to infringe upon a greater number of innocent, uninvolved bystanders.[11] Indeed, the issue is often not so

---

range was reasonably targeted to capture the suspect's movements, especially given that Google location history is not precise."); *see also*, 2 Wayne R. LaFave, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 4.6(d), at 35-37 (6th ed. 2020) (Supp. 2024) (discussing *Arson* and *Price* approvingly); Mary D. Fan, *Big Data Searches and the Future of Criminal Procedure*, 102 TEX. L. REV. 877, 886 (April 2024) ("[D]igital probable cause and particularity can be established by a tightly framed . . . geofence warrant likely only to net persons for whom there is probable cause to believe perpetrated an unsolved crime.").

[11] *See*, *e.g.*, *In re Search of Information Stored at Premises Controlled by Google*, 481 F.Supp.3d 730, 756 (N.D. Ill. 2020) (finding the geofence warrant overbroad, while also observing: "It is also possible to imagine other applications of geofence technology that might comport with Fourth Amendment standards. Say, for example, that the government develops information supporting probable cause to believe that its geofences will not capture the information of uninvolved persons, such as a scenario in which the government can establish independently that only the suspected offender(s) would be found in the geofence, or where probable cause to commit an offense could be found as to all present there."); *In re Search of Information that is Stored at Premises Controlled by Google, LLC*, 542 F.Supp.3d 1153, 1158 (D. Kan. 2021) ("[T]he geofence boundary appears to potentially include the data for cell phone users having nothing to do with the alleged criminal activity. The boundary encompasses two public streets, so anyone driving their automobile by the target location during the relevant time period could be identified in the data. Google Maps also indicates that the subject building contains another business, which the application does not address. * * * And the nexus between the alleged criminal activity and [the] one-hour duration [of the requested temporal scope of the search] is weak."); *People v. Meza*, 90 Cal.App.5th 520, 312 Cal.Rptr.3d 1, 18-19 (2023) ("The failure to sufficiently narrow the search parameters potentially allowed a location-specific identification of thousands of individuals . . . for whom no

much whether there is probable cause to believe the search will uncover evidence of the offense as it is whether the warrant is "overbroad"—that is, whether the search it authorizes outstrips the probable cause that justifies it by casting too wide a net and thereby impacting an unacceptable number of people who cannot possibly have any connection to the offense.[12]

---

probable cause existed. * * * The warrant here, authorizing the search of more than 20 acres total over a cumulative period of more than five hours in residential and commercial areas did not meet the fundamental threshold requirement [of particularity]."); *see also*, *In re Search of: Information Stored at Premises Controlled by Google, as Further Described in Attachment A*, No. 20 M 297, 2020 WL 5491763, at *7 (N.D. Ill. July 8, 2020) (finding the geofence warrant overbroad, but observing that, "if the government had constrained the geographic size of the geofence and limited the cellular telephone numbers for which agents could seek additional information to those numbers that appear in all three defined geofences, the government would have solved the issues of overbreadth and lack of particularity").

[12] *E.g.*, *Meza*, 312 Cal.Rptr.5th at 16, 20 (observing that "the warrant in this case sufficiently described the place to be searched (Google's database of users' location history) and items to be retrieved from that search (designated records for users to be found within the boundaries of certain coordinates at certain times)[,]" while nevertheless concluding that the warrant lacked particularity for failing to be structured so as to minimize the potential for capturing location data for uninvolved individuals and maximize the potential for capturing location data for suspects and witnesses); *United States v. Chatrie*, 590 F.Supp.3d 901, 929-30 (E.D. Va. 2022) ("To be sure, a fair probability may have existed that the Geofence Warrant would generate the *suspect's* location information. However, the warrant, on its face, also swept in unrestricted location data for private citizens who had no reason to incur Government scrutiny.").

IV. ANALYSIS

In this case, the geofence warrant affidavit supplied ample probable cause to believe both that an offense had occurred and that evidence of the identity of one or more of the perpetrators could be discovered by searching the Google database. Moreover, the warrant itself was framed narrowly enough that almost any device found to have been present within its parameters would have belonged to one of the perpetrators, or potentially to a witness who might identify the perpetrators or testify about the offense, but not merely an innocent bystander.

A. Probable Cause

1. An Offense Occurred . . .

Probable cause to support a search warrant is present when, under the totality of circumstances, there is at least a "fair probability" or "substantial chance" (it need not be "more likely than not") that evidence of an offense will be found at the location that law enforcement seeks to search. *Flores v. State*, 319 S.W.3d 697, 702 (Tex. Crim. App. 2010) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 243 n.13 (1983)).[13]

[13] Assuming that the warrant in this case was controlled by Article 18.01(c) of the Texas Code of Criminal Procedure, because it is a so-called "evidentiary" search warrant under Article 18.02(10), it could not have issued absent probable cause as to three things: "(1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or

There can be little doubt—and Appellant does not contest—that the warrant affidavit established that an offense had occurred, namely, the murder of Giddings. The question is whether there is probable cause—at least a "fair probability" or "substantial chance"—that the thing to be searched—the Google location history database—will contain evidence of that offense. For the following reasons, we agree with the court of appeals that the magistrate who signed off on the warrant affidavit had a "substantial basis" to conclude that probable cause existed to believe that Google's location history database would reveal evidence of who murdered Giddings (if it revealed any information at all). *Id.* (citing *Gates*, 462 U.S. at 238).

2. . . . For Which Evidence of the Perpetrator's Identity Could be Found in Google's Location History Database

Detective Loeb's warrant affidavit established that Google's location history database could contain location information for a substantial number of both Android devices as well as non-Android devices that were registered to Google accounts with enabled location services. Appellant argues, however, that probable cause requires a specific showing that one of the assailants was indeed carrying a device with enabled Google location services. Like the court of

---

thing to be searched." TEX. CODE CRIM. PROC. arts. 18.01(c), 18.02(10). For reasons we describe in the text, all three statutory criteria are satisfied here.

appeals, we disagree that probable cause necessarily requires so much. *Wells*, 675 S.W.3d at 826.

Loeb's affidavit claimed that "[i]t is likely that at least one of the four suspects . . . had an Android device on him during the commission of the offense," since home-invasion-type offenses commonly involve "someone outside of the residence . . . to keep an eye out for responding police officers." From this the magistrate could reasonably have inferred a "fair probability" or "substantial chance" that the home invaders carried cell phones to keep contact with an outside lookout.

Moreover, a magistrate is entitled to take it as well-established fact that, in this day and age, almost everyone possesses a cell phone on or about his person at practically any time of day or night—they are, indeed, ubiquitous. *See Carpenter*, 585 U.S. at 311 (noting that people "compulsively carry cell phones with them at all times"); *Riley v. California*, 573 U.S. 373, 385 (2014) (noting that cell phones "are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy"). "The core inquiry here is probability, not certainty, and it is eminently reasonable to assume that criminals, like the rest of society, possess and use cell phones to go about their daily business." *In re Search of Information that is Stored at Premises*

Controlled by Google LLC, 579 F.Supp.3d 62, 78 (D.D.C. 2021).[14]

In this case, the warrant-issuing magistrate had a "substantial basis" to conclude that there was a "fair probability" (or "substantial chance") that at least one of the four assailants possessed a device that Google could locate within the geofenced area.[15] This

---

[14] In *State v. Baldwin*, 664 S.W.3d 122, 123 (Tex. Crim. App. 2022), this Court concluded that, in order to conduct a search of the *content* of a suspect's cell phone, law enforcement must be able to demonstrate probable cause in the form of a "nexus" between the cell phone and the commission of the offense itself. The Court later concluded that probable cause can be established that the contents of a cell phone might contain evidence of a crime without necessarily showing that the cell phone was directly *used* in the commission of the offense. *Stocker v. State*, 693 S.W.3d 385, 388 (Tex. Crim. App. 2024). In any event, in the instant case, mere *possession* of the cell phone at the time and location of the offense may well be enough—never mind what is contained *in* the cell phone—to constitute evidence of the identity of the perpetrator of, or witnesses to, the offense.

[15] One legal commentator has observed that, at least as of 2022:

> [S]tatistics demonstrate a fair probability that Google will have location data on the target of a geofence query. Eighty-five percent of Americans own a smartphone, and Google enjoys a 40% domestic market share (compared to 60% for Apple). This means that 34% of Americans own an Android smartphone while 51% own in iPhone. If Google has location data on almost all Android users (30%) and half of iPhone users (25%), then Google has location information on 55% of Americans, meeting the preponderance standard, and thus by definition satisfying the lower probable cause test.

constitutes probable cause to believe that Google's location history database would contain evidence relevant to the identity of the person who killed Giddings.

B. Particularity

We also agree that the geofence warrant in this case provided sufficient particularity with respect to both the "place to be searched" and the "things to be seized." U.S. CONST. amend. IV. The "place" designated by the warrant to be searched, which was directed to "Google LLC," was wherever Google stores its "[r]ecords pertaining to GPS, WiFi or Bluetooth sourced location history data[.]" The "thing to be seized" was the "location history data generated from devices that reported a location within the geographical region bounded by the following latitudinal and longitudinal coordinates, dates and times ("Initial Search Parameters") and Identifying information for Google Accounts associated with the responsive location history data[.]"

The warrant then identified the specific latitudinal and longitudinal coordinates, narrowly drawn to include no more than a part of the church, the appurtenant church grounds where the assailants waited, the street they rushed across, the front yard of the house where Dickerson was shot, and the house itself, in which Giddings was killed. It also gave a specific date—the date of the murder—as well as the 25-

---

Reed Sawyers, *For Geofences: An Originalist Approach to the Fourth Amendment*, 29 GEO. MASON L. REV. 787, 807-08 (2022) (internal footnotes omitted).

minute window of time during which the offense took place. This degree of specificity appropriately circumscribed police discretion, limiting the information they could obtain from the location history database to that which was relevant to identifying whoever was present at the specific time and place of the offense itself.

Moreover, the "Initial Search Parameters" were sufficiently tailored in terms of time and place as to minimize the potential for infringing on the privacy rights of persons who could not reasonably be regarded as either suspects or witnesses to the offense. The area to be searched was small and restricted to the places where police knew that the unidentified suspects were located: a part of the church grounds, where the suspects hid in waiting for Giddings to arrive home; the street between the church and the home, which the suspects rushed across; and the front yard and interior of the house itself, where the assaults on Dickerson and Giddings took place. These were not high traffic areas—especially not during the brief period of time in the middle of the night when the offense occurred.[16] It was not at all likely that the geofence in this case would have identified many

[16] The geofence polygon also embraced part of the interior of the church, and the back yard to the house—places the police would have no reason to believe the suspects had gone. But there is no reason to believe uninvolved persons would have been found in those two places either, at least not between 2:45 and 3:10 o'clock in the morning—even, as here, on a Sunday morning. Moreover, anyone who may, for whatever reason, have been present at those locations at that time would likely at least have heard gunshots, and therefore would at least have been potential witnesses to the offense.

innocent bystanders or passersby who would not have been relevant to the investigation.

Indeed, the "Initial Search Parameters" were so narrow in this case as to allay any concern about Steps Two and Three of the warrant process, as described in both the warrant and the warrant affidavit. Appellant argues that, even if there was probable cause to support Step One of the processes authorized by the geofence warrant in this case, police should have been required to involve the magistrate in deciding which devices identified by Step One merited additional disclosure from the location history database, via Steps Two and Three. Otherwise, Appellant asserts, the warrant allowed police improper unilateral discretion to determine whether there is probable cause to justify that additional disclosure, contrary to Fourth Amendment principles.

But while some geofence warrants may be so broad in scope at Step One as to call for additional involvement by a magistrate at the later stages, we do not believe that to be the case here. The Initial Search Parameters in this case were sufficiently narrow as to provide probable cause, under the circumstances, to believe that *whichever* devices were revealed to have been present at the narrowly circumscribed place and time captured by the geofence polygon would almost certainly have belonged to legitimate suspects, or potential witnesses, so that any additional disclosure of information via Steps Two and Three would be justified by the same probable cause that supported Step One. *See Price v. Superior Court of Riverside County*,

93 Cal.App.5th 13, 44-45, 310 Cal.Rptr.3d 520, 546-47 (2023) (concluding that, when the warrant affidavit supplied probable cause "to seize all location data and identifying information for all devices traversing the geofence[,]" additional disclosure in Step Two did not improperly vest police with unguided discretion). On the specific facts of this case, we do not deem the geofence search warrant to have been so lacking in particularity as to require an additional magisterial imprimatur in the later stages of its execution.

V. CONCLUSION

Assuming that the Fourth Amendment generally requires police to obtain a search warrant for corporate-held location history data, we conclude that the geofence warrant in this case was supported by probable cause and that it satisfied the particularity requirement of the Fourth Amendment. The judgment of the court of appeals is affirmed.[17]

FILED: April 2, 2025
PUBLISH

[17] We also granted a second ground for review in this case: "[w]hether the Court of Appeals correctly determined the reliability of Google data[.]" But we now dismiss that ground as improvidently granted.

[SEAL]

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

No. PD-0669-23

AARON RAYSHAN WELLS, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR
DISCRETIONARY REVIEW FROM THE FIFTH
COURT OF APPEALS, DALLAS COUNTY

FINLEY, J., filed a concurring opinion in which PARKER, J., joined.

CONCURRING OPINION

Filed April 2, 2025

I agree with the Court's judgment today affirming the judgment of the court of appeals below. I also join Judge Yeary's opinion that explains why the State's geofence warrant was constitutional. Both Judge Yeary and the court of appeals below assumed, without deciding, that law enforcement obtaining cell phone location history data from Google was a "search" under the Fourth Amendment. Notwithstanding my joining Judge Yeary's opinion today that would uphold the constitutionality of the geofence warrant, I write separately to explain that, in my view, we do not need to reach that issue: Law

enforcement did not conduct an unreasonable search under the Fourth Amendment because Appellant did not have a reasonable expectation of privacy in the information he voluntarily turned over to a third party.

I. Applicable Law

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. "A Fourth Amendment privacy interest is infringed when the government physically intrudes on a constitutionally protected area or when the government violates a person's 'reasonable expectation of privacy.'" *United States v. Smith*, 110 F.4th 817, 830 (5th Cir. 2024) (quoting *United States v. Jones*, 565 U.S. 400, 406 (2012)). To determine whether a "reasonable expectation of privacy exists," Justice Harlan's two-step approach articulated in his concurring opinion in *Katz v. United States*, 389 U.S. 347 (1967), controls. *See Jones*, 565 U.S. at 406. A defendant must show (1) that he had a subjective expectation of privacy; and (2) that his subjective expectation of privacy is one that society recognizes, or is prepared to recognize, as reasonable. *Smith v. Maryland*, 442 U.S. 735, 740 (1979).

The Supreme Court of the United States has applied the reasonable expectation of privacy test to electronic information in several cases. In *United States v. Knotts*, 460 U.S. 276 (1983), for example, the Court held that the use of "beeper" information to

track a vehicle's movements was not a Fourth Amendment search. 460 U.S. at 281. The Court emphasized that the movements of Knott's vehicle and its final destination had been voluntarily conveyed to anyone who wanted to look, and therefore he could not assert a privacy interest in the information obtained. *Id.* Three decades later, the Court decided *United States v. Jones*, 565 U.S. 400 (2012). There, the Court addressed whether the remote monitoring of a vehicle's movements via an attached GPS tracking device for twenty-eight days violated a person's legitimate expectation of privacy. 565 U.S. at 402-04. Applying a physical-trespass theory (instead of *Katz*'s expectation-of-privacy analysis), a majority of the Court said yes. *Id.* at 410-11.

Other cases are equally instructive. In *United States v. Miller*, 425 U.S. 435 (1976), the Court held that the government did not conduct a search when it obtained an individual's bank records from his bank, since he voluntarily exposed those records to the bank in the ordinary course of business. 425 U.S. at 443. Finally, in *Smith*, the Court held that the government did not conduct a search when it used a pen register to record outgoing phone numbers dialed from a person's telephone, because he voluntarily conveyed those numbers to his phone company when placing calls. 442 U.S. at 742.

Then came *Carpenter v. United States*, 585 U.S. 296 (2018). In *Carpenter*, the Court addressed whether a person has a legitimate expectation of privacy in historical cell-site location information (CSLI) records. *Id.* at 303. The Court concluded that the defendant had a reasonable expectation of privacy in his historical CSLI, and the government violated the Fourth Amendment when it searched the location records without a warrant supported by probable cause. *Id.* at 316-17. Critically, the Court emphasized that the defendant had not voluntarily turned over his CSLI to a cell phone provider as understood in *Miller* and *Smith*. *Id.* at 309.

This Court has addressed CSLI in several cases. *Sims v. State*, 569 S.W.3d 634 (Tex. Crim. App. 2019), was the first time, and this Court held that an individual "did not have a legitimate expectation of privacy in his physical movements or his location as reflected in the less than three hours of real-time CSLI records accessed by police by pinging his phone less than five times." 569 S.W.3d at 646. A year later, in *Holder v. State*, 595 S.W.3d 691 (Tex. Crim. App. 2020), this Court held that accessing "23 days" of CSLI violated Article I, Section 9 of the Texas Constitution. 595 S.W.3d at 704. Prior to *Carpenter*, this Court also addressed searches of CSLI records in *Ford v. State*, 477 S.W.3d 321 (Tex. Crim. App. 2015),

and *Love v. State*, 543 S.W.3d 835 (Tex. Crim. App. 2016).[1]

Turning to Google's location history data, in *United States v. Chatrie*, 107 F.4th 319 (4th Cir. 2024), the Fourth Circuit held that the government "did not conduct a search when it obtained [the location history] data" of an individual. 107 F.4th at 332. The Fourth Circuit first distinguished location history data from CSLI, noting that location history data is not an "all-encompassing record of whereabouts," rather, the information is "far less revealing" and limited to a "single, brief trip." *Id.* at 330. Next, the Fourth Circuit noted that the appellant "voluntarily exposed his location information to Google" and did so knowingly, having been warned of the consequences when he opted into Google's services. *Id.* at 331. Thus, the Fourth Circuit concluded that the third-party doctrine governed the case, so the appellant could not claim a reasonable expectation of privacy in the information voluntarily exposed to Google. *Id.*

The Fifth Circuit soon after disagreed. In *United States v. Smith*, 110 F.4th 817 (5th Cir. 2024), the Fifth Circuit held that geofence warrants "are general warrants categorically prohibited by the Fourth Amendment." 110 F.4th at 838. The Fifth Circuit rejected *Chatrie* and held that "geofence location data is invasive for Fourth Amendment purposes." *Id.* at 834. For the Fifth Circuit, the question was

[1] Both cases upheld multi-day searches of CSLI but were likely abrogated by this Court's decision in *Holder* because both were decided pre-*Carpenter*.

whether location history data "ha[d] the capability of revealing intimate, private details about a person's life," not whether the search itself did. *Id.* at 834 n.8. The Fifth Circuit then held that the third-party doctrine did not apply because, while an individual does "opt in" to the services, the decision to opt in is "hardly informed and, in many instances, may not even be voluntary." *Id.* Concluding that a search had occurred, the Fifth Circuit then held that geofence warrants were unconstitutional general warrants because the actual database search (at Step 1 of the process), involved a search of the entire Google repository—as the Fifth Circuit described it, "general, exploratory rummaging." *Id.* at 837. Nevertheless, applying the good-faith exception to the exclusionary rule, the Fifth Circuit affirmed the district court's denial of the motion to suppress. *Id.* at 840.[2]

[2] Assuming, *arguendo*, that the warrant in this case is invalid, the good faith exception applies here as well. Here, law enforcement was using cutting-edge technology that, prior to this investigation, was unknown to them. Further, at the time law enforcement obtained and executed the warrant, there was no authority—much less any published authority—on geofence warrants. And law enforcement acted reasonably and with prudence: They wrote the warrant as narrowly tailored, both geographically and temporally, as they could, and they sought an additional warrant for the personal identifying information after the first anonymized list was provided by Google.

II. Analysis

a. Google's Location History Data is *not* CSLI.

Carpenter described CSLI as "an all-encompassing record of the [device] holder's whereabouts," that "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." *Carpenter*, 585 U.S. at 311 (citing *Jones*, 565 U.S. at 415) (internal quotations omitted). A cell phone "tracks nearly exactly the movements of its owner . . . faithfully follow[ing] . . . beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales." *Id.* Since a person has a reasonable expectation of privacy in the whole of their physical movements, it follows that location information obtained from the tracker in one's pocket via wireless carriers was the product of a search.

But location history data is noticeably different. A geofence warrant reveals no more than "an individual trip viewed in isolation." *Chatrie*, 107 F.4th at 330 (quoting *Beautiful Struggle v. Balt. Police Dep't*, 2 F.4th 330, 342 (4th Cir. 2021) (en banc)). The information obtained is more akin to the short-term public movements in *Knotts*, or the short-term CSLI records this Court analyzed in *Sims*, rather than the records in *Carpenter* and *Jones*. I cannot say that Appellant had a legitimate expectation of privacy in his location

records for the limited timeframe the State sought in this case.

b. The information was voluntarily exposed.

As the Supreme Court correctly recognized in *Carpenter*, "[c]ell phone location information is not truly 'shared' as one normally understands the term." 585 U.S. at 315. Importantly, "a cell phone logs a cell-site record by dint of its operation, without any affirmative act on the part of the user beyond powering up." *Id.* "[A]part from disconnecting the phone from the network, there is no way to avoid leaving behind a trail of location data." *Id.* Thus, "in no meaningful sense does the user voluntarily assume the risk of turning over a comprehensive dossier of his physical movements." *Id.* (citing *Smith*, 442 U.S. at 745).

Not so, here. As the record in this case makes clear, when a user does not affirmatively turn on the location history settings, a mobile device's location will not be automatically saved. Appellant undertook affirmative steps on his Android device to enable location sharing: He logged in to his Google account on the device and opted in to the Location History services in the account's settings. He also had to click through several warning screens that admonished him of the consequences of opting in. Those consequences included, as relevant here, Google collecting and tracking Appellant's location history and sharing that data with additional third-parties, *inter alia*,

advertisers.[3] After providing consent to Google, Appellant still retained ultimate control over both his settings (he could limit or disable Location History at any time), and the data collected by Google (he could edit or delete any location history data through his Timeline). At any time, Appellant had the ability to cease sharing his location history information with Google and withdraw his consent for Google to share that information with other third parties. Thus, Appellant voluntarily exposed his location to Google. The Fourth Circuit in *Chatrie* put it best: "If Google compiles a record of [a user's] whereabouts, it is only because he has authorized Google to do so." 107 F.4th at 331. I cannot say that Appellant had a reasonable expectation of privacy in information he voluntarily turned over to a third party.

III. Conclusion

I agree with the Court's judgment to affirm the judgment of the court of appeals. I only write separately to express my view that Appellant did not have a reasonable expectation of privacy in information

---

[3] *See* State's Pretrial Exh. 7, at 17 ("Advertising: Google processes information, including online identifiers and information about your interactions with advertisements, to provide advertising. This keeps Google's services and many of the websites and services you use free of charge. You can control what information we use to show you ads by visiting your ad settings."); *see also Chatrie*, 107 F.4th at 322 ("But Google uses and benefits from a user opting in, too—mostly in the form of advertising revenue. Google uses Location History to show businesses whether people who viewed an advertisement visited their stores. It similarly allows businesses to send targeted advertisements to people in their stores' proximity.")

that he voluntarily turned over to Google. Law enforcement did not need a warrant to obtain that information. With these thoughts, I join the Court's judgment.

Filed: April 2, 2025
Publish

[SEAL]

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

No. PD-0669-23

AARON RAYSHAN WELLS, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR
DISCRETIONARY REVIEW FROM THE FIFTH
COURT OF APPEALS, DALLAS COUNTY

Filed April 2, 2025

NEWELL, J., filed a concurring and dissenting opinion in which RICHARDSON and WALKER, JJ., joined.

The most important question before us is whether the geofence warrant amounts to a constitutionally protected search. Instead of answering that question, Judge Yeary's opinion assumes it away and in doing so crafts an opinion that ensures that we will never have to answer the question. It turns this case from a geofence warrant case into a probable cause case that will essentially lower the standard for probable cause for all warrants just to uphold a search pursuant to a novel type of warrant.

I disagree that the geofence warrant in this case was adequately supported by probable cause. I would hold instead that Appellant did not have a legitimate

expectation of privacy in the limited information sought through the geofence warrant's first and second steps. These two steps sought temporally and spatially limited location history data consistent with existing case law regarding cell phone location information.

But I would hold that Appellant did have a reasonable expectation of privacy in the information sought by the warrant's third step, which included six months of prior IP history.[1] Therefore, I concur with upholding at least the first two steps authorized by the geofence warrant but not on the basis of probable cause. But because the court of appeals did not address the required threshold question of whether Appellant had a reasonable expectation privacy in the information sought by the geofence warrant I dissent to refusal to do so on that point.

Was There a Constitutionally Protected Search?

The Fourth Amendment's "basic purpose . . . is to safeguard the privacy and security of individuals against arbitrary invasions by government officials."[2] "[W]hen an individual 'seeks to preserve something as private,' and his expectation of privacy is 'one that

---

[1] The warrant ordered that, "[f]or those accounts identified as relevant to the ongoing investigation through an analysis of provided records, and upon demand, the provider shall provide the subscriber's information for those relevant accounts to include, subscriber's name, emails addresses, services subscribed to, last 6 months of IP history, SMS account number, and registration IP."

[2] *Carpenter v. United States*, 585 U.S. 296, 303 (2018).

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."[3] We have recognized that "[t]he threshold issue in every Fourth Amendment analysis is whether a particular government action constitutes a 'search' or a 'seizure.'"[4] The State argued at trial, on appeal, and argues before this Court that Appellant has failed to establish a search occurred because he does not have a reasonable expectation of privacy in his location history data. Before reaching the question of probable cause, the court of appeals should have answered this threshold question.[5]

A common thread in the jurisprudence regarding the expectation of privacy is that voluntarily sharing things with others generally defeats an objective expectation of privacy. For example, in *United States v.*

---

[3] *Id.* at 296 (quoting *Smith v. Maryland*, 442 U.S. 735, 740 (1979)).

[4] *Sims v. State*, 569 S.W.3d 634, 643 (Tex. Crim. App. 2019) (citing *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)); *King v. State*, 670 S.W.3d 653, 656 (Tex. Crim. App. 2023) ("Absent a legitimate expectation of privacy, a defendant lacks standing to raise [a challenge the constitutionality of a search] and we may not consider the substance of his complaint.").

[5] *Wells v. State*, 675 S.W.3d 814, 827 (Tex. App.-Dallas 2023, pet. granted) ("Because we conclude that the warrant at issue satisfies the requirements of the Fourth Amendment and, alternatively, Detective Leob's reliance on the warrant was objectively reasonably, it is unnecessary for us to address the State's argument that appellant had no reasonable expectation of privacy in his location history."); *but see King*, 670 S.W.3d at 656.

Knotts, the Supreme Court considered law enforcement's use of a planted beeper's signal to track a vehicle through traffic and recognized that movement in an otherwise public area is not protected by an expectation of privacy.[6] Similarly, when it comes to bank records, the turning over of financial information to a third party has been seen as a voluntary relinquishment of an expectation of privacy in the bank records themselves.[7] But the Court has also recognized that temporal limits should nevertheless be placed upon otherwise voluntarily disclosed information. For example, tracking information for an extended period of time even in a public place might infringe upon an expectation of privacy.[8]

---

[6] *United States v. Knotts*, 460 U.S. 276, 281-82 (1983) ("A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another"). But in *United States v. Jones*, the Court held that the government's use of a GPS tracking device it installed on the vehicle to monitor a vehicle's movements constituted a search under the Fourth Amendment deciding the case on the basis of the government's physical intrusion into the vehicle. *United States v. Jones*, 565 U.S. 400, 404-05 (2012). The Court acknowledged that "[i]t may be that achieving the same result [as traditional surveillance for a four-week period] through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy, but the present question does not require us to answer that question." *Id.* at 412.

[7] *United States v. Miller*, 425 U.S. 435, 437 (1976).

[8] *Jones*, 565 U.S. at 426 (Alito, J., concurring in judgment) ("the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy"); *Carpenter*, 585 U.S. at 310 n. 3 (holding that accessing seven days of CSLI constitutes a Fourth Amendment search); *see also Sims*, 569 S.W.3d at 645-46 (whether government action constitutes a

From these cases it appears that seizing arguably voluntarily disclosed location information does not infringe upon an expectation of privacy if the information sought is both spatially and temporally limited. In *Carpenter*, the Court held there was a reasonable expectation of privacy in at least seven days of historical cell-site location information ("CSLI") associated with Carpenter's phone and, as a result, the Fourth Amendment was violated when the phone was searched without a warrant supported by probable cause.[9] The Court reasoned that cell-site location records hold "the privacies of life" by revealing "not only particular movements, but through them [a person's] 'familiar, political, professional, religious, and sexual associations.'"[10] The Court held that "[g]iven the unique nature of cell phone location records, the fact that the information is held by a third party does not by itself overcome

---

'search' turns on whether 'enough' information was seized that it violated a legitimate expectation of privacy); *Ford v. State*, 477 S.W.3d 321, 335 (Tex. Crim. App. 2015) (holding no expectation of privacy in four days of location data and recognizing that the aggregation of data might be covered by a reasonable expectation of privacy even if a discrete bit of data would not be).

[9] *Carpenter*, 585 U.S. at 316. The two orders at issue in *Carpenter* sought 152 days of cell-site records, which produced records spanning 127 days and seven days of CSLI from a second carrier, which produced two days of records. *Id.* at 302. But the Court noted that it was sufficient for their purposes to hold that accessing seven days of CSLI was a search for Fourth Amendment purposes. *Id.* at 310 n. 3.

[10] *Id.* at 311 (internal citations omitted).

the user's claim to Fourth Amendment protection."[11] Post-*Carpenter*, we recognized that, "[w]hether a particular government action constitutes a 'search' or 'seizure' does not turn on the content of the CSLI records; it turns on whether the government searched or seized "enough" information that it violated a legitimate expectation of privacy."[12] In *Sims v. State*, this Court was considering real-time location information as opposed to historical CSLI but we found the reasoning in *Carpenter* applicable to both kinds of records.[13] And we held that Sims did not have a legitimate expectation of privacy in less than three hours of real-time CSLI records accessed by law enforcement pinging his phone less than five times.[14]

Geofence warrants, like the one at issue, have been said to "work in reverse" to the traditional search

---

[11] *Id.* at 309.

[12] *Sims*, 569 S.W.3d at 645-46 ("There is no bright-line rule for determining how long police must track a person's cell phone in real time before it violates a person's legitimate expectation of privacy in those records. Whether a person has a recognized expectation of privacy in real-time CSLI records must be decided on a case-by-case basis.").

[13] *Id.* at 645.

[14] *Id.* at 646; *see also Holder v. State*, 595 S.W.3d 691, 704 (Tex. Crim. App. 2020) (holding, under the Texas Constitution, that there is a reasonable expectation of privacy in 23 days of historical CSLI accessed by the State without probable cause); *Ford*, 477 S.W.3d at 334-35 (pre-*Carpenter* holding that obtaining four days of CSLI information did not violate the Fourth Amendment because there was no legitimate expectation of privacy).

warrant.[15] Geofence warrants generally specify "a location and period of time, and, after judicial approval, companies conduct sweeping searches of their location databases and provide a list of cell phones and affiliated users found at or near a specific area during a given timeframe, both defined by law enforcement."[16] Here, "[i]n the first step, Google would be asked to create an anonymized list of all devices located within the 'target location' during the time period of 2:45 a.m. to 3:10 a.m. on June 24, 2019."[17] The target location was "limited to the house where the offense occurred and a portion of the church property across the street."[18] The target location primarily sought location history data from public spaces.[19] With that information, law enforcement would "analyze this location data to identify users who may have witnesses or participated" in the offense. Google "would then provide additional anonymized location history outside of the target location for a period not to exceed sixty minutes before and after the last timestamp associated with the

---

[15] *United States v. Smith*, 110 F.4th 817, 822 (5th Cir. 2024) (citing Haley Amster & Brett Diehl, Note, *Against Geofences*, 74 Stan. L. Rev. 385, 388 (2022)). "Unlike a warrant authorizing surveillance of a known suspect, geofencing is a technique law enforcement has increasingly utilized when the crime location is known but the identities of the suspects [are] not." *United States v. Rhine*, 652 F.Supp.3d 38, 66 (D.D.C. 2023).

[16] *Smith*, 110 F.4th at 822 (citing *Geofence Warrants and the Fourth Amendment*, 134 Harv. L. Rev. 2508, 2509 (2021)).

[17] *Wells*, 675 S.W.3d at 822.

[18] *Id.*

[19] The suspects had in fact already been captured in the church's parking lot on surveillance video. *Id.* at 823.

device within the target location."[20] The first step was limited to a 25-minute duration, during the time of the offense, at the location of the offense. The second step expanded the location but was still limited temporally. The first two steps involved less than three hours of location information. Given these temporal and spatial limitations, Appellant did not have a reasonable expectation of privacy in the location history data returned. The State did not seek "enough" information through these steps that it can be said to have violated a legitimate expectation of privacy.[21] This limited intrusion did not implicate the type of "privacies of life" that were at the center of the Court's concern in *Carpenter*.[22]

There is another relevant distinction between the CSLI records at issue in *Carpenter* and the location history information with which we are presently concerned. The Court in *Carpenter* found the CSLI records had not been voluntarily "shared" in the way that term is normally understood.[23] The Court noted the pervasive nature of cell phones in modern society,

---

[20] *Id.* at 822.

[21] *Sims*, 569 S.W.3d at 646 (no legitimate expectation of privacy in physical movements or location as reflected in less than three hours of real-time CSLI); *see also United States v. Chatrie*, 107 F.4th 319, 330 (4th Cir. 2024) (holding there was no reasonable expectation of privacy in two hour' worth of location history data obtained from Google).

[22] *Carpenter*, 585 U.S. at 311 (noting that 127 days of time-stamped data provides an intimate window into a person's life, revealing not only his particular movements, but through them his familiar, political, professional, religious, and sexual associations and that these location records thus hold the privacies of life).

[23] *Id.* at 315.

that cell-site records are created without any affirmative action on the part of the user given that virtually activity on the phone generates CSLI, and concluded that, "in no meaningful sense does the user voluntarily 'assume[ ] the risk' of turning over a comprehensive dossier of his physical movements."[24] Here, the Google location history data was recorded by Google only if users "opted-in." There was an affirmative action by the user rather than a recording of location information caused by virtually any activity on the phone.[25] Arguably this step suggests a greater assumption of the risk than merely using a cell phone, but I question whether turning on location services to be able to use a particular app or even ask your phone for directions to a particular location is the same thing as agreeing to be surveilled for an extended period of time. Still, in this case, the information produced in the first two steps of the geofence warrant was not so open ended that it sought a dossier of physical movements. Rather, it captured a device's presence in a discrete location for a short amount of time.

The voluntariness of the disclosure and the limited scope of the data sought support the application of the third-party doctrine, which holds that "a person

---

[24] *Id.* (citing *Smith*, 442 U.S. at 745).

[25] *See id.* (noting that "[a]part from disconnecting the phone from the network, there is no way to avoid leaving behind a trail of location data"). Here, on the other hand, at the Fourth Circuit has recognized, "[w]hether Google tracks a user's location . . . is entirely up to the user himself. If Google compiles a record of his whereabouts, it is only because he has authorized Google to do so." *Chatrie*, 107 F.4th at 331.

has no legitimate expectation of privacy in information he voluntarily turns over to third parties."[26] The Court in *Carpenter* declined to apply the third-party doctrine to the CSLI sought concluding that the rationales underlying the doctrine did not support its application because (1) the information was not voluntarily shared and (2) the nature of the information sought.[27] Here, both rationales support the application of the third-party doctrine as to the limited location history data and subscriber information sought. For those records sought in the first two steps, this is not the "rare case" where there is a legitimate privacy interest in the records held by a third party.[28]

But the third step of the geofence warrant sought six months of prior IP history in addition to identifying subscriber information. Judge Yeary acknowledges that the information provided in step three "may suggest access" to more than identifying information. We have previously recognized that a person has a legitimate expectation of privacy in the contents of his cell phone.[29] Unlike brief and limited location history data or subscriber information, months of IP history data has the ability to reveal the "privacies of life."[30] The rationales underlying the third-party doctrine do not hold up when considering

---

[26] *Smith*, 442 U.S. at 743-44.

[27] *Carpenter*, 585 U.S. at 314-15.

[28] *Id.* at 319.

[29] *Granville v. State*, 423 S.W.3d 399, 405-06 (Tex. Crim. App. 2014).

[30] *Carpenter*, 585 U.S. at 311.

months of IP history data. First, the nature of that data is not limited in time or scope and are potentially much more revealing than limited location history data. Furthermore, there is no "opt-in" for the record kept of websites visited or services accessed on a cellphone. Cellphones log IP history whenever the user accesses the internet. This data, like 127 days of CSLI, "provides an intimate window into a person's life," which can provide location as well as "familial, political, profession, religious, and sexual associations."[31] When the information sought is not temporally or spatially limited, implicates privacy concerns, and is not voluntarily shared, the third-party doctrine does not overcome an expectation of privacy. The geofence warrant ultimately sought months of historical data in which Appellant had a reasonable expectation of privacy. Thus, I would hold, at a minimum that the third step of the warrant constituted a constitutionally protected search. To clarify, I am not suggesting that the existence of a legitimate expectation of privacy in the IP address information invalidates the entire warrant. Rather, I would hold that the warrant must be based upon probable cause in light of the third step authorized by the warrant. And, as I discuss below, I do not agree that there is probable cause supporting any of the steps authorized by the warrant, especially the third.

Probable Cause

Today, however, the Court does not decide whether the information sought by the geofence

[31] *Id.*

warrant constitutes a search. Rather, it decides the case on the basis of probable cause. In doing so, it virtually ensures that the threshold question will never be answered. Judge Yeary's opinion effectively lowers the burden for law enforcement to obtain a warrant based upon probable cause given the meager amount of information available to police when this geofence warrant was sought. Even a CSLI case starts with a suspect, but here, law enforcement only had a location.

Given that, I disagree with the court of appeals' conclusion that the warrant at issue was supported by probable cause. To establish probable cause, an affidavit in support of a search warrant must provide a substantial basis for concluding that there is a fair probability that contraband or evidence of a crime will be found in a particular location.[32] Here, the affidavit asserted it was likely that one of the suspects carried an Android phone and that home invasion suspects commonly communicate with someone outside of the residence but provided no other basis for concluding evidence of a crime could be found by searching the Google database. In *State v. Baldwin*, this Court held that in order to conduct a search of the contents of a suspect's cell phone, law enforcement must be able to demonstrate probable cause in the form of a "nexus" between the cell phone and the commission of the offense.[33] Conclusory allegations or conclusions are

---

[32] *State v. Duarte*, 389 S.W.3d 349, 354 (Tex. Crim. App. 2012).

[33] *State v. Baldwin*, 664 S.W.3d 122, 123 (Tex. Crim. App. 2022). Although the geofence warrant at issue involved a search of Google's location history database, ultimately the detectives used the information gleaned to search Appellant's phone without

generally insufficient to establish probable cause.[34] Applying that understanding to boilerplate language about the use of cellphones among criminals, the Court held that "specific facts connecting the items to be search to the alleged offense are required for the magistrate to reasonably determine probable cause."[35] Here, there were no specific facts connecting the Google location history database to the alleged offense beyond a conclusory statement about the likelihood a suspect carried an Android phone. There was no basis for that conclusion.

In *Baldwin*, witnesses identified Baldwin's vehicle leaving the victim's home the day of the murder.[36] Baldwin was later stopped in the sedan matching the witnesses' description and a cellphone was located inside of the vehicle.[37] Investigators obtained a warrant to search the phone. The warrant's affidavit noted that available geolocation information may show the location of the suspect at or near the time of an offense and that the investigator knows from "training and experiences that someone who commits the offense of aggravated assault or murder often makes phone calls and/or text messages immediately prior and after the

---

providing any nexus between the phone and the offense beyond boilerplate assumptions about the use of phones in home invasion offenses.

[34] *Id.* at 132 (citing *Rodriguez v. State*, 232 S.W.3d 55, 61 (Tex. Crim. App. 2007)); *Duarte*, 389 S.W.3d at 354.

[35] *Baldwin*, 664 S.W.3d at 134.

[36] *Id.* at 125.

[37] *Id.* at 126.

crime."[38] The Court rightly held this was not sufficient to establish probable cause. While we recognized that the witnesses' descriptions and the vehicle's license plate supported a nexus between the vehicle and the offense, "they ha[d] no bearing on whether [Baldwin's] phone [wa]s connected with the offense" because "[t]he affidavit contains nothing about the phone being used before or during the offense."[39] We reiterated that "[s]uspicion and conjecture do not constitute probable cause."[40] Without more, we held, boilerplate language about cellphone use among criminals is insufficient to establish probable cause.[41]

Here, the "nexus" provided in the affidavit to connect the cellphone, and the criminal offense was that "[i]t is likely that at least one of the four suspects who committed this offense had an Android device on him during the commission of this offense. It is common practice that home invasion robbery suspects keep an open line with someone outside of the residence while committing this type of offense to keep an eye out for responding police officers." This amounts to nothing

---

[38] *Id.*

[39] *Id.* at 135 ("The boilerplate language in itself is not sufficient to provide probable cause in this case, nor does the remaining affidavit set forth details in sufficient facts to support probable cause. Considering the whole of the affidavit, there is no information included that suggest anything beyond mere speculation that [the defendant's] cellphone was used before, during, or after the crime.").

[40] *Id.* (citing *Tolentino v. State*, 638 S.W.2d 499, 502 (Tex. Crim. App. 1982)).

[41] *Id.* at 134.

more than boilerplate language about the use of cellphones among criminals.[42] Without more, this is the same type of bare conclusion or speculation about the use of cellphones that does not support probable cause. Nothing in the affidavit suggests, for example, that the phones at issue were anything more than at the target location. There is nothing suggesting they were used during the commission of the offense or captured information regarding the crime.[43]

Judge Yeary concludes that from the affidavit's assertions that "[i]t is likely that at least one of the four suspects . . . had an android" and that it is common in-home invasions for suspects to "keep an open line" with a lookout outside of the residence, a magistrate could have reasonably inferred a "fair probability" that the home invaders carried cellphones. But "a magistrate's action cannot be a mere ratification of the bare conclusions of others."[44] In

---

[42] *Id.* at 123 (While boilerplate language may be used in a search warrant affidavit, to support probable cause, "the language must be coupled with other facts and reasonable inferences that establish a nexus between the device and the offense.").

[43] Certainly, no probable cause was established to support a search of the cell phones or the data held by the cell phones, which the warrant sought when it requested historical IP data. There is a real danger in concluding otherwise that a lowered standard for probable cause will be used to search cell phones and their data with the attendant privacies of life themselves. In fact, in this case, secondary warrants to search the phone accounts identified through this geofence warrant were obtained based upon little more information than that used to justify the geofence warrant.

[44] *Duarte*, 389 S.W.3d at 354 (quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983).

other words, the affidavit for the search warrant itself cannot simply assert that there is a fair probability or likelihood and that alone be considered sufficient to support a finding of probable cause. Such conclusions must be supported by facts. Even if the magistrate could accept the conclusion offered, the warrant does not include any facts to establish a fair probability that the devices identified were related to the offense. [45] There is nothing more than boilerplate language about the use of cellphones in home invasions.

Judge Yeary's opinion allows for the idea that anyone identified via a device located within the search warrant parameters would necessarily be a suspect or a witness. But by definition a witness is not involved in the crime. Like a general warrant, searching for the identity of a witness presupposes there is no evidence of guilt, and it uses the search itself to generate evidence to test that witness involvement.[46] This is the precise danger created by the way in which a geofence warrant works backwards to gather evidence. There is nothing but speculation to suggest that a potential witness had any information on their phone regarding

---

[45] Indeed, the surveillance video in this case does not provide any factual support for the "keep an open line" conclusion contained in the warrant affidavit.

[46] *Smith*, 110 F.4th at 836 ("[T]he Fourth Amendment was the founding generation's 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. 'General warrants' are warrants that 'specif[y] only an offense,' leaving 'to the discretion of the executing officials the decision as to which persons should be arrested and which places should be searched.") (internal citations omitted).

the crime. Introducing the idea of probable cause to believe that a "witness" has evidence of a crime significantly lowers the specificity required to obtain a warrant.[47] It fails to distinguish between innocent bystanders and suspects. Indeed, one of the people at issue was excluded after this evidence was obtained.[48]

Judge Yeary argues probable cause is supported by the fact that, today, almost everyone possesses a cell phone on his person. Indeed, the Supreme Court in *Carpenter* recognized that people "compulsively carry cell phones with them all the time."[49] And the Court previously characterized cell phones as pervasive.[50] But the Supreme Court's acknowledgment of the ubiquitous nature of cell phones was made to acknowledging greater privacy concerns for the data captured by cell phones not as support for greater

---

[47] *Estrada v. State*, 154 S.W.3d 604, 609 (Tex. Crim. App. 2005) ("Probable cause to search exists when reasonably trustworthy facts and circumstances within the knowledge of the offense on scene would lead a man of reasonable prudence to believe that the instrumentality of a crime or evidence of a crime will be found."). Surely, locating and identifying a person near a particular crime scene does not provide sufficient probable cause to search their phone. Here, locating and identifying potential witnesses in and of itself is not contraband nor evidence of a crime.

[48] *Wells*, 675 S.W.3d at 825 ("The first search revealed five devices within the geofence . . . [t]he second stage of the search . . . indicated that two of the devices travelled past the gas station where the suspect's car was recorded on video surveillance. The third stage of the search revealed the identity of the Google account subscribers for the two devices identified as relevant.").

[49] *Carpenter*, 585 U.S. at 311.

[50] *Riley v. California*, 573 U.S. 373, 395 (2014).

intrusions.[51] In any event, the fact that most people carry cellphones does not provide the required nexus to the offense. That most people carry cellphones without more does not establish a fair probability that evidence of a crime will be discovered by searching phones located near the scene of a crime.

Conclusion

The warrant in this case did not establish probable cause. But because the court of appeals erred in the first instance by failing to consider whether Appellant had a reasonable expectation of privacy in the things to be searched, I would remand for the court of appeals to consider that question. In particular, I believe the court of appeals should consider whether the third step in the geofence warrant amounted to an intrusion into a legitimate expectation of privacy. I would require the court of appeals to reconsider whether probable cause could justify the search of six months of IP address information under that warrant, and, if necessary, whether the second warrant in this case was obtained as a fruit of the poisonous tree.

Filed: April 2, 2025
Publish

---

[51] *Carpenter*, 585 U.S. at 311-15 (acknowledging the fact that people compulsively carry cell phones in support of a greater privacy concern for historical cell-site records and that cell phones are a pervasive and insistent part of daily life as a reason not to apply the third-party doctrine to such records); *Riley*, 573 U.S. at 395 (recognizing the pervasive character of cell phones, which "carry a cache of sensitive personal information," as support for not dispensing with the warrant requirement).

AFFIRMED and Opinion Filed August 23, 2023

[SEAL]
In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-21-00855-CR

AARON RAYSHAN WELLS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 4
Dallas County, Texas
Trial Court Cause No. F19-75986

OPINION

Before Justices Reichek and Goldstein[1]
Opinion by Justice Reichek

Aaron Rayshan Wells appeals his conviction for capital murder. Bringing six issues, appellant contends (1) he was not brought to trial timely under the Interstate Agreed Detainer Act (IADA), (2) the trial court abused its discretion in denying his motion to suppress evidence obtained through a geofence

[1] Justice David Schenck was a member of the original panel, but Justice Schenck is no longer a member of the Court, and he did not participate in the issuance of this opinion.

warrant, (3) the State failed to show the Google data used as a basis for its expert's testimony was reliable, (4) the trial court abused its discretion in denying his motion for continuance, (5) the evidence was legally insufficient to support his conviction, and (6) the submission of a jury instruction on conspirator liability constituted harmful error. We affirm the trial court's judgment.

Background

We begin with a brief overview of the facts concerning the offense and investigation. In the early morning hours of June 24, 2018, Nikita Dickerson engaged in her nightly routine of meeting her boyfriend, Jimmy Giddings, in the driveway of their house to escort him inside. Giddings was a drug dealer, and Dickerson brought a gun with her for their protection. Dickerson stated she was not aware of any particular threats to Giddings, but the neighborhood was unsafe.

On this occasion, as Giddings was getting out of his car, a group of men rushed toward him from the vicinity of a church across the street. One of the men shot at Dickerson multiple times, and she sustained non-fatal injuries. As Dickerson collapsed to the ground, she dropped her gun, which was picked up by the man who shot her. Security camera recordings show Giddings running into the house and closing a metal gate in the entryway behind him. The men followed, kicking open the gate to gain entry. Three men are clearly visible in the recording with the lower

parts of their faces covered. The men entered the house, forcing Dickerson to get up and walk inside with them at gunpoint. A short time later, a fourth man, later identified as appellant, ran past the camera into the house.

Once in the house, the men demanded money. During the course of the robbery, Giddings was shot and killed. One of Dickerson's children, who was in a bedroom of the house during the offense, called 911. The men fled before police arrived.

A homicide detective, Jeffrey Loeb, released still pictures of the three men who could be seen clearly in the security camera footage. A public tip line was opened to try to identify them. Although the lower portions of the men's faces were covered, the pictures showed distinctive tattoos.

When no productive leads were generated by the tip line, Detective Loeb requested a geofence search warrant to obtain information from Google about cellular devices located in the area at the time of the offense. Based on the security camera recording timestamp and footage showing that the men were in the area of the church immediately before and after the offense, Loeb obtained a warrant to search Google's records for information on devices located within a rectangular geofence encompassing Giddings's house and the portion of the church directly across the street between 2:45 a.m. and 3:10 a.m. on June 24. Ultimately, a cellular phone associated with appellant was identified as being at the scene. Through appellant's phone records and a

search of social media, police were able to identify Milton Prentice, Brian Groom, and Kiante Watkins as the other three men involved in the offense.

Appellant was found incarcerated for a different offense in a federal prison in Tennessee. After being transferred to Dallas County, he was tried for and convicted of capital murder. This appeal followed.

Analysis

I. IADA

In his first issue, appellant contends the trial court erred in denying his motion to dismiss under the IADA because the State of Texas failed to bring him to trial within 180 days after he requested disposition of his case. The IADA is a congressionally sanctioned compact between the United States and the states that have adopted it, including Texas. *See Kirvin v. State*, 394 S.W.3d 550, 555 (Tex. App.—Dallas 2011, no pet.). The Act outlines a cooperative procedure to be used when a state is seeking to try a prisoner who is being held in a penal or correctional institution of another state. *See* TEX. CODE CRIM. PROC. ANN. art. 51.14. The state with the untried indictment, information, or complaint must file a detainer with the institution that is holding the prisoner. *State v. Votta*, 299 S.W.3d 130, 135 (Tex. Crim. App. 2009).[2]

[2] A detainer is a request that is filed by a criminal justice agency with the institution in which the prisoner is incarcerated asking that the prisoner be held for the agency, or that the agency be advised when the prisoner's release is imminent. *Id.* at 135, n. 5.

The institution must then promptly inform the prisoner the detainer has been filed and that he has the right to request final disposition of the charges made the subject of the detainer. *Id.* The prisoner may make such a request by giving written notice to the warden of the facility in which he is being held who is then required to forward the request to the appropriate court and prosecuting officer. *Id.* Once the request for final disposition has been received by the court and prosecuting officer, the prisoner must be brought to trial within 180 days unless a continuance is granted under the Act. *Id.*

A continuance granted under the Act must be (1) by a court of competent jurisdiction, (2) in open court, (3) with the defendant or his counsel present, (4) for good cause, and (5) be necessary or reasonable. *Kirvin*, 394 S.W.3d at 556. The "open court" requirement does not mandate a formal proceeding, but is intended to prevent ex parte or sua sponte continuances. *Id.* Where a continuance is agreed to by both sides, it is deemed to be reasonable, necessary, and granted for good cause. *Id.* at 556–57. The defendant's personal consent to the continuance is not required; his counsel's signature is sufficient. *Id.* at 556. Agreed continuances toll the statutory period within which the defendant must be tried. *Id.*

The record in this case shows the State of Texas filed its detainer with the Tennessee prison and, on April 8, 2020, appellant signed his request for final disposition. Appellant's request was received by the trial court on May 8. The State asserts the district

attorney did not receive the disposition request until May 29. Appellant was transferred to a Dallas County jail on June 30.

On July 15 and August 7, both the district attorney and appellant's defense counsel signed agreed requests for continuance, otherwise known as "pass slips," resulting in a trial setting in September. On September 23, the parties filed a joint motion for continuance stating that, although the IADA required appellant to be tried within 180 days, the postponement of jury trials due to the pandemic constituted good cause to continue the trial date in this case. Based on the joint motion, the trial court reset the trial date to March 1, 2021.

Between February 11, 2021 and April 15, 2021, the district attorney and defense counsel jointly requested five more continuances resulting in a trial setting of August 19. On June 25, the court conducted a pre-trial conference at which the State, appellant, and his counsel appeared. The State announced at the hearing that it was ready to proceed to trial. Defense counsel, however, stated she had a conflict and requested the trial be moved to the next available date on the court's jury calendar, which was September 21.

Appellant spoke on his own behalf and stated he had two concerns. His first concern was that he felt there had been a lack of communication between him and his counsel, resulting in her failure to file motions or "come up with a defense" despite the fact the case was set for trial. Because of this, appellant requested he be appointed new counsel. Appellant's second

concern was the delay in his case going to trial, and he requested the charges against him be dismissed under the IADA.

The trial court denied appellant's request for new counsel and appellant does not challenge the denial on appeal or assert he received ineffective assistance. In response to appellant's IADA complaint, the court agreed appellant "certainly need[ed] to have this case tried." The court went on to find good cause existed to extend the trial date to September 21, but cautioned that it would be the final continuance granted. Jury selection began on September 21, and trial commenced on September 23.

As stated above, agreed continuances toll the statutory period within which a defendant must be brought to trial under the IADA. *Id.* at 557. The record here shows the State and defense agreed to multiple continuances of the trial date covering a period of 379 days between July 15, 2020 and August 19, 2021. During a large portion of this time, jury trials were not being conducted due to the global pandemic. Defense counsel then requested an additional continuance which tolled the statutory period for a further 35 days. *See id.* at 556 (reasonable delays caused by defense motions toll statutory period). Appellant's trial commenced 482 days after his request for disposition was received by the district attorney and 503 days after his request was received by the trial court. Even assuming the latter date controls, 414 of the 503 days were tolled, meaning that only 89 days of the 180-day period ran from the date of the request to the

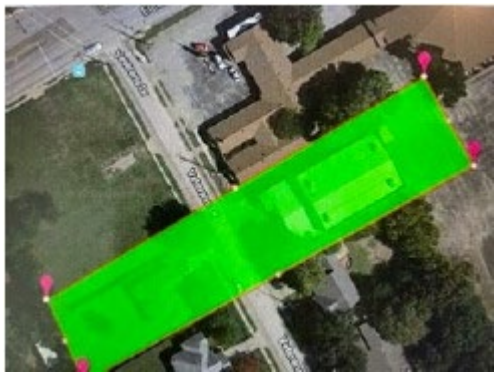
beginning of trial. Appellant's trial was, therefore, timely under the IADA. *Id.* at 558. We resolve appellant's first issue against him.

II. Geofence Search

In his second issue, appellant contends the trial court abused its discretion in refusing to suppress location history data obtained from Google with a geofence search warrant. A geofence warrant allows police investigators to search location history data for compatible mobile devices located within a specified area during a specified period of time. *In re Search Warrant Application for Geofence Location Data Stored at Google Concerning an Arson Investigation*, 497 F. Supp. 3d 345, 351 (N.D. Ill. 2020) ("*Arson*"). This type of warrant is essentially the reverse of a global positioning systems ("GPS") warrant which allows a search of location data generated by a specific device belonging to a person known or suspected to have been involved in criminal activity. *See In re Search of Info. that is Stored at Premises Controlled by Google LLC*, 579 F. Supp. 3d 62, 69 (D.D.C. 2021) ("*D.C. Google I*"). With a geofence warrant, police investigators identify the geographic area in which criminal activity occurred and seek to identify device users at that location when the crime was committed. *Arson*, 497 F. Supp. 3d at 351. Google calculates the location of a device that has enabled Google location history using input from cell towers, GPS, and signals from nearby wireless internet networks ("Wi-Fi") and Bluetooth beacons. *United States v. Rhine*, No. 21-0687, 2023 WL 372044, at *17 (D.D.C. Jan. 24, 2023). Because Google

location history includes multiple inputs, it is "considerably more precise than other kinds of location data." *Id.* For each device, Google retains subscriber information which may include the subscriber's name, address, telephone number, and other identifiers. *Arson*, 497 F. Supp. 3d at 351. Law enforcement officers use a geofence search warrant to seize this data using a multi-step process to identify criminal suspects and potential witnesses to the crime. *See D.C. Google I*, 579 F. Supp. 3rd at 71–72.

In this case, Detective Loeb submitted a warrant application outlining a threestep search process. In the first step, Google would be asked to create an anonymized list of all devices located within the "target location" during the time period of 2:45 a.m. to 3:10 a.m. on June 24, 2018. The application defined the target location using four latitude and longitude coordinates connected by straight lines and included a visual reference image of the search area.



As shown, the search area was limited to the house where the offense occurred and a portion of the church property across the street.

Once the anonymized list was produced, law enforcement would then analyze the data to identify users who may have witnessed or participated in the offense. For those users identified as relevant to the investigation, Google would then provide additional anonymized location history outside of the target location for a period not to exceed sixty minutes before and after the last timestamp associated with the device within the target location. The purpose of this additional information was to eliminate users who, based on the contextual data, did not appear to fall within the scope of the warrant. For the accounts determined to be relevant after this narrowing process, Google would then provide the subscriber information, including the user's name and email address.

In addition to the search description, the warrant application included background information on Google's location services, discussion of the prevalence of Google accounts on cellular phones, and a probable cause statement by Loeb. The probable cause statement laid out the basic facts of the offense. It was noted that surveillance video obtained from the church showed the suspects gathering in the parking lot behind one of the church buildings across the street from the victim's house just prior to the offense and showed the suspects fleeing immediately afterwards in a car that was left parked in the lot. Loeb stated it was likely that at least one of the four suspects had a device on him during the commission of the offense that had enabled Google location services. He opined that "[i]t is common practice that home invasion

robbery suspects keep an open line with someone outside of the residence while committing this type of offense to keep an eye out for responding police officers." It was also noted that the initial shooting of Dickerson occurred outside the house in the front yard, and the police were looking not only for persons involved in the offense, but also for those who were present at the time as potential witnesses.

A district judge approved the warrant and, as a result of the initial search, Google identified three devices in the target location at the time of the offense. Once the search was expanded, Loeb narrowed the search to a single Google account that "was determined to belong to a suspect who clearly had involvement in this offense." The account belonged to appellant and, with appellant's name, email address, and Google account identification number, Loeb obtained a second warrant for appellant's Google account information. Appellant does not challenge this second warrant other than as the "fruit of the poisonous tree."

Google account records provided in response to the second warrant showed that appellant had changed his phone number since he created his Google account. A woman using appellant's former phone number gave Loeb appellant's new number. A warrant was then issued to T-Mobile for appellant's phone records, including cell-site location information. The phone records confirmed that appellant was in the area at the time of the offense. The records also showed the persons with whom appellant was in

communication around the time of the offense. Through social media, detectives were able to identify Prentice, Groom, and Watkins as the other three men involved in the offense based on their distinctive tattoos.

Prior to trial, appellant moved to suppress the information obtained through the geofence warrant. Appellant argued the search was an unreasonably broad invasion of privacy and unsupported by probable cause. The State responded that appellant did not have a reasonable expectation of privacy in the State's limited search of his phone's location history. The State additionally contended the motion should be denied because the warrant was valid and, alternatively, suppression of the evidence was inappropriate under the good faith exception to the exclusionary rule. The trial court denied appellant's motion to suppress, and the evidence was admitted.

On appeal, appellant argues the State's search pursuant to the geofence warrant was a violation of the Fourth Amendment's constitutional guarantee against unreasonable searches and seizures. *See* U.S. CONST. amend. IV. The ultimate measure of the constitutionality of a governmental search is its "reasonableness." *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995). Whether a particular search is reasonable is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. *Id.* at 652–53. Where a search is conducted by law enforcement officials to discover evidence of criminal

wrongdoing, reasonableness generally requires a warrant. *Id.* at 653. The United States Supreme Court has determined that, to be compliant with the Fourth Amendment, a warrant must meet three requirements: (1) it must be issued by a neutral, disinterested magistrate; (2) it must be supported by probable cause that the evidence sought will aid in a "particular apprehension or conviction for a particular offense"; and (3) it must particularly describe the things to be seized and the place to be searched. *Dalia v. United States*, 441 U.S. 238, 255 (1979). Appellant asserts the State's geofence warrant in this case failed to meet the second and third requirements.

The issuance of a warrant is supported by probable cause if, under the totality of the circumstances set forth in the affidavit before the magistrate, there is a fair probability that contraband or evidence of a crime will be found in a particular place at the time the warrant is issued. *State v. Jordan*, 342 S.W.3d 565, 568–69 (Tex. Crim. App. 2011). "The magistrate may interpret the affidavit in a non-technical, common-sense manner, and may draw reasonable inferences from the facts and circumstances contained within its four corners." *Id.* at 569. We give great deference to the magistrate's determination of probable cause and, on review, only ensure the magistrate had a substantial basis for concluding probable cause existed. *Id.*

The particularity requirement is related to the probable cause requirement because it allows the magistrate to determine whether probable cause

exists for the requested search. *Bonds v. State*, 403 S.W.3d 867, 875 (Tex. Crim. App. 2013). Among the objectives of requiring particularity with respect to the place to be searched and things to be seized are: (1) limiting the officer's discretion by narrowing the scope of the search, and (2) minimizing the danger of searching the person or property of an innocent bystander or property owner. *Id.* at 874–75. Primarily, the requirement is "meant to prevent general searches and the seizure of one thing under a warrant that describes another thing to be seized." *State v. Powell*, 306 S.W.3d 761, 765 (Tex. Crim. App. 2010).

Geofence warrants are a relatively new addition to the array of investigative tools available to law enforcement. Because of this, the amount of case law on this type of warrant is limited. *See Rhine*, 2023 WL 372044, at *17. But, while the cases are not numerous, those that have addressed the constitutional issues raised by geofence warrants have done so in depth. *See e.g. id.* at *21–27 (surveying geofence warrant cases). We find the reasoning in these opinions to be consistent, persuasive, and instructive on the warrant presented here. *See Price v. Super. Ct. of Riverside Cnty*, No. E078954, 2023 WL 4312776, at *11 (Cal. App. 4th July 3, 2023).

The case of *Price v. Superior Court of Riverside County* has strikingly similar facts to those presented in this case. In *Price*, a man was shot on the front porch of his home in a residential area. *Id.* at *3. The man's brother was a witness to the offense and saw two men flee the scene in opposite directions—one ran

north, while the other got into a vehicle and headed south. *Id.* Surveillance video from a gas station nearby showed the same vehicle later heading east on a different street. *Id.* at *4.

A detective obtained a warrant seeking location history information from Google for devices located within a geofence encompassing the front yard of the victim's house, including the front porch area where the shooting occurred, and the street in front of the house for the lengths of two houses heading north and south. *Id.* at *5. Based on the timing of multiple 911 calls received about the offense, the time period specified for the first stage of the search was from 10:00 p.m. to 10:22 p.m. *Id.* In his affidavit in support of the warrant, the detective averred that "in his experience people who plan and commit crimes together use cell phones to communicate." *Id.* at *11.

The first search revealed five devices within the geofence during the twenty-two-minute time period. *Id.* at *5. The second stage of the search provided a "more expanded view" of the location and movements of the five devices and indicated that two of the devices travelled past the gas station where the suspects' car was recorded on video surveillance. *Id.* at *4–*5. The third stage of the search revealed the identity of the Google account subscribers for the two devices identified as relevant. *Id.* at *5. Additional warrants were then secured to obtain the Google account and cellular phone records for the suspects. *Id.*

In its review of the constitutionality of the geofence warrant, the court in *Price* concluded the warrant was both supported by probable cause and a "model of particularity." *Id.* at *14. Given the specificity of the geofence and the "indisputable common knowledge that most people carry cell phones virtually all the time," the court reasoned there was at least a "fair probability" that the suspects in the murder would be identified in the search. *Id.* at *12. The court went on to state that

> if a geofence warrant is narrowly tailored, in its initial search parameters, or geographic scope and time period, to maximize the probability it will capture only suspects and witnesses, and to minimize searches of location data and identifying information of individuals for whom there is no probable cause to believe [they] were suspects or witnesses (uninvolved individuals), then the discretion afforded to the executing officer by Google's multi-step production protocol will be constitutionally immaterial.

Id. at *13.

The geofence warrant in this case was equally likely to reveal evidence of the identities of suspects and potential witnesses to the offense, and it was even more likely than the warrant in *Price* to exclude uninvolved persons. Like the warrant in *Price*, the geofence here encompassed only the area where the suspects were known to have been at the time of the offense. Also like *Price*, the area was residential in

nature, made up largely of single family homes, and was not heavily trafficked at the time. Because the period for the initial search in this case was between 2:45 a.m. and 3:10 a.m., there was a significantly diminished possibility that anyone uninvolved would be located in or around the search area, which included only the victim's house and a then-closed church building. Additionally, because one of the shootings took place outside the house, there was a strong possibility that everyone within the geofence would have witnessed at least part of the offense.

Although it is unclear whether or to what extent the second stage of the location history search in *Price* was limited in time, the warrant here limited the anonymized information produced in the second stage to only location history for a period of sixty minutes before and after the initial search period, for a maximum time of approximately two and one-half hours. This limited time-frame in the early morning hours of a single day would not provide nearly the "all-encompassing record" or "intimate window into a person's life" that concerned the United States Supreme Court when it addressed the seizure of one hundred and twenty-seven days of historical cell-site information in *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018).

Appellant acknowledges that the three-step narrowing process used in the State's geofence warrant "effectively filtered out the innocent," but argues the initial search impermissibly included innocent third parties merely because they were

present in an area where a crime was committed. As we have already established, however, the warrant in this case, even in its initial stage, was unlikely to identify persons who were not either a suspect or witness to the offense. Furthermore, a search is not constitutionally impermissible simply because it *may* infringe on the privacy interests of uninvolved third persons. *Rhine*, 2023 WL 372044, at *26; *D.C.*, 579 F. Supp. 3d at 84; *Arson*, 497 F. Supp. 3d at 361. It is sufficient that the warrant did not have the potential for revealing the personal information of a substantial number of uninvolved persons. *Rhine*, 2023 WL 372044, at *26.

Appellant argues that, to demonstrate probable cause for the warrant, the State was required to provide specific evidence showing the suspects were carrying cell phones with enabled Google location services and that the phones would contain evidence of the crime. As multiple courts, including the United States Supreme Court, have recognized—cell phones are ubiquitous. *See Carpenter*, 138 S. Ct. at 2218. Judges are not required to "check their common sense at the door and ignore the fact that most people compulsively carry cell phones with them all the time." *United States v. James*, 3 F. 4th 1102, 1105 (8th Cir. 2021). Detective Loeb's affidavit explained that, in his training and experience, co-conspirators in a home-invasion robbery use phones to keep an open line with someone outside the residence. The affidavit further stated that "nearly every cellular phone using the Android operating system has an associated Google account" and non-Android devices

may also have Google accounts that are used by the company for location-based services, advertising, and search results. Although it is possible the suspects were not carrying cell phones with enabled Google location services during the offense, probable cause is about "fair probabilities," not near certainties. *Id.; see also Arson*, 497 F. Supp. 3d at 355 ("probable cause does not require conclusive evidence that links a particular place or item to a crime"). As for establishing how the cell phone would contain evidence of the offense, the affidavit in support of the warrant made clear that police were seeking the identities of persons who were at the scene through use of the phone's location data. *See Price*, 2023 WL 4312776, at *11.

Appellant relies heavily on the case of *United States v. Chatrie*, 590 F.Supp.3rd 901 (E.D. Va. 2022), to argue the State's geofence warrant was overbroad. Appellant's reliance is misplaced. In *Chatrie*, the court held a geofence warrant was impermissibly overbroad because it failed to establish particularized probable cause to search every Google user within the geofence. *Id.* at 929. The geofence at issue encompassed 17.5 acres in a commercial area between the hours of 4:20 p.m and 5:20 p.m. *Id.* at 922. The court concluded the warrant was "completely devoid of any suggestion that all, or even a substantial number of the individuals searched had participated in or witnessed the crime." *Id.* at 929. In contrast, the geofence warrant before us was as narrowly tailored as possible to capture only location data for suspects and potential witnesses.

The geofence warrant cases to date can generally be divided into two categories—those in which the geofence search warrant was found constitutionally infirm because it was not sufficiently limited as to time and place so as to restrict the executing officer's discretion and minimize the danger of searching uninvolved persons,[3] and those in which the warrant satisfied the Fourth Amendment because it established probable cause to search every person found within the geofence area.[4] Based on the analysis above, we conclude the warrant here falls into the second category. Even when the geofence warrant was found to be invalid, however, courts have refused to exclude evidence resulting from the search. This is because evidence obtained in objective good faith reliance upon a warrant that is valid on its face is an exception to the exclusionary rule. *See United States v. Leon*, 468 U.S. 897, 922 (1984); *see also* TEX. CODE

---

[3] *People v. Meza*, No. B318310, 2023 WL 5287224, at *11 (Cal. Ct. App. 2023); *Chatrie*, 590 F. Supp. 3d at 929; *In re Search of Info. that is Stored at the Premises Controlled by Google ("Kansas")*, 542 F. Supp. 3d 1153, 1158 (D. Kan. 2021); *In re Search of Info. Stored at Premises Controlled by Google ("Pharma I")*, No. 20 M 297, 2020 WL 5491763, at *7 (N.D. Ill. July 8, 2020); *In re Search of Info. Stored at Premises Controlled by Google ("Pharma II")*, 481 F. Supp. 3d 730, 756 (N.D. Ill. 2020).

[4] *Price*, 2023 WL 4312776, at *18; *In re Search of Info. that is Stored at Premises Controlled by Google ("Texas")*, No. 2:22-mj-01325, 2023 WL 2236493, at *14 (S.D. Tex. Feb. 14, 2023); *United States v. Smith*, No. 3:21-cr-107-SA, 2023 WL 1930747, at *10 (N.D. Miss. Feb. 10, 2023) (warrant not overbroad, but officers failed to follow process set out in warrant); *Rhine*, 2023 WL 372044, at *32 (warrant not overbroad, but second warrant used to obtain de-anonymized information); *D.C. Google I*, 579 F. Supp. 3d at 80–81; *Arson*, 497 F. Supp. 3d at 363.

CRIM. PROC. ANN. art. 38.23(b); *McClintock v. State*, 541 S.W.3d 63, 73 (Tex. Crim. App. 2017). "Given the dearth of authority directly on point and the novelty of the particular surveillance technique at issue," courts have determined evidence obtained through an invalid geofence warrant was nevertheless admissible because it was not "objectively unreasonable" for officers to believe the warrant was valid. *Meza*, 307 Cal. Rptr. 3d at 544; *Chatrie*, 590 F. Supp. 3d at 938. Appellant here makes no argument that it was objectively unreasonable for Detective Loeb to rely on the geofence warrant to obtain his location history. Accordingly, even if the warrant was invalid, appellant has failed to show the trial court erred in refusing to grant his motion to suppress.

Because we conclude the warrant at issue satisfies the requirements of the Fourth Amendment and, alternatively, Detective Loeb's reliance on the warrant was objectively reasonable, it is unnecessary for us to address the State's argument that appellant had no reasonable expectation of privacy in his location history.[5] We resolve appellant's second issue against him.

---

[5] We note that no case has been willing to go as far as the State suggests and hold that law enforcement officers do not need to obtain a warrant before searching Google's location history data stores. The State cites *Sims v. State* in which the Texas Court of Criminal Appeals held a defendant did not have a legitimate expectation of privacy in his physical movements or location as revealed by three hours of real-time surveillance done by "pinging" his phone. *See Sims v. State*, 569 S.W.3d 634, 645 (Tex. Crim. App. 2019). As the U.S. Supreme Court has observed, however, historical location information maintained by a third

III. Google Location Data Reliability

In his third issue, appellant contends the trial court abused its discretion in allowing the State's mapping expert, Greg Gambrell, to testify about appellant's location history based, in part, on the data obtained from Google. Appellant argues the State failed to show the Google data was reliable. Trial courts are given wide latitude in their rulings on the reliability of expert testimony. *Wilson v. Shanti*, 333 S.W.3d 909, 913 (Tex. App.—Houston [1st Dist.] 2011, pet. denied). If there is evidence supporting the trial court's decision to admit the challenged evidence, there is no abuse of discretion and we must defer to that decision. *Osbourn v. State*, 92 S.W.3d 531, 538 (Tex. Crim. App. 2002).

In a hearing outside the presence of the jury, Gambrell testified he was a graphic digital multimedia evidence specialist who was certified in call detail records and geolocation analysis. To receive the certification, Gambrell completed five years of

---

party "does not fit neatly under existing precedents." *Carpenter*, 138 S. Ct. at 2214. Law enforcement's real-time tracking of a known, and potentially dangerous, suspect, and its search of a vault of historical location data to determine the whereabouts of unknown persons and innocent bystanders, are fundamentally different things. We share the concern of other courts that "current Fourth Amendment doctrine may be materially lagging behind technological innovations." *Chatrie*, 590 F. Supp. 3d at 925. And we bear in mind that the central aim of the Framers was "to place obstacles in the way of a too permeating police surveillance." *Carpenter*, 138 S. Ct. at 2214 (quoting *United States v. Di Re*, 332 U.S. 581, 595 (1948)).

training through the FBI, the United States Secret Service, and the National White Collar Crime Center. Gambrell also completed approximately one hundred and twenty hours of training on the use of ZetX software, which creates illustrations of location histories.

Gambrell testified he input thousands of lines of appellant's location history data, obtained from both Google and appellant's phone service provider, into the ZetX program to create maps showing appellant's movements. Gambrell stated the records he received from Google were certified and ZetX provides a failsafe that detects if records have been altered. Google additionally provided a business records affidavit stating that Google servers recorded the data automatically at the time, or reasonably soon after, it was transmitted by appellant's device, and the data was kept in the ordinary course of business. The Google affidavit averred the records it produced were "a true duplicate of original records that were generated by Google's electronic process or system that produces an accurate result" and "[t]he accuracy of Google's electronic process and system is regularly verified by Google."

Gambrell discussed how the Google data was collected using Wi-Fi, GPS, and cell towers, and he stated the spreadsheets of location data provided by Google specify which of these sources produced each data point along with its range of accuracy. According to Gambrell, the range of accuracy is within ten meters for GPS, within one hundred meters for Wi-Fi,

and within miles for cell towers. Gambrell elaborated on how each of these technologies collects location data from cellular devices and testified that all three are considered valid sciences accepted among the scientific community. He further stated Google relies on the accurate collection of location information as part of its business model to provide location services and targeted advertising.

With respect to the specific Google data used in this case, Gambrell testified he verified its accuracy in several ways. First, he compared the location data received from Google to the cell-site location data received from appellant's phone service provider to determine if there were any conflicting data points. Next, he looked to other evidence in the case, such as the surveillance videos, to confirm that it correlated with the Google data. He also looked within the Google data itself for anomalies or outliers that would indicate it was inaccurate. As a final confirmation, Gambrell manually validated the accuracy range of the Google data points from the crime scene using a measuring wheel. At the conclusion of the hearing, the trial court ruled that Gambrell's testimony, and the State's demonstrative evidence regarding appellant's movements, were admissible.

Appellant contends that Gambrell's testimony did not meet the standard of reliability for expert testimony set out in *Kelly v. State*, 824 S.W.2d 568, 573 (Tex. 1992).[6] For expert testimony to be reliable under

[6] The State responds that Gambrell's testimony was not based on hard science, but rather on specialized technical

Kelly, (1) the underlying scientific theory must be valid, (2) the technique applying the theory must be valid, and (3) the technique must have been properly applied on the occasion in question. *Id.* Whether a particular field of study is legitimate is the type of question that can be resolved as a general matter so that courts can take judicial notice of the reliability of the type of evidence at issue. *Morris v. State*, 361 S.W.3d 649, 655 (Tex. Crim. App. 2011). Trial courts are not required to "reinvent the scientific wheel in every trial." *Id.*

The evidence the State sought to introduce through Gambrell was maps of appellant's movements in the days leading up to, including, and immediately after the offense. The maps were created using cell-site location data obtained from appellant's phone service provider and GPS, Wi-Fi, and cell-site location data obtained from Google. Appellant challenges only the reliability of the Google location data.

As the State informed the trial court at the hearing, this Court and many others have already concluded that maps based solely on cell-site location data, including specifically ZetX mapping, are sufficiently reliable to be admissible at trial. *See Trevino v. State*, No. 05-19-00295-CR, 2020 WL

---

training and, therefore, the more flexible standard of reliability set forth in *Nenno v. State* applies. *See Nenno v. State*, 970 S.W.2d 549, 561 (Tex. Crim. App. 1998), *overruled on other grounds by State v. Terrazas*, 4 S.W.3d 720 (Tex. Crim. App. 1999). Because we conclude Gambrell's testimony met the standards set forth in *Kelly*, we need not address this argument.

2537246, at *8 (Tex. App.—Dallas May 19, 2020, no pet.) (mem op., not designated for publication); *Patrick v. State*, No. 05-18-00435-CR, 2018 WL 3968781, at *30 (Tex. App.—Dallas Aug. 20, 2018 no pet.) (mem op., not designated for publication) (citing multiple other cases); *Thompson v. State*, 425 S.W.3d 480, 489 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd); *see also Carpenter*, 138 S.Ct at 2216 (cell-site location information provides a detailed and comprehensive record of a person's movements); *United States v. Schaffer*, 439 Fed. Appx. 344, 347 (5th. Cir. 2011) (field of historical cell-site analysis neither untested nor unestablished). Given that a map based solely on cell-site location information from appellant's phone service provider would have been admissible, appellant fails to explain how a map that combines this same data with the location data provided by Google is rendered less reliable. Indeed, the combination of technologies used by both companies makes it significantly more reliable. *See State v. Pierce*, 222 A.3d 582, 590 (Del. Super. Ct. 2019) (accuracy of Google Wi-Fi location data verified by other mechanisms such as GPS).

In addition to gathering location information through cell towers, Google also mines data from GPS and Wi-Fi routers. GPS in particular is significantly more precise than cell-site location information and has been found by this Court to be reliable. *See Brown v. State*, 163 S.W.3d 818, 824 (Tex. App.—Dallas 2005, pet. ref'd); s*ee also United States v. Beverly*, 943 F.3d 225, 230 n.2 (5th Cir. 2019). Appellant acknowledges

this fact in his argument in support of his second issue.

In *State v. Pierce*, the Superior Court of Delaware thoroughly analyzed the reliability of Google's Wi-Fi location data under the standard set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The *Daubert* standard is "virtually identical" to the *Kelly* standard. *See Hartman v. State*, 946 S.W.2d 60, 62 (Tex. Crim. App. 1997) (en banc). The court in *Pierce* concluded that Google's location data met all the criteria for reliability, including wide acceptance in the scientific community. *Pierce*, 222 A.3d. at 591. The fact that Google uses the location data for commercial purposes is a recognized indicator of reliability. *Id.*; *see also Carpenter*, 138 S. Ct. at 2217.

In addition to the general reliability of Google's location data, Gambrell independently verified the accuracy of the information he was provided in this case. His verification of the Google location data included corroborating it using appellant's cell phone records and other evidence in the case, as well as manually assessing the accuracy of certain data points using a measuring wheel. This type of independent corroboration supports the trial court's finding of reliability. *See Alyea v. State*, No. 14-19-00498-CR, 2021 WL 5117972, at *3–5 (Tex. App.—Houston [14th Dist.] Nov. 4, 2021, pet. ref'd) (mem. op., not designated for publication).

Appellant argues the State offered no evidence to show "Google's process for culling and delivering data

in response to a warrant or court order." As observed by the court in *Chatrie*, Google is always collecting location data and stores *all* of the data it collects in a vast "Sensorvault." *Chatrie*, 590 F.Supp.3d at 909. The warrant served on Google in this case ordered the company to turn over "all location data" associated with appellant's Google account for the time period of June 1, 2018 to June 30, 2018, including GPS, Wi-Fi, or Bluetooth sourced location history data generated from devices associated with appellant's Google account, and all data "collected or maintained by Google Location Services and/or Google Location History and any stored location data from or derived from GPS, Wi-Fi access points, cell tower triangulation/trilateration or other measurement" related to appellant's Google account. There is nothing in the record to suggest Google did not turn over all the information the State requested.

Appellant points to the testimony of his defense expert, Steve Watson, concerning the unreliability of Google's data. Most, if not all, of this testimony was offered by the defense after the trial court had already ruled on the admissibility of Gambrell's testimony. Furthermore, Watson acknowledged the accuracy of the independent technologies relied upon by Google—GPS, Wi-Fi, and cell tower data—to determine location. Watson's focus was on the proprietary, and therefore un-reviewed, algorithm used by Google to combine those inputs to produce the location determination it uses in its services. The data provided by Google in response to the warrant did not employ the algorithm, however. It provided only the

raw data points from each of the different sources of location information separately along with their ranges of accuracy. The ranges of accuracy for each data point were fully taken into account by Gambrell and explained to the jury.

We conclude the case law concerning the technology at issue, and the evidence concerning its specific application and reliability in this case, were sufficient to support the trial court's decision to admit Gambrell's testimony. Accordingly, the trial court did not abuse its discretion and we overrule appellant's third issue.

IV. Motion for Continuance

In his fourth issue, appellant contends "the trial court abused its discretion when it denied his motion for continuance based, in part, on evidence the State did not disclose under *Brady v. Maryland*, 373 U.S. 83 (1963)." He asserts the State failed to turn over evidence relating to the "culpability" of Dickerson, Giddings's girlfriend, and a man whose fingerprint was found on one of the cars at the crime scene. Appellant argues he "undeniably suffered harm because he could not explore the viable theory that Dickerson masterminded [Giddings's] murder." We review a trial court's ruling on a motion for continuance for an abuse of discretion. *Cruz v. State*, 565 S.W.3d 379, 381 (Tex. App.—San Antonio 2018, no pet.).

At the hearing on appellant's motion for a continuance, Jimmy Spurger, an investigator with the

public defender's office, testified he had uncovered information about Dickerson after looking into tips received by the Dallas Police Department. Spurger testified these tips were provided to the defense in July 2020, but he did not begin investigating them until September 15, 2021, a few days before the hearing. The first tip stated that Dickerson had Giddings murder her previous husband "Nathaniel" so she could benefit financially. This person also believed Dickerson arranged to have Giddings murdered. On the same day, police received a second tip stating that Dickerson was "in on the robbery" and "she was shot to make it look good."

Spurger began researching Dickerson and found a relative named Nathan Williams who was murdered in 2012. A CLEAR report on Williams stated he was associated with both Dickerson and Giddings and showed him living at the house where Giddings was killed from September 2016 to January 2018, well after his death in 2012. A man named Ghiri Johnson was also listed as an "associate" of Williams and a "relative/associate" of Dickerson and Giddings. A fingerprint of Johnson's was found at the scene of Giddings's murder. Spurger requested a copy of the file on William's murder, and the State turned it over the same day.

At the hearing on appellant's motion, defense counsel stated she wanted to make it clear she was not accusing the State of hiding anything. Her argument was only that the State had failed in its obligation to investigate these tips and they "should have found the

Brady." Counsel asked for additional time to review the file on Williams's murder. The trial court denied the motion.

A *Brady* violation occurs when the State suppresses, willfully or inadvertently, evidence favorable to the appellant. *Harm v. State*, 183 S.W.3d 403, 406 (Tex. Crim. App. 2006) (en banc). *Brady* does not require the State to disclose exculpatory information that it does not know exists. *Id.* at 407. Nor does the State have any duty to seek out such information independently on the defendant's behalf. *Duncan v. State*, No. 05-96-01027-CR, 1997 WL 691438, at *6 (Tex. App.—Dallas Nov. 6, 1997, pet. ref'd) (not designated for publication); *Palmer v. State*, 902 S.W.2d 561, 563 (Tex. App.—Houston [1st Dist.] 1995, no pet). If the defendant, using reasonable diligence, could have obtained the information about which he complains, there is no *Brady* violation. *Duncan*, 1997 WL 691438, at *6; *Westley v. Johnson*, 83 F.3d 714, 726 (5th Cir. 1996).

Here, the record shows the State did not withhold or suppress evidence. The State simply did not pursue two tips it received. Those tips were timely provided to the defense. Although the defense was in possession of the tips for more than a year, it did not begin to investigate them until shortly before trial. We conclude appellant has failed to show a *Brady* violation and the trial court did not abuse its discretion in denying appellant's motion for a continuance. We resolve appellant's fourth issue against him.

V. Accomplice Witness Testimony

Appellant's fifth issue challenges the sufficiency of the evidence to support his conviction. Appellant argues he was convicted based on the testimony of Kiante Watkins, one of the other three men involved in the offense, and the State failed to submit sufficient evidence to corroborate Watkins's version of what occurred. To support a conviction based on the testimony of an accomplice, there must be corroborating evidence that tends to connect the defendant with the offense. TEX. CODE CRIM. PROC. ANN. art. 38.14. Corroborating evidence is not enough if it merely shows the offense was committed. *Id.* But even apparently insignificant incriminating circumstances, including confirming a mere detail, may provide sufficient corroboration. *Medrano v. State*, 421 S.W.3d 869, 883 (Tex. App.—Dallas 2014, pet. ref'd). We look at the facts and circumstances of each case and consider the combined force of all the non-accomplice evidence that tends to connect the accused to the offense. *Id.* While the defendant's presence at the scene of the crime is insufficient by itself to corroborate accomplice testimony, proof that the defendant was at or near the scene, when coupled with other suspicious circumstances, may be sufficient corroboration to support a conviction. *Malone v. State*, 253 S.W.3d 253, 257 (Tex. Crim. App. 2008).

The location data generated by appellant's phone showed he was at Giddings's house when Giddings was murdered. It also showed that he visited Giddings's neighborhood twenty days before the

offense. Giddings's security camera recorded four men entering the house. Appellant's phone records demonstrate that, in the weeks leading up to and including the day of the offense, he was communicating with the other three men seen in the security camera footage when the offense occurred. His phone records also show he made a call from the church parking lot across from Giddings's house immediately before Giddings and Dickerson were attacked. Appellant's internet search history includes searches for news about the offense and indicates appellant began reading a Dallas Police Department blog, including a section on unsolved 2018 homicides, immediately after the offense was committed.

Watkins testified that all four men arrived and fled from the scene in appellant's red Jeep Cherokee. Church surveillance video showed a Jeep Cherokee leaving the church parking lot after the offense. The State submitted documentation into evidence showing appellant purchased a red Jeep Cherokee approximately one month before the murder. A few days after the offense, appellant was searching online about how to reset the oil sensor for a Jeep Cherokee, indicating he still owned the vehicle.

Although appellant attempts to discredit some of this evidence and Watkins's testimony in general, it was solely within the province of the jury to weigh the evidence and evaluate credibility. *See Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999). We conclude there was sufficient evidence tending to connect appellant to the offense and to corroborate

Watkins's testimony. *See Malone*, 253 S.W.3d at 257. We resolve appellant's fifth issue against him.

VI. Conspiracy Liability Instruction

In his final issue, appellant contends the trial court erred in instructing the jury on conspirator liability. The challenged instruction, which tracks the language of section 7.02(b) of the penal code, stated,

> If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

See TEX. PENAL CODE ANN. § 7.02(b). Appellant argues this instruction allowed the jury to convict him without finding the specific intent required for the offense. He further argues the instruction allowed the jury "to convict the non-shooter as a party and similarly impose the death penalty" without being required to find the non-shooter intended to cause the death or that the shooter intended to cause the death. Appellant is mistaken.

It has long been the law in Texas that a person can be convicted of capital murder as a party to the offense without having had the intent to commit the

murder. *Ex parte Martinez*, 330 S.W.3d 891, 901 (Tex. Crim. App. 2011); *Johnson v. State*, 853 S.W.2d 527, 535 (Tex. Crim. App. 1992). All the State was required to prove in this case was that (1) appellant conspired with the group to commit robbery, (2) the murder occurred in furtherance of the robbery, and (3) the murder should have been anticipated as a result of carrying out the robbery. *Martinez*, 330 S.W.3d at 902. The court's charge properly instructed the jury on these elements.

Contrary to appellant's suggestion that a finding of guilt based on conspiracy liability allows a defendant to be sentenced to death without a finding of intent, the code of criminal procedure requires additional findings before a defendant who was found guilty as a party to capital murder can be subjected to the death penalty. If a defendant is found guilty of a capital offense for which the State seeks the death penalty, the trial court must conduct a separate sentencing proceeding to determine whether the defendant will be sentenced to death or life in prison without parole. TEX. CODE CRIM. PROC. ANN. art. 37.071, § 2(a). In cases where the jury charge allowed the jury to find the defendant guilty as a party at the guilt/innocence stage, the jury must be asked in the separate sentencing proceeding "whether the defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that human life would be taken." *Id.* § 2(b)(2). Regardless, the State in this case did not seek the death penalty and, therefore, appellees arguments are

unavailing. *See Cienfuegos v. State*, 113 S.W.3d 481, 495 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd).

We conclude the trial court's charge to the jury on conspiracy liability was proper. We overrule appellant's sixth issue.

Based on the foregoing, we affirm the trial court's judgment.

/s/ Amanda L. Reichek
AMANDA L. REICHEK
JUSTICE

Publish
TEX. R. APP. P. 47.2(b)
210855F.P05

[SEAL]

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

AARON RAYSHAN WELLS, Appellant No. 05-21-00855-CR V. THE STATE OF TEXAS, Appellee	On Appeal from the Criminal District Court No. 4, Dallas County, Texas Trial Court Cause No. F19-75986. Opinion delivered by Justice Reichek. Justice Goldstein participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered August 23, 2023

CAUSE NO. F19-75986-K

THE STATE OF TEXAS	§	**IN THE CRIMINAL**
vs.	§	**DISTRICT COURT**
AARON WELLS	§	**NO. 4 DALLAS COUNTY, TEXAS**

Filed September 30, 2021

FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN RE DEFENDANT'S MOTION TO SUPPRESS
ELECTRONIC CUSTOMER DATA EVIDENCE
ACQUIRED THROUGH GEOFENCING

I admit to being a bit confused by the Arkansas case. The motion and ruling in that case were based on *Daubert*. It appears that the court found under *Daubert* and that Agent (apparently a law enforcement officer) does not have the expertise to testify regarding the "NELOS data and analysis" but could testify "about call detail records and historical cell-site analysis".

I don't find anything in the case that suppresses a search warrant but excludes *Doc 124* which may be a search warrant but I can't tell. I am attempting to find out.

In my research I have read an interesting note on this issue: "Geofence Warrants and the Fourth Amendment" May 10, 2021, 134 Harvard Law Review 2500. And I also found a case that apparently has not been decided but the comments and briefing show

insight into this issue. United States Vs Chatrie, NO. 3:19-cr-130, ED-VA.

In the Harvard Law Review note there is a reference to a Texas case (#18-mj-00169 WD -TX) apparently approving geofence warrants. I could not find that case. You may be able to find it.

While eventually the issue may be decided in favor of legislation or case law outlawing geofencing warrants altogether, the present law is unsettled and in this particular instance I believe that the application for the warrant and the warrant itself have to sufficient particularity to be valid.

Therefore, I deny the Defendant's Motion to Suppress.

Since the Arkansas case's ruling is based on *Daubert* a separate issue may be the testifying person on the Google data and analysis.

/s/ Andrew Kupper
Andrew Kupper, Presiding Judge

OFFICIAL NOTICE FROM COURT OF
CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711

[SEAL]

6/18/2025 **05-21-00855-CR**
WELLS, AARON RAYSHAN **PD-0669-23**
Tr. Ct. No. F19-75986

On this day, the Appellant's motion for rehearing has been denied.

Deana Williamson, Clerk

[SEAL]

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0669-23

AARON RAYSHAN WELLS, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S MOTION FOR REHEARING FROM THE FIFTH COURT OF APPEALS DALLAS COUNTY

NEWELL, J., filed a concurring opinion.

Filed June 18, 2025

I agree that Appellant's motion for rehearing can be denied because Appellant's arguments essentially rehash the arguments made on original submission. Unfortunately, though, Appellant misses a key issue that needs to be addressed regarding what this Court's . . . I am not exactly sure what to call what we produced in this case. Was it a decision? Was it an opinion? Or was it, as I ultimately believe, a waste of everyone's time. I write separately to explain why.

We failed to produce a coherent rationale for affirming the court of appeals. In fact, we didn't even affirm the court of appeals opinion because there is not a majority of judges who agree that the decision of the court of appeals should be affirmed. I am at a loss

as to how practitioners will be able to explain this case let alone how the judiciary will interpret it.

In this case, the court of appeals held that the geofence warrant at issue satisfied the requirement of the Fourth Amendment.[1] However, the court of appeals declined to address the question of whether Appellant had a reasonable expectation of privacy in his location history.[2] We granted discretionary review on both issues.

Judge Yeary wrote an opinion joined by only three judges that the entire warrant passed constitutional muster because the warrant was supported by probable cause and was sufficiently particular.[3] But even within that quartet, one judge, Judge Finley, wrote a concurring opinion to expressly base his decision on a different rationale that was joined by Judge Parker.[4] Under the view expressed in that opinion, there was no expectation of privacy in any level of the location history information collected by Google. But both Judges Finley and Parker also inexplicably joined Judge Yeary's opinion regarding probable cause despite taking the position that a showing of probable cause was not even necessary.[5]

---

[1] *Wells v. State*, 675 S.W.3d 814, 827 (Tex. App.—Dallas 2023, pet. granted).

[2] *Id.*

[3] *Wells v. State*, --- S.W.3d---, No. PD-0669-23, 2025 WL 980996, at *10 (Tex. Crim. App. 2025).

[4] *Id.* (Finley, J., concurring).

[5] *Id*. (Finley, J. concurring) ("Notwithstanding my joining Judge Yeary's opinion today that would uphold the

However, four judges disagreed with Judge Yeary and Judge Finley's opinions. Two judges joined an opinion I authored that would have only upheld part of the search warrant, namely the first two steps, and by extension only part of the court of appeals opinion.[6] My concurring and dissenting opinion agreed with some aspects of Judge Finley's opinion by agreeing that there was no expectation of privacy in the limited identifying information sought, at least in the first two steps of the geofence warrant.[7] But this opinion also took the position that there was not probable cause to support any step outlined in the geofence warrant.[8] Three judges explicitly took this position. One judge, Judge McClure, dissented without opinion. By dissenting, Judge McClure necessarily disagreed with the position taken by Judge Yeary that probable cause supported the geofence warrant and would have

---

constitutionality of the geofence warrant, I write separately to explain that, in my view, we do not need to reach that issue: Law enforcement did not conduct an unreasonable search under the Fourth Amendment because Appellant did not have a reasonable expectation of privacy in the information he voluntarily turned over to a third party.").

[6] *Id.* at *13 (Newell, J., concurring in part and dissenting in part).

[7] Even that agreement was nuanced because Judges Finley and Parker took the position that the third-party doctrine alone operated to extinguish Appellant's expectation of privacy in the location information. *Id.* at *10 (Finley, J., concurring). But I argued that the third-party doctrine along with the already public nature of the area searched as well as the temporal limitation on the data searched extinguished Appellant's expectation of privacy in purely identifying information. *Id.* at *13 (Newell, J., concurring in part and dissenting in part).

[8] *Id.*

reversed the court of appeals opinion entirely. So, in total, four judges would not have affirmed the court of appeals holding that the geofence warrant was supported by probable cause at any stage.

Given this breakdown, we should not have handed any of these opinions down. There was no majority decision affirming the court of appeals. Instead, we should have dismissed the petition for discretionary review as improvidently granted and waited for a different case in which the entire Court could weigh in.[9] It would have been better than the TEMU product we sold Texas.

In *Unkart* this Court explained the different types of opinion that can be handed down, and what we did fit in any of those categories. As we explained:

> An "opinion of the Court" or "majority opinion" is one that is joined by a majority of the judges participating in the case. A "fractured decision" is a judgment by an appellate court that has no majority opinion. A "plurality opinion" is that opinion in a fractured decision that was joined by the highest number of judges or justices. Plurality opinions do not constitute binding authority. But a fractured decision may constitute binding authority if, and to the extent that, a majority holding can be ascertained from the various opinions in the case. Even if the rationales seem disparate, if a majority of

[9] Presiding Judge Schenck did not participate.

> the judges agree on a particular narrow ground for or rule of decision, then that ground or rule may be viewed as the holding of the court.[10]

The only "majority holding" that can be ascertained from the various opinions we published is that the first two steps of the warrant pass constitutional muster. But four judges think it is because the warrant was supported by probable cause and four judges don't. And five judges think it is because there was no reasonable expectation of privacy implicated by at least the first two steps of the search, but three judges of those judges have a more limited view as to why that is. There is no narrow ground for or rule of decision on this aspect of the case that practitioners could rightly call the "holding of the court."

And while it is tempting to fall into the lazy habit of referring to Judge Yeary's four-judge* opinion as a "plurality,"[11] it most certainly is not a plurality. Judge Yeary's opinion was not joined by the highest number of judges on the Court. It is no more the holding of the Court than Judge Finley's opinion or my opinion. It is certainly not persuasive authority because again, it was not joined by the highest number of judges on the Court and four judges affirmatively disagreed with it. Simply put, Judge Yeary's opinion in this case is not

---

[10] *Unkart v. State*, 400 S.W.3d 94, 100-01 (Tex. Crim. App. 2013).

[11] Indeed, we observed this phenomenon and how it sowed confusion in the courts of appeals when we decided *State v. Hardin*. *See State v. Hardin*, 664 S.W.3d 867, 876 n. 35 (Tex. Crim. App. 2022).

worth the data storage used to post it on the Court's website. None of the opinions in this case are. And we should have never handed them down.

To make sure that courts and practitioners clearly understand the vacuous nature of this Court's handling of this case I will repeat myself. There is no coherent ruling or rationale in this Court's non-decision. In a way, that is worse than if the Court had simply improvidently granted the State's petition for discretionary review. Had we done that instead of purporting to put this Court's signature on what the lower court did, practitioners could simply cite to the lower court opinion as some form of authority until this Court found a case to properly resolve the issues raised.

But given the quality of the product we put out in this case; it is hard for me to be any more than ambivalent about granting rehearing on our own motion to fix this case. Judge Yeary's opinion does not improve upon the court of appeals' analysis in any demonstrable way. And while I am obviously partial to my opinion because I wrote it (and I at least attempted to tackle the significant issue of whether there is an expectation of privacy implicated by the geofence warrant in this case), my opinion has no more judges to recommend it than Judge Yeary's opinion. This case resulted in an obvious and insurmountable deadlock. In the end, given the circular-firing-squad nature of what we handed down, I suppose denying rehearing to avoid doing any more harm is just as palatable as withdrawing all the opinions and dismissing the

State's petition for discretionary review as improvidently granted. If we did our best, our best wasn't good enough.[12] We simply can't do any better.[13]

With these thoughts, I concur in the denial of rehearing.

Filed: June 18, 2025

Publish

[12] James Ingram, Just Once (A&M Records 1981).

[13] *Cf. Armstrong v. State*, --- S.W.3d ---, No. PD-0409-22, 2025 WL 1517410, at *8 (Tex. Crim. App. 2025) (Yeary, J. concurring) ("And the Court could do better.").

THE STATE OF TEXAS § COURT:
COUNTY OF DALLAS § 292 DISTRICT COURT

WARRANT FOR ELECTRONIC CUSTOMER DATA

The State of Texas: To the Sheriff or any Peace Officer of Dallas County, Texas, or any Peace Officer of the State of Texas:

Whereas, the affiant whose name appears on the affidavit attached hereto and incorporated herein for all purposes is a peace officer under the laws of Texas and did heretofore this day subscribe and swear to said affidavit before me, and whereas I find that the verified facts stated by affiant in said affidavit show that affiant has probable cause for the belief he/she expresses herein and establishes existence of proper grounds for issuance of this Warrant for Stored Customer Data or Communications under Article 18.21, Section 5A of the Texas Code of Criminal Procedure.

Now, therefore, you are commanded to execute this warrant by serving it upon the below-listed provider through any permissible means pursuant to the Texas Code of Criminal Procedure Article 18.21, Section 5A, to-wit:

Google LLC
1600 Amphitheater Parkway,
Mountain View, CA 94043 Phone 844-383-8524
Email uslawenforcement@google.com

The employees or agents of the above-listed provider are hereby ordered to furnish the Affiant hereof with the following electronic customer data from the providers' electronic storage within fifteen (15) business days after the date the warrant is served as required by the Texas Code of Criminal Procedure Article 18.21, Section 5A, to-wit:

Records pertaining to:

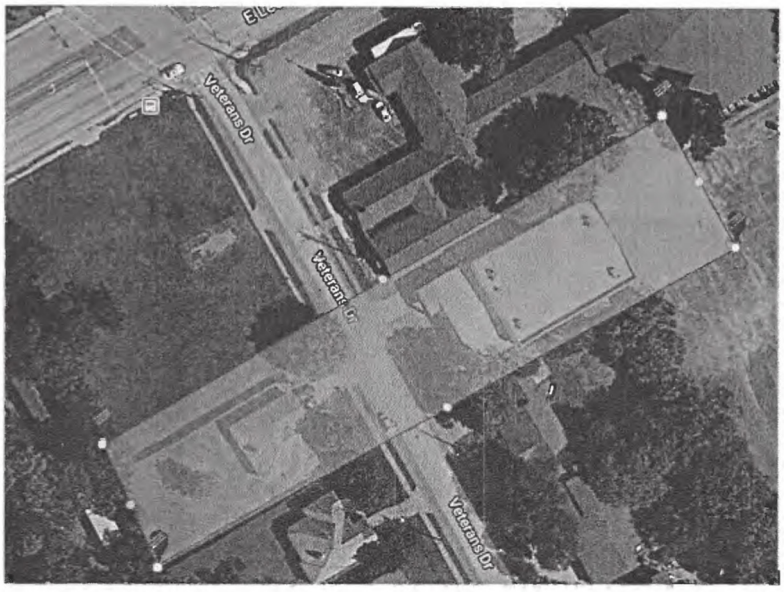
- GPS, WiFi or Bluetooth sourced location history data generated from devices that reported a location within the geographical region bounded by the following latitudinal and longitudinal coordinates, dates and times ("Initial Search Parameters") and Identifying information for Google Accounts associated with the responsive location history data

  Dates & Time Periods (including time zone): June 24, 2018 0245 hrs (2:45 a.m.) to June 24, 2018 0310 hrs (3:10 a.m.) Central Time Zone

  Target Location:
  Geographical area identified as a polygon defined by the following latitude/longitude coordinates and connected by straight lines:

  Point 1: 32.689738, -96.780357
  Point 2: 32.690386, -96.779056
  Point 3: 32.690128, -96.778885
  Point 4: 32.689496, -96.780229

Target Location Reference Image 1:



- Google shall query location history data based on the "Initial Search Parameters"
- For each location point recorded within the "Initial Search Parameters", Google shall produce anonymized information specifying the corresponding unique device ID, timestamp, coordinates, display radius, and data source, if available (the "Anonymized List")
- Law enforcement will analyze this location data to identify users who may have witnessed or participated in the Subject Offenses and will seek any additional information regarding those devices from Google.
- For those accounts identified as relevant to the ongoing investigation through an analysis of

provided records, and upon demand, the "Provider" shall provide additional location history outside of the predefined area for those relevant accounts to determine path of travel. This additional location history shall not exceed 60 minutes plus or minus the first and last timestamp associated with the account in the initial dataset. (The purpose of path of travel/contextual location points is to eliminate outlier points where, from the surrounding data, it becomes clear the reported point(s) are not indicative of the device actually being within the scope of the warrant.)

- For those accounts identified as relevant to the ongoing investigation through an analysis of provided records, and upon demand, the "Provider" shall provide the subscriber's information for those relevant accounts to include, subscriber's name, email addresses, services subscribed to, last 6 months of IP history, SMS account number, and registration IP.

- Provide Records to **Dallas Police Department Homicide Detective Jeffrey Loeb** at email address: **Jeffrey.Loeb@dpd.ci.dallas.tx.us**

It is further ORDERED that the custodian of records of the above-listed provider, or any person otherwise qualified to attest to the authenticity of the information or records that are produced pursuant to this warrant, **shall execute a business records affidavit of the tenor enclosed.**

The court grants authorization to remove any property or item seized under this warrant from the county in which it was seized.

Capital Murder – Dallas Police Department Case #136680-2018

Once said electronic customer data has been furnished to Affiant, herein fail not that you shall make due return thereon to this magistrate showing how you have executed same.

Issued this the 7 day of Dec. , 2018 , at 12:45, P. M., to certify which witness my hand this day

[Illegible]
Printed Name:

Judge Brandon Birmingham
District Judge
292nd Judicial District Court
133 N. Riverfront Blvd., LB 13
Dallas, Texas 75207
___Judicial District
State of Texas

THE STATE OF TEXAS § COURT:
COUNTY OF DALLAS § 292 DISTRICT COURT

AFFIDAVIT AND APPLICATION FOR SEARCH WARRANT

COMES NOW, undersigned Affiant, being a Peace Officer under the laws of the State of Texas, and being duly sworn on oath, makes the following statements and accusations:

Google LLC
1600 Amphitheater Parkway,
Mountain View, CA 94043 Phone 844-383-8524
Email uslawenforcement@google.com

And there is now in the custody of the above-listed provider at the above-described premises, certain "ELECTRONIC CUSTOMER DATA" contained therein that has been used to commit or further a crime, or constitutes evidence relevant to proving that a crime has been committed, to wit:

Records pertaining to:

- GPS, WiFi or Bluetooth sourced location history data generated from devices that reported a location within the geographical region bounded by the following latitudinal and longitudinal coordinates, dates and times ("Initial Search Parameters") and Identifying information for Google Accounts associated with the responsive location history data

  Date & Time Period (including time zone):

June 24, 2018 0245 hrs (2:45 a.m.) to June 24, 2018 0310 hrs (3:10 a.m.) Central Time Zone

Target Location:
Geographical area identified as a polygon defined by the following latitude/longitude coordinates and connected by straight lines:

Point 1: 32.689738, -96.780357
Point 2: 32.690386, -96.779056
Point 3: 32.690128, -96.778885
Point 4: 32.689496, -96.780229

Target Location Reference Image 1:

- Google shall query location history data based on the "Initial Search Parameters"
- For each location point recorded within the "Initial Search Parameters", Google shall produce anonymized information specifying the corresponding unique device ID, timestamp, coordinates, display radius, and

data source, if available (the "Anonymized List")

- Law enforcement will analyze this location data to identify users who may have witnessed or participated in the Subject Offenses and will seek any additional information regarding those devices from Google.
- For those accounts identified as relevant to the ongoing investigation through an analysis of provided records, and upon demand, the "Provider" shall provide additional location history outside of the predefined area for those relevant accounts to determine path of travel. This additional location history shall not exceed 60 minutes plus or minus the first and last timestamp associated with the account in the initial dataset. (The purpose of path of travel/contextual location points is to eliminate outlier points where, from the surrounding data, it becomes clear the reported point(s) are not indicative of the device actually being within the scope of the warrant.)
- For those accounts identified as relevant to the ongoing investigation through an analysis of provided records, and upon demand, the "Provider" shall provide the subscriber's information for those relevant accounts to include, subscriber's name, email addresses, services subscribed to, last 6 months of IP history, SMS account number, and registration IP.
- Provide Records to **Dallas Police Department Homicide Detective Jeffrey Loeb at email address: Jeffrey.Loeb@dpd.ci.dallas.tx.us**

Which is being kept and used in violation of the laws of the State of Texas, to wit:

Capital Murder

GROUNDS FOR ISSUANCE:

- Texas Code of Criminal Procedure Article 18.02:

  (10) property or items, except personal writings by the accused, constituting evidence tending to show that a particular person committed an offense;

  And

  (13) electronic customer data held in electronic storage, including the contents of and records and other information related to a wire communication or electronic communication held in electronic storage.

The facts establishing Affiant's basis for probable cause that the aforementioned violations of Texas law are being committed and the electronic customer data sought constitutes evidence of that offense or evidence a particular person committed that offense is held in electronic storage by the aforementioned provider are as follows:

Background Relating to Google, Google Location Services and Relevant Technology

A cellular telephone or mobile telephone is a handheld wireless device primarily used for voice,

text, and data communication through radio signals. Cellular telephones send signals through networks of transmitter/receivers called "cells," enabling communication with other cellular telephones or traditional "landline" telephones. Cellular telephones rely on cellular towers, the location of which may provide information on the location of the subject telephone. Cellular telephones may also include global positioning system ("GPS") technology for determining the location of the device.

Google is a company which, among other things, provides electronic communication services to subscribers, including email services. Google allows subscribers to obtain email accounts at the domain name gmail.com and/or google.com. Subscribers obtain an account by registering with Google. A subscriber using the Provider's services can access his or her email account from any computer connected to the Internet.

Google has developed an operating system for mobile devices, including cellular phones, known as Android, that has a proprietary operating system. Nearly every cellular phone using the Android operating system has an associated Google account, and users are prompted to add a Google account when they first turn on a new Android device. Based on my training and experience, I have learned that Google collects and retains location data from Android-enabled mobile devices when a Google account user has enabled Google location services. Google can also collect location data from non-Android devices if the device is registered to a Google account and the user has location services enabled. The company uses this information for

location-based advertising and location-based search results. This location information is derived from GPS data, cell site/cell tower information, and Wi-Fi access points.

Location data can assist investigators in understanding a fuller geographic picture and timeline, which may tend to identify potential witnesses, as well as possibly inculpating or exculpating account owners. Additionally, location information digitally integrated into image, video, or other computer files sent via email can further indicate the geographic location of the accounts user at a particular time (e.g., digital cameras, including on cellular telephones, frequently store GPS coordinates indicating where a photo was taken in the metadata of image file).

Probable Cause Statement

On June 24th, 2018, at approximately 3:00am, four masked black males who had been hiding across the street at Carver Heights Baptist Church, ran across the street and began shooting at complainant Jimmy Giddings and witness Nikita Dickerson. This shooting took place in the front yard of the complainant and witnesses residence at 4923 Veterans Drive in Dallas, Dallas County, Texas. Witness Nikita Dickerson, who was armed with a handgun, was shot four times before she could shoot back and she fell to the ground where she was disarmed at gunpoint by the suspects. Complainant Jimmy Giddings, who was not hit during the barrage of gunfire, ran into his residence at 4923 Veterans Drive and hid from the suspects.

Witness Nikita Dickerson, was forced at gunpoint by the suspects to enter the location and once inside the suspects ordered for Jimmy Giddings to come out of hiding or they would kill witness Nikita Dickerson. Complainant Jimmy Giddings came out of the master bedroom closet where he was hiding and the suspects ransacked his bedroom stealing over $10,000.00 in cash from a dresser drawer in his bedroom. One of the four masked suspects executed complainant Jimmy Giddings by shooting him in the face.

The suspects then fled the location with the stolen cash ran back across the street to the church where they had a vehicle parked behind the gymnasium out of sight from the offense location. The suspects fled eastbound down E. Ledbetter Dr. Surveillance video from complainant Jimmy Giddings residence captured high quality images of the masked suspects including their tattoos that can later be used to for identification purposes. Additionally, surveillance video from the church showed the suspects gathering just prior to the offense and later showed them flee in the suspect vehicle.

It is likely that at least one of the four suspects who committed this offense had an Android device on him during the commission of this offense. It is common practice that home invasion robbery suspects keep an open line with someone outside of the residence while committing this type of offense to keep an eye out for responding police officers.

Affiant is also familiar with Android based cellular devices reporting detailed location information to Google where the electronic data is then stored. This information is captured and recorded even when the user is not doing any specific action on the device. As a result, Affiant is requesting a list of any Google devices in a geographic area around the address of 4923 Veterans Drive, Dallas, Texas 75241 in Dallas County, Texas to help identify the suspects in this capital murder investigation.

In particular, the geographical region bounded by the latitudinal and longitudinal coordinates indicated in this application and the time specified in the application. This Application seeks authority to collect certain location information related to Google accounts that were located within the Target Location during the Date and Time Period (the "Subject Accounts").

The information sought from Google regarding the Subject Accounts will identify which cellular devices were near the location where the victim was murdered and may assist law enforcement in determining which persons were present or involved with the murder under investigation. The requested information includes:

a. *Location information*. All location data, whether derived from Global Positioning System (GPS) data, cell site/cell tower triangulation/trilateration, and precision measurement information such as timing advance or per call measurement data, and Wi-Fi location, including the GPS coordinates, estimated radius, and the dates and times of all location recordings, during the Date and Time Period;

b. Each device corresponding to the location data to be provided by Google will be identified only by a numerical identifier, without any further content or information identifying the user of a particular device. Law enforcement will analyze this location data to identify users who may have witnessed or participated in the subject offenses and will seek any additional information regarding those devices from Google.

c. For those accounts identified as relevant to the ongoing investigation through an analysis of provided records, and upon demand, the "Provider" shall provide additional location history outside of the predefined area for those relevant accounts to determine path of travel. This additional location history shall not exceed 60 minutes plus or minus the first and last timestamp associated with the account in the initial dataset. (The purpose of path of travel/contextual location points is to eliminate outlier points where, from the surrounding data, it becomes clear the reported point(s) are not indicative of the device actually being within the scope of the warrant.)

d. For those accounts identified as relevant to the ongoing investigation through an analysis of provided records, and upon demand, the "Provider" shall provide the subscriber's information for those relevant accounts to include, subscriber's name, email addresses, services subscribed to, last 6 months of IP history, SMS account number, and registration IP.

Affiant is requesting this warrant authorized under Texas Code of Criminal Procedure Article

18.21, Section 5A and reciprocating statutes of other states.

WHEREFORE, Your Affiant makes this affidavit and prays that a search warrant be issued commanding any Peace Officer of the State of Texas, with proper and necessary assistance, to search the location listed above where the property and electronic customer data might be kept for the specified accounts.

Further, Affiant requests that the custodian of records or any person otherwise qualified to attest to the authenticity of the records sought under this warrant provide with such records a signed and notarized business records affidavit.

/s/ Jeffrey Loeb 7751
AFFIANT
Jeffrey Loeb, Homicide Detective – Badge #7751
Dallas Police Department – Homicide Unit

Capital Murder – Dallas Police Department Case #136680-2018

Subscribed and sworn to by said Affiant on this the 7 day of Dec, A.D. 2018, as certified by my hand this day.

Judge Brandon Birmingham	**[Illegible]**
Printed Name:	**District Judge**
292nd Judicial District Court	**Judicial District**
133 N. Riverfront Blvd., LB 13	**State of Texas**
Dallas, Texas 75207	