Sanchez v. Los Angeles Dep't of Transp. 39 F.4th 548 (9th Cir. 2022)

REBECCA GONZALEZ*

BACKGROUND

In 2018, Appellee, the Los Angeles Department of Transportation ("LADOT"), adopted the "Shared Mobility Device Pilot Program" (hereafter "Pilot Program") in response to growing popularity of scooter-sharing.[1] This program mandated that e-scooter companies obtain a permit from LADOT to rent e-scooters and comply with LADOT rules, regulations, indemnification, insurance, and fee requirements.[2] As a condition of receiving a permit, LADOT required e-scooter operators to disclose real-time location data for every device through an application programming interface called Mobility Data Specification ("MDS").[3] MDS would be used in conjunction with the e-scooter operator's smartphone applications to compile real-time data on each e-scooter's location by collecting the start and end points and times of every ride taken.[4]

In 2017, e-scooter companies such as Bird, Lime, and Lyft began renting e-scooters to the public in Los Angeles. These e-scooters did not have a fixed location and were dropped off or picked up from stations within the service area. Some companies tracked the scooter's entire ride using built-in GPS trackers, while others used the GPS on the rider's phone to track scooter pickup and drop-off locations.[5] The scooters are rendered through each companies' respective smartphone application, which charges the rider based on the distance and duration of the trip taken.[6]

Appellant Justin Sanchez used e-scooters to commute from his home to work, visit friends, frequent businesses, and access places of leisure. Sanchez contended that the Pilot Program's location disclosure requirement and MDS protocols supplied the government with "Orwellian precision"[7] of e-scooters within 1.11 centimeters of users' exact location and permitted use of that information to identify trips by individuals and retrace a rider's whereabouts.

---

* Rebecca Gonzales is a 2023 Juris Doctor candidate at the University of San Francisco School of Law.

1. Los Angeles, Cal., Ordinance 185,785 (Sept. 13, 2018).
2. *Id.*
3. Sanchez v. Los Angeles Dep't of Transp., 39 F.4th 548, 554 (9th Cir. 2022).
4. *Id.*
5. Mike Murphy & Alison Griswold, *Electric scooters are flooding California, and they'll be on your sidewalks soon*, QUARTZ (April 21, 2018), https://qz.com/1257997/electric-scooters-are-flooding-california-and-theyll-be-on-your-sidewalks-soon [https://perma.cc/7C4Y-B73W].
6. *Id.*
7. *Sanchez* 39 F.4th 548 at 553.

PROCEDURAL HISTORY

Sanchez filed suit in the United States District Court for the Central District of California, challenging the Pilot Program by claiming it violated the California Constitution, the California Electronic Communications Privacy Act ("CalECPA"), and the Fourth Amendment. The District Court granted LADOT's motion to dismiss for failure to state a claim upon which relief can be granted, finding that there was no Fourth Amendment search because Sanchez had no reasonable expectation of privacy over the anonymous MDS location data compiled by the LADOT program.[8] Sanchez appealed to the United States Court of Appeals for the Ninth Circuit after the district court dismissed the complaint with prejudice.

ISSUE

Did Sanchez suffer an injury-in-fact in, establishing Article III standing? If so, does collection of MDS location data by LADOT constitute a search under the Fourth Amendment and therefore violate Sanchez' objective and subjective reasonable expectation of privacy?

DECISION

The Ninth Circuit held that LADOT's collection of real-time location data constituted injury-in-fact to establish Article III standing and affirmed the district court's ruling that the collection of MDS data was not a search and, therefore, does not violate the Fourth Amendment.

The district court did not err in concluding that Sanchez had no reasonable expectation of privacy over his MDS location data. The Ninth Circuit affirmed the district court's dismissal without leave to amend because CalECPA did not create a private right of action. As such, dismissal of the constitutional and statutory claims was not in error and, thus, affirmed.

REASONING

As to the Article III standing issue, the court analyzed whether Sanchez could demonstrate whether (1) he suffered an injury-in-fact that was concrete, particularized, and actual or imminent; (2) LADOT likely caused the injury; and (3) judicial relief would likely redress the injury.[9]

First, to determine whether a plaintiff suffered an injury-in-fact, the court assessed if the alleged injury to the plaintiff had a "close relationship to a harm traditionally recognized as providing a basis for a lawsuit."[10] The court recognized that constitutional violations are injuries that can provide the basis for a lawsuit. Here, the alleged harm was the violation of Sanchez's Fourth

8. FED. R. CIV. P. 12(b)(6).

9. *Sanchez*, 39 F.4th at 554 (citing TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2203 (2021)).

10. *Id.* (quoting Spokeo, Inc. v. Robins, 578 U.S. 330, 341 (2016)).

Amendment constitutional right, caused by the collection of the MDS location data. Accordingly, Sanchez's complaint gave rise to Article III standing.

Secondly, to determine whether LADOT likely caused Sanchez's injury, the court reviewed whether there was a constitutional violation by analyzing whether LADOT's act of collecting MDS location data qualified as a search under the Fourth Amendment.

The definition of a search focuses on whether the government actors obtained information by physically intruding into a constitutionally protected area (i.e., where there is a reasonable expectation of privacy).[11] In his concurring opinion in *Katz v. United States*, Supreme Court Justice Harlan explained that a reasonable expectation of privacy is a twofold requirement: a person must first exhibit an actual, subjective expectation of privacy and, secondly, that the expectation must be one that society is prepared to recognize as being objectively reasonable."[12]

In assessing Sanchez's reasonable expectation of privacy in the physical location of the e-scooter use, the Ninth Circuit first turned to the ruling from *United States v. Knotts* where the Supreme Court found that a person traveling in a car on public roads has no reasonable expectation of privacy in his movements. Then, the Ninth Circuit pointed out that analogously, there is no privacy interest in information obtained through a police officer's use of a GPS beeper tracking device.[13] Further, the Ninth Circuit relied on *Carpenter v. United States*, the Supreme Court decision which held that government collection of cell site location information ("CSLI") has been found to violate one's reasonable expectation of privacy because mapping a cell phone's location over the course of 27 days provides an all-encompassing record of the holder's whereabouts.[14]

Here, the district court found that the collection of MDS data is analogous to remote monitoring of a discrete automotive journey because e-scooters are used on public roads and the MDS data only captures the locations of e-scooters during discrete trips. MDS data does not track users over an extended period; ergo the location information is limited to the duration of the trip. E-scooter users unceremoniously leave the scooter on the street, which is where the tracking ends. Unlike e-scooters, cell phones are constantly located on one's person and continuously identify one's location, making them indispensable to participation in modern society.

Because there is no expectation of privacy on public roads and the time used on e-scooters was limited, the district court found that there was an overall diminished expectation of privacy in the MDS data, as it only disclosed information by the user during an individual trip.

11. *Id.* at 555 (citing Smith v. Maryland, 442 U.S. 735, 740 (1979)).

12. *Id.* (citing Katz v. United States, 389 U.S. 347, 361 (1967)).

13. United States v. Knotts, 460 U.S. 276, 281-82 (1983).

14. *See* Carpenter v. United States, 138 S. Ct. 2206, 2214–17 (2018) (noting that tracking a cell phone provides near perfect surveillance, and that the unique nature of cell phones raises a Fourth Amendment concern because people compulsively carry their phones all the time, and that CSLI allows the government to travel back in time to trace a person's whereabouts).

Meanwhile, the Ninth Circuit assessed the applicability of the third-party doctrine as applied to Sanchez. Under the third-party doctrine, a person has no legitimate expectation of privacy in information they voluntarily turn over to a third party, "even if the information is revealed on the assumption that it will be used only for a limited purpose."[15] The Ninth Circuit considered whether there was a "voluntary exposure" of information here and whether the nature of the material disclosed to the third-party demonstrated a reduced expectation of privacy.[16]

The Ninth Circuit found that e-scooter companies owned and possessed location data and that Sanchez voluntarily and knowingly disclosed that information. Unlike a cell phone user whose device provides location information without affirmative acts,[17] Sanchez affirmatively chose to disclose location data to e-scooter operators each time he rented a device because, before renting a scooter, Sancez agreed to the e-scooter company's privacy policies. The Ninth Circuit reasoned that whenever Sanchez rented an e-scooter, he plainly understood that the e-scooter company needed to collect location data for the scooter through smartphone applications in order to charge him. Because MDS data was knowingly disclosed as a central feature of his transaction with a third-party, the third-party doctrine squarely applied, and Sanchez had no reasonable expectation of privacy in the information.

Sanchez argued that *Carpenter* should have applied, and hence the court should treat the collection of MDS data as a search under the Fourth Amendment because government tracking of a user's location can be done retroactively through smartphone applications. The district court disagreed with this argument asserting that *Carpenter* did not extend to the third-party doctrine in contexts other than the collection of historical CSLI.

Unlike the facts in *Carpenter* in which information was provided without any affirmative acts, here, Sanchez affirmatively and knowingly disclosed location data to the e-scooter operators. Thus, he had a diminished reasonable expectation of privacy because of the nature of MDS location data. As such, LADOT did not cause Sanchez's injury because their collection of anonymous data traffic movements is not a search under the Fourth Amendment since it may be used in the future to reveal an individual's previous location, positing that "an inference is not a search."[18]

Lastly, the Ninth Circuit addressed whether judicial relief would redress the issue. Finding no injury by LADOT in the first place, this inquiry was found to be a non-issue.

In its opinion, the court concluded that Sanchez had no standing under CalECPA. Except after adherence with certain procedures, CalECPA prevents state actors from (1) compelling the production of electronic communication information from a service provider; (2) compelling the

15. *Sanchez*, 39 F.4th at 557 (citing United States v. Miller, 425 U.S. 435, 443 (1976)).

16. *Carpenter*, 138 S. Ct. 2206, 2219–20.

17. *Sanchez*, 39 F.4th at 554 (distinguishing from *Carpenter*).

18. *Id.* at 552 (citing Kyllo v. United States, 121 S. Ct. 2038 (2001)).

production of electronic device information from anyone other than authorized possessor; (3) accessing electronic device information by means of physical interaction or electronic communication with the device.[19]

The statute limits suits to the following: (a) a person in a trial, hearing, or proceeding to move to suppress information obtained in violation of its provisions; (b) the California Attorney General to commence a civil action to compel any government entity to comply with the restrictions; and (c) a person whose information is targeted by warrant, order, or other legal process inconsistent with the restrictions to petition the issuing court to void or modify the warrant, order, or process, or to order the destruction of any information obtained in violation of the restrictions.[20]

Sanchez argued that the phrase "issuing court" encompasses the trial court so that he had standing. However, the appeals court found that the term "issuing court" referred to one that previously issued a "warrant, order, or other legal process."[21] Accordingly, because no court previously issued such an aforementioned order in the present case, the statute did not authorize Sanchez to bring an independent action to enforce its provisions. Thus, CalECPA did not create a private right of action.

19. CAL. PENAL CODE § 1546.1.

20. CAL. PENAL CODE §§ 1546.4(a-c).

21. *Id.*