

IN THE
Supreme Court of the United States

United States of America,

Petitioner,

v.

Amanda Koehler,

Respondent.

**On Writ of Certiorari to
the United States Court of Appeals
for the Thirteenth Circuit**

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF PAWNBALD**

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

AMANDA KOEHLER,

Defendant.

Case No.: 20-PKS09-20-RCN15

**ORDER DENYING
DEFENDANT’S MOTION TO
SUPPRESS EVIDENCE**

DATE: November 25, 2016

On October 1, 2016, Amanda Koehler (“Defendant”) was charged by indictment with three counts of kidnapping under 18 U.S.C § 1201(a) and one count of being a felon in possession of a handgun under 18 U.S.C. § 922(g)(1). Defendant has filed a motion to suppress evidence seized on the date of her initial arrest on August 17, 2016, pursuant to Rule 12(b)(3)(c) of the Federal Rules of Criminal Procedure. For the reasons stated below, the Court **DENIES** Defendant’s motion to suppress evidence as obtained in violation of the Fourth Amendment.

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1 **I. STATEMENT OF FACTS**

2 The State of Pawndale lies directly on the United States-Mexico border. Pawndale’s capital,
3 Eagle City, is one of the largest and busiest ports of entry into the United States. The Eagle City
4 border station has always been a major crossing point for criminals entering both the U.S. and
5 Mexico. As a result, the U.S. Border Patrol prioritized securing the Eagle City border station by
6 assigning more Border Patrol Agents to Eagle City than any other border station in the U.S.

7 On August 17, 2016, U.S. Border Patrol Agent Christopher Dwyer and his partner, Agent
8 Ashley Ludgate, were on patrol at the Eagle City border station around 3:00 A.M. when they
9 stopped a car driven by Scott Wyatt. When asked why he was crossing the border into the U.S., Mr.
10 Wyatt appeared extremely agitated and uncooperative. Agent Ludgate asked Mr. Wyatt if he was
11 transporting \$10,000 or more in U.S. currency. Mr. Wyatt said he was not. Agent Ludgate calmly
12 informed Mr. Wyatt of their right to search his vehicle and that this was a routine search done on
13 every vehicle. Agent Dwyer then asked Mr. Wyatt to step out of the car and open his trunk. When
14 Mr. Wyatt opened the trunk, he discovered \$10,000 in \$20 bills and a laptop with the initials “AK”
15 inscribed on it. Suspicious of the contents, Agent Ludgate asked Mr. Wyatt if the laptop was his.
16 Mr. Wyatt stated that he shared the laptop with his fiancé, Amanda Koehler.

17 The agents ran Ms. Koehler’s name in its criminal intelligence and border watch database.
18 The database search revealed that Ms. Koehler is a felon with multiple convictions for crimes of
19 violence. Ms. Koehler was also named as a person of interest in the recent kidnappings of John,
20 Ralph, and Lisa Ford. John, Ralph, and Lisa are the teenage children of billionaire biotech mogul
21 Timothy H. Ford. The Ford children were kidnapped on their way to school and held for a ransom
22 of \$100,000 each. Recently, the kidnappers agreed to give proof of life (in the form of a phone call
23 with one of the children) in exchange for \$10,000 in \$20 bills, due at noon the following day,
24 August 18.

25 The FBI and Eagle City Police Department (ECPD) have been working together, as they
26 believed the Ford children were transported across state lines and held somewhere in Eagle City.
27 Aware of the ongoing investigation, Agent Ludgate opened the laptop and began looking through
28 the desktop of the laptop.

1 When Agent Ludgate opened the laptop, she found several documents already open. Many
2 of these documents contained Timothy H. Ford's personal information, such as Mr. Ford's address,
3 a list of Mr. Ford's upcoming meetings and appearances, and the names of his staff members. Agent
4 Ludgate continued searching through the documents and found a lease agreement with the name
5 "Laura Pope" and an address that did not match Mr. Ford's. Agent Ludgate informed Agent Dwyer
6 of what she found and placed Mr. Wyatt under arrest for failure to declare in excess of \$10,000, a
7 violation of 31 U.S.C. § 5136. Agent Ludgate then contacted Detective Raymond Perkins, lead
8 detective in the investigation of the Ford kidnappings, to report their findings.

9 The address on the document Agent Ludgate found was traced to a large estate atop Mount
10 Partridge on the outskirts of Eagle City known as Macklin Manor. The top of Mount Partridge is
11 particularly cloudy, and fog and clouds usually cover Macklin Manor year-round. Because of the
12 perpetual fogginess, planes and other aircraft often steer clear of flying over Mount Partridge on
13 their way to and from Eagle City, opting to go around the mountain due to the extremely limited
14 visibility. Macklin Manor originally belonged to former Eagle City Chief of Police Bartholomew
15 Macklin, but the estate was abandoned after his death in 2015. About six months ago, R.A.S., a
16 company based in the Cayman Islands, purchased Macklin Manor. Further investigation revealed
17 that R.A.S. is a shell company owned by "Laura Pope." The FBI later confirmed that "Laura Pope"
18 is one of Ms. Koehler's aliases. However, nobody had seen any residents at the property.

19 Detective Perkins was reluctant to approach the estate without knowing more about its
20 layout and possible residents. At around 4:30 A.M., Detective Perkins assigned Officers Kristina
21 Lowe and Nicholas Hoffman to conduct loose surveillance on Macklin Manor. While Officer
22 Hoffman patrolled the area on foot, Officer Lowe, ECPD's technology expert, deployed a PNR-1
23 drone to fly over the property at dawn.

24 Because of its availability and affordability, the PNR-1 has become a favorite amongst
25 drone enthusiasts. However, ECPD is the only police department in Pawndale to use drones for
26 surveillance. The PNR-1 has a battery life of about 35 minutes and a camera that can capture high-
27 resolution photographs and video. However, the digital storage capabilities of the PNR-1 are
28 minimal. The memory card in the PNR-1 can hold only about 30 photos and 15 minutes of video at

1 a time. The PNR-1 also comes with a pre-programmed maximum flight altitude of 1640 feet, the
2 legal maximum altitude allowed for drones in Pawndale. However, due to recent network
3 connectivity errors, some PNR-1 drones have been known to fly as high as 2000 feet.

4 Officer Lowe parked her squad car about two blocks away from Macklin Manor. She then
5 deployed the PNR-1 over Macklin Manor. The PNR-1 took about 7 minutes to get to Macklin
6 Manor, hovered above Macklin Manor for another 15 minutes, and then took another 7 minutes to
7 return to Officer Lowe's car. The PNR-1 took 22 photos and recorded about 3 minutes of video
8 before Officer Lowe maneuvered it back to the ground. The photos and video surveillance provided
9 Macklin Manor's layout, which includes a large main house, an open pool and patio area, and a
10 single-room pool house. The large main house is directly adjacent to the patio area, and about 15
11 feet separate the house from the pool. The pool house is on the other side of the pool, roughly 50
12 feet from the main house. The estate is not surrounded by any gate or fence. The drone also
13 captured the image of a single young female subject crossing from the main house to the pool
14 house. Detective Perkins was able to confirm that the female subject was Ms. Koehler via
15 photographs recently acquired by ECPD.

16 After identifying Ms. Koehler was on the premises, Detective Perkins became fearful that
17 alerting the occupants without more information would endanger the lives and safety of any
18 potential hostages. Detective Perkins and Officer Hoffman surreptitiously approached the front of
19 the main house of Macklin Manor. Detective Perkins then scanned the front door area of the main
20 house with a handheld Doppler radar, without a warrant.

21 Handheld Doppler radar devices have become popular amongst law enforcement agencies in
22 recent years. The Doppler radar device emits a radio wave that can detect movements up to 50 feet
23 away. If an individual is moving inside a building, the frequency emitted by the Doppler radar
24 device changes. Often, Doppler radar devices zero in on a person's breathing, rather than their
25 movement, making it almost impossible to hide from a Doppler radar device if within 50 feet. The
26 Doppler radar device cannot reveal what the inside of a building looks like, but it can determine
27 how many people are present inside the house and roughly where they are located.

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1 The Doppler radar detected what appeared to be one individual in the front room of the
2 house, a few feet away from the front door. The officers then worked around the main house
3 towards the pool house and conducted a second Doppler radar scan on the pool house. The second
4 Doppler scan revealed what appeared to be three individuals, close together, breathing but
5 unmoving. Another individual appeared to be nearby, pacing around, presumably standing guard.

6 The officers retreated and obtained a search warrant for the entire residence. At around 8:00
7 A.M., Detective Perkins, Officer Lowe, and Officer Hoffman returned to Macklin Manor with a
8 SWAT team. The team conducted a no-knock and notice, as permitted by the warrant, and entered
9 the estate. The officers drew their weapons and detained two individuals in the living room, later
10 identified as Sebastian Little and Dennis Stein. A third individual, identified as Ms. Koehler,
11 escaped out the back door. Officer Lowe and Officer Hoffman gave chase and were able to detain
12 Ms. Koehler before she could leave the estate. Upon detaining Ms. Koehler, the officers found a
13 Glock G29 handgun on her person. The officers then used force to enter the pool house and
14 detained the individual standing guard, identified as Jamison Erich. John, Ralph, and Lisa Ford
15 were found inside the pool house, restrained to chairs but otherwise unharmed.

16 On October 1, 2016, a federal grand jury indicted Ms. Koehler on three counts of
17 kidnapping under 18 U.S.C § 1201(a) and one count of being a felon in possession of a handgun
18 under 18 U.S.C. § 922(g)(1). Ms. Koehler filed the instant motion to suppress the evidence found on
19 the day of her arrest. First, Ms. Koehler contends that her Fourth Amendment rights were violated
20 when Agent Ludgate searched her laptop at the Eagle City border station. Second, Ms. Koehler
21 contends that her Fourth Amendment rights were also violated during the warrantless searches
22 conducted on Macklin Manor, via Officer Lowe's PNR-1 drone and Detective Perkins's Doppler
23 radar device.

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1 **II. ANALYSIS**

2 The Court finds that the search of Ms. Koehler’s laptop at the Eagle City border checkpoint
3 did not violate her Fourth Amendment rights. The border search exception has long provided the
4 government with broad authority to conduct warrantless searches of people, vehicles, and mail
5 entering the country, and extending the border search exception to the contents of a laptop is merely
6 the next step in the evolution of Fourth Amendment search doctrine. Further, the Court finds that
7 the warrantless searches of Macklin Manor, conducted via a PNR-1 drone and a handheld Doppler
8 radar device, did not violate Ms. Koehler’s Fourth Amendment right against an unreasonable
9 search. The definition of a person’s reasonable expectation of privacy will change as technology
10 advances, and the reality is that the use of objects such as drones and handheld Doppler radar
11 devices are becoming much more common.

12 **A. Digital Border Searches and the Border Search Exception**

13 Ms. Koehler first contends that Agent Ludgate’s search of her laptop was a violation of her
14 Fourth Amendment rights. The Court disagrees, and finds that the border search exception extends
15 to the contents of electronic devices.

16 The 4th Amendment protects individuals against unreasonable searches, seizures, and arrest.
17 U.S. Const. amend. IV. All warrantless searches and seizures are presumed unreasonable, unless the
18 government can show that an established exception applies. *Katz v. United States*, 389 U.S. 347,
19 357 (1967). One such exception, the “border search exception,” allows government agents to
20 conduct warrantless, suspicionless, routine searches of individuals, their vehicles, and their effects
21 when passing through a border station. *United States v. Flores-Montano*, 541 U.S. 149, 152 (2004).
22 These warrantless searches are deemed reasonable because “[t]he Government’s interest in
23 preventing the entry of unwanted persons and effects is at its zenith at the international border.”
24 *Flores-Montano*, 541 U.S. at 152.

25 Of course, in an ever-changing world, the meaning of reasonableness under the Fourth
26 Amendment must remain fluid. As such, both the Supreme Court and several Circuit courts have
27 modified the border search doctrine in two ways. First, through the distinction of routine versus
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1 non-routine searches. And second, through the application of the border search exception to digital
2 devices such as phones, laptops, and tablets.

3 Routine searches are searches that do not seriously invade an individual’s right to privacy.
4 *United States v. Johnson*, 991 F.2d 1287, 1291 (7th Cir. 1993). These searches do not require
5 reasonable suspicion, probable cause, or a warrant. *United States v. Montoya de Hernandez*, 473
6 U.S. 531, 538 (1985). On the other hand, non-routine border searches do require reasonable
7 suspicion. *United States v. Roberts*, 274 F.3d 1007, 1012 (5th Cir. 2001). Courts measure
8 reasonable suspicion by a totality of the circumstances, including, but not limited to, the “unusual
9 conduct of the defendant, discovery of incriminating matter during routine searches, computerized
10 information showing propensity to commit relevant crimes, [and] a suspicious itinerary.” *See*
11 *United States v. Irving*, 452 F.3d 110, 124 (2d. Cir. 2006). While the line between routine and non-
12 routine border searches is a blurred one, the Supreme Court and some Circuit courts have suggested
13 that the label “non-routine” is reserved for intrusive border searches of a *person* and not their
14 belongings or vehicles. *See Flores-Montano*, 541 U.S. at 152; *see also United States v. Braks*, 842
15 F.2d 509, 511 (1st Cir. 1988); *United States v. Levy*, 803 F.3d 120, 123 (2d. Cir. 2015).

16 Courts have tried to apply the distinction between routine and non-routine border searches to
17 the searches of digital devices. Whether reasonable suspicion is necessary during a digital border
18 search rests on two factors: 1) whether the search was routine and 2) whether the search was
19 intrusive. *See United States v. Cotterman*, 709 F.3d 952, 968 (9th Cir. 2013); *see also United States*
20 *v. Arnold*, 523 F.3d 941, 947 (9th Cir. 2008). When determining the intrusiveness of a digital
21 search, courts will not rely on the storage capacity of the item being searched. *Arnold*, 523 F.3d at
22 947 (9th Cir. 2008). Non-routine forensic digital border searches require reasonable suspicion.
23 *Cotterman*, 709 F.3d at 968. However, quick and non-intrusive digital border searches require no
24 reasonable suspicion. *Arnold*, 523 F.3d at 947 (9th Cir. 2008).

25 Whether Agent Ludgate’s search was routine or non-routine plays an important role in
26 determining whether her search of the laptop in Mr. Wyatt’s car required reasonable suspicion.
27 However, undergoing a routine versus non-routine search analysis is unnecessary because Agent
28 Ludgate had the reasonable suspicion necessary to search the laptop in Mr. Wyatt’s car.

1 This Court looks to the totality of the circumstances in determining that Agent Ludgate had
2 the reasonable suspicion necessary to search Ms. Koehler’s laptop at the Eagle City border station.
3 We find the *Irving* factors helpful in guiding our decision today. The first factor is unusual conduct
4 by the defendant. When Agent Ludgate stopped Mr. Wyatt at the Eagle City border station, Mr.
5 Wyatt was agitated and uncooperative. This is exactly the type of unusual conduct the *Irving* court
6 was looking for. Second, the *Irving* court looked to whether the agents discovered incriminating
7 matters. Here, Agent Ludgate discovered that Mr. Wyatt had a close, personal relationship with Ms.
8 Koehler, a known felon and person of interest in the recent kidnappings of the Ford children.
9 Finally, the *Irving* court linked the existence of the defendant’s computer with the propensity to
10 commit the crime and looked at the defendant’s suspicious itinerary. Here, although the laptop was
11 not directly linked to the crime, the surrounding context gave rise for Agent Ludgate to reasonably
12 suspect that Mr. Wyatt (or at least the owner of the laptop) was involved in the Ford kidnappings.
13 Additionally, the \$10,000 found in the trunk was the exact same amount and the exact same
14 increments the Ford kidnappers asked for. Further, the initials “AK” were inscribed on the laptop.
15 These initials match Amanda Koehler’s initials, the person of interest in the Ford kidnappings and
16 Mr. Wyatt’s fiancé. Finally, Mr. Wyatt was found at the Eagle City border station, the city the
17 kidnappers were suspected of traveling to with the Ford children.

18 All of these facts lean in favor of ruling that Agent Ludgate had the reasonable suspicion
19 necessary to search Ms. Koehler’s laptop. Because we find that Agent Ludgate had reasonable
20 suspicion, this court does not have to address whether the search was routine or non-routine.

21 **B. The Use of Technology Under the Fourth Amendment**

22 Ms. Koehler also contends that the search of Macklin Manor via Officer Lowe’s use of
23 PNR-1 drone and Detective Perkins’s use of a handheld Doppler radar device was a violation of her
24 Fourth Amendment rights. The Court disagrees, and finds that the use of these devices falls under
25 well-established Supreme Court case law.

26 **1. Officer Lowe’s Use of the PNR-1 Drone**

27 The touchstone of Fourth Amendment analysis will always be whether a person has a
28 reasonable expectation of privacy. *Katz*, 389 U.S. at 360. The Fourth Amendment protects only a

1 person's subjective expectation of privacy that society is prepared to recognize as reasonable. *Id.* at
2 361. Thus, the protections afforded by the Fourth Amendment do not extend to certain areas. *See*
3 *Hester v. United States*, 265 U.S. 57, 59 (1924). One such example is the "open fields doctrine,"
4 which "permits police officers to enter and search a field without a warrant." *Oliver v. United*
5 *States*, 466 U.S. 170, 173 (1984). "An individual may not legitimately demand privacy for activities
6 conducted out of doors in fields, except in the area immediately surrounding the home." *Id.* at 176.

7 Certain open areas are protected by the Fourth Amendment – namely areas that extend "the
8 intimate activity associated with the 'sanctity of a man's home and the privacies of life.'" *Oliver*,
9 466 U.S. at 180 (1984) (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)). These areas are
10 known as curtilage and an individual carries a reasonable, subjective expectation of privacy within
11 the curtilage of their home. *Oliver*, 466 U.S. at 180. The Supreme Court laid out four factors that
12 help determine whether an area is considered curtilage and thus protected by the Fourth
13 Amendment: (1) the proximity of the area to the dwelling; (2) whether there are enclosures
14 surrounding the area; (3) how the area is used; and (4) how hard the area is being protected. *United*
15 *States v. Dunn*, 480 U.S. 294, 301 (1987). However, the ultimate question is whether "the area in
16 question is so intimately tied to the home itself that it should be placed under the home's 'umbrella'
17 of Fourth Amendment protection." *Id.*

18 The Fourth Amendment does not preclude an officer from making observations of clearly
19 visible activities from a public vantage point in which the officer has every right to be. *California v.*
20 *Ciraolo*, 476 U.S. 207, 213 (1986). Thus, nonintrusive searches conducted in navigable airspace
21 fully accessible to the public are reasonable and do not require a warrant. *Id.* The question becomes
22 "whether [the defendant's] expectation of privacy was rendered illusory by the extent of public
23 observation of his backyard from [navigable airspace]." *Florida v. Riley*, 488 U.S. 445, 464 (1989).

24 The first step in the court's analysis is to determine whether what the PNR-1 drone observed
25 was within the curtilage of Macklin Manor. The *Dunn* factors guide our analysis. First, the pool area
26 was not in close proximity to the main house. The pool house is at least 50 feet away from the main
27 house. The pool house is also an entirely separate building, separated from the main house by a
28 patio area and a pool. Second, there are no enclosures surrounding the pool area, or the main house

1 area. There is no fencing surrounding the buildings and no awnings or shading shielding the
2 buildings from aerial observation. Third, both the pool area and the pool house are completely
3 separate from the main house. Presumably, nobody is living in the pool house on a permanent basis.
4 Finally, the pool area is not being protected very diligently. As stated earlier, there is a clear lack of
5 enclosures shielding the pool house from observation, as well as an absence of anything to indicate
6 the area as private (such as guards, guard dogs, “do not enter signs,” etc.). These factors show Ms.
7 Koehler had no reasonable expectation of privacy from the air in Macklin Manor.

8 *Ciraolo* and *Riley* also guide our analysis in that legal, nonintrusive searches conducted in
9 navigable airspace from vantage points that any member of public could see are valid under the
10 Fourth Amendment. First, the PNR-1 drone was not violating any laws when it flew above Macklin
11 Manor and the search was conducted in navigable airspace. The PNR-1 drone is pre-programmed to
12 navigate at an altitude of only 1640 feet, the limit for navigable airspace for drones in Eagle City.
13 There is no proof that Officer Lowe’s PNR-1 exceeded this limit. Second, the search was
14 nonintrusive, in that the drone merely flew over the property for a few minutes and flew back to
15 Officer Lowe. The drone did not break through any barriers nor did the drone see through any walls.
16 Finally, any member of the public flying over Macklin Manor could see what the PNR-1 drone saw.
17 Therefore, the use of the PNR-1 drone by Officer Lowe constituted a valid search under the Fourth
18 Amendment and did not violate Ms. Koehler’s constitutional rights.

19 **2. Detective Perkins’s Use of the Handheld Doppler Radar Device**

20 The 10th Circuit was the first court to address the use of handheld Doppler radar devices in
21 the context of Fourth Amendment searches. *See United States v. Denson*, 775 F.3d 1214, 1218 (10th
22 Cir. 2014). However, the 10th Circuit decided that they did not have enough information regarding
23 handheld Doppler radar devices to make a definitive decision. *Id.* We acknowledge there is minimal
24 information out there in terms of how Doppler radar works – however, we disagree with the 10th
25 Circuit and believe a decision can be made regarding handheld Doppler radar devices by following
26 the Supreme Court’s reasoning in *Kyllo v. United States*, 533 U.S. 27 (2001). An analysis of
27 handheld Doppler radar devices under *Kyllo* reveals that Ms. Koehler’s Fourth Amendment rights
28 were not, in fact, violated by Detective Perkins’s use of the handheld Doppler radar device.

1 The use of sense-enhancing technology to gather information regarding the interior of a
2 home that could not have been retrieved without actually going inside is prohibited under the Fourth
3 Amendment. *Kyllo*, 533 U.S. at 40. However, a person’s reasonable expectation of privacy may be
4 lowered when the police use devices of common usage to conduct the search. *Id.*

5 Whether the handheld Doppler radar device used by Detective Perkins constituted a valid
6 search rests on two factors: (1) whether the information the Doppler device gained would not
7 otherwise be obtainable without entering the house and (2) whether the device is in common use.
8 The latter is undisputed in the eyes of this court – Doppler radar devices have become extremely
9 popular amongst law enforcement and it is without doubt they are in common use. So the analysis
10 of Detective Perkins’s search will begin and end with whether the information obtained could not
11 have been otherwise obtained without entering the house. Here, the information obtained was
12 merely that people were present inside the house. Mere observation from across the street or from
13 further surveillance by the PNR-1 drone could have obtained that information without the entering
14 the house. Further, Officer Hoffman, who was conducting surveillance on foot, would surely have
15 eventually seen one or more of the individuals arrested eventually walk outside. Therefore, the use
16 of the Doppler radar device was not a search under the Fourth Amendment.

17 **3. Fruit of the Poisonous Tree**

18 Even if the use of the PNR-1 drone and the handheld Doppler radar device constituted
19 impermissible searches, Ms. Koehler fails to show “fruits” resulting from these activities.

20 Detective Perkins had adequate probable cause for a search warrant even without the
21 information acquired by the PNR-1 drone and the handheld Doppler radar device. The observations
22 by the PNR-1 drone and the handheld Doppler radar device were therefore not conducted to
23 establish probable cause for a search warrant of Macklin Manor – rather, the searches were done in
24 an effort to maintain officer safety and ensure that, in executing the search warrant, the officers
25 were prepared and protected.

26 A search warrant will issue only upon a showing of probable cause. *Illinois v. Gates*, 462
27 U.S. 213, 232 (1983). Probable cause is a fluid concept that turns on “the assessment of
28 probabilities in particular factual concepts – not readily, or even usefully, reduced to a neat set of

1 legal rules.” *Gates*, 462 U.S. at 232. Probable cause is determined by a totality of the circumstances.
2 *Id.* at 230. In analyzing probable cause, a court will look at factual and practical considerations of
3 everyday life in which a reasonable and prudent person would act. *Brinegar v. United States*, 338
4 U.S. 160, 176 (1990).

5 The principal components of probable cause are (1) the events leading up to the search and
6 (2) whether these facts, viewed from an objectively reasonable officer, resulted in probable cause.
7 *Ornelas v. United States*, 517 U.S. 690, 696 (1996). However, creating a precise definition of
8 probable cause is nearly impossible. *Maryland v. Pringle*, 540 U.S. 366, 370 (2003). In determining
9 probable cause, the relevant inquiry is whether particular conduct is innocent or guilty, but the
10 degree of suspicion that attaches to particular types of noncriminal act. *United States v. Sokolow*,
11 490 U.S. 1, 10 (1989).

12 Here, the events preceding the use of the PNR-1 drone and handheld Doppler radar device
13 would give rise to probable cause. Mr. Wyatt was stopped at the Eagle City border station, a known
14 crossing point for criminals, at 3:00 A.M. with \$10,000 in \$20 bills. The Ford kidnapers had asked
15 for that exact amount in those exact denominations. Further, a laptop with the initials “AK” were
16 also found in Mr. Wyatt’s trunk. Mr. Wyatt admitted that the laptop belonged to Ms. Koehler, a
17 person of interest in the Ford kidnappings. Inside the laptop were documents containing Mr. Ford’s
18 personal information, as well as a lease agreement with Ms. Koehler’s name for Macklin Manor.
19 Finally, Macklin Manor was owned by R.A.S., a shell company owned by “Laura Pope,” one of Ms.
20 Koehler’s known aliases. Under the totality of the circumstances, an objectively reasonable officer
21 would believe that probable cause existed to search Macklin Manor.

22 While we acknowledge a search warrant was not obtained until after the use of the PNR-1
23 drone and the handheld Doppler radar device, the information acquired by the PNR-1 drone and
24 handheld Doppler radar device were not necessary to establish probable cause. Detective Perkins
25 already had the probable cause necessary to secure a search warrant. Detective Perkins was
26 primarily concerned with officer safety, and did not want to approach the estate unprepared.
27 Therefore, Ms. Koehler fails to show “fruits” resulting from this particular search and is therefore
28 not entitled to relief.

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III. CONCLUSION & ORDER

For the foregoing reasons, the Court **DENIES** Ms. Koehler’s motion to suppress evidence in its entirety.

IT IS SO ORDERED

Marietta Meagle

MARIETTA MEAGLE
United States District Judge

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**UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT**

UNITED STATES OF AMERICA,

Appellee,

v.

AMANDA KOEHLER,

Appellant.

No.: 125-1-7-720
District Court No.: 20-PKS09-20-RCN15

DATE: July 10, 2017

Appeal from the United States
District Court for the Southern District of Pawndale
Marietta Meagle, District Judge, Presiding

Argued and Submitted
January 7, 2017
Eagle City, Pawndale

Filed February 1, 2017
Before Judge Connor Middlebrooks, Judge Tamara Swan, and Judge Peter Hapley
Circuit Judges

Opinion by Judge Middlebrooks

1 **OPINION**

2 MIDDLEBROOKS, C. Circuit Judge:

3 Appellant Amanda Koehler appeals her conviction after guilty plea on charges of
4 kidnapping and possession of a firearm by a felon. Appellant reserved her right to appeal the district
5 court’s ruling on her suppression motion. Appellant contends the District Court erred in denying her
6 motion to suppress evidence prior to her plea. For the foregoing reasons, we agree with Appellant,
7 reverse the judgment entered against her, and remand the case for further proceedings.

8 **I. BACKGROUND**

9 Because the facts of this case are not in dispute, this Court adopts and incorporates by
10 reference the facts from the District Court ruling. The District Court denied Appellant’s motion to
11 suppress evidence which would allow the Government to use the evidence during the border search
12 of Appellant’s laptop and of the search conducted via Officer Lowe’s drone and Detective Perkins’s
13 handheld Doppler radar device. As a consequence, Appellant pled guilty to the charges and now
14 appeals the District Court’s order denying her motion to suppress. Appellant’s standing on both
15 claims is not in dispute.

16 **II. ANALYSIS**

17 Appellant argues that her convictions should be reversed because the district court erred in
18 not suppressing the Government’s evidence obtained in violation of her Fourth Amendment rights.
19 First, Appellant contends that Officer Ludgate’s search of her laptop at the Eagle City border station
20 was unconstitutional under the Fourth Amendment. Second, Appellant argues that the search of
21 Macklin Manor done via Officer Lowe’s PNR-1 drone and Detective Perkins’s handheld Doppler
22 radar device also violated her constitutional rights.

23 **A. Digital Border Search**

24 Appellant argues that her constitutional rights were violated when Officer Ludgate searched
25 her laptop at the Eagle City border station. Appellant contends that digital border searches fall
26 outside the scope of the border search exception. We agree and hold that the digital border search of
27 Appellant’s laptop at the Eagle City border station violated Appellant’s Fourth Amendment rights.
28

1 The touchstone of the Fourth Amendment will always be reasonableness. *Katz v. United*
2 *States*, 389 U.S. 347, 360 (1967). The reasonableness of a search or seizure is gauged by the
3 totality of the circumstances, starting with the scope and duration of the intrusion. *United States v.*
4 *Jacobsen*, 466 U.S. 109, 124 (1984).

5 Border searches are “a narrow exception to the Fourth Amendment prohibition against
6 warrantless searches without probable cause.” *United States v. Seljan*, 547 F.3d 993, 999 (9th Cir.
7 2008). The border search exception does not mean “anything goes” at the border. *Id.* at 1000.
8 “Some searches of property are so destructive as to require” particularized suspicion. *United States*
9 *v. Flores-Montano*, 541 U.S. 149, 155-56 (2004). An individual’s privacy rights are still balanced
10 against the interests of the government, even at the border. *United States v. Montoya de Hernandez*,
11 473 U.S. 531, 539 (1985).

12 As the lower court points out, the distinction between routine and non-routine searches is
13 key in any border search analysis, as routine border searches do not require reasonable suspicion,
14 while non-routine border searches do. *See United States v. Montoya de Hernandez*, 473 U.S. 531,
15 538 (1985); *see also United States v. Roberts*, 274 F.3d 1007, 1012 (5th Cir. 2001). The non-routine
16 label is generally reserved for intrusive border searches of a person and not their belongings or
17 vehicles. *See Flores-Montano*, 541 U.S. at 152.

18 The Supreme Court has not provided a definitive answer as to “whether, and under what
19 circumstances, a border search might be deemed “unreasonable” because of the particularly
20 offensive manner in which it is carried out.” *Flores-Montano*, 541 U.S. at 155 n.2 (2004) (quoting
21 *United States v. Ramsey*, 431 U.S. 606, 618 n.13 (1987)). This question is particularly salient in the
22 context of digital searches at the border. While the Fourth and Ninth Circuits have attempted to
23 resolve this issue, the answer to whether the warrantless search of digital devices at the border
24 violates the Fourth Amendment is not as novel as it seems. Rather, this type of inquiry falls squarely
25 under the recent decision of *Riley v. California*, 134 S. Ct. 2473 (2014).

26 The immense storage capacity of a digital device entirely changes a person’s reasonable
27 expectation of privacy. *Riley v. California*, 134 S. Ct. 2473, 2489 (2014). Digital devices implicate
28 different levels of privacy because of the information they can hold. *Id.* Devices such as laptops

1 provide access to large amounts of personal data and may be seized without a warrant incident to
2 lawful arrest – however, the *contents* of a laptop may not be searched without a warrant, absent an
3 exception to the warrant requirement. *See id.* at 2492. Devices such as laptops are not the same as
4 physical containers – saying the data stored on a phone or a laptop is the same as the search of a
5 physical item is “like saying a ride on horseback is materially indistinguishable from a flight to the
6 moon.” *Id.* at 2488.

7 The lower court skipped the analysis of whether Agent Ludgate’s search was routine or non-
8 routine because they find Agent Ludgate had the requisite reasonable suspicion to search the laptop
9 in Mr. Wyatt’s trunk. This analysis is shortsighted – Agent Ludgate’s search was absolutely non-
10 routine and the facts as presented do not show Agent Ludgate had the requisite reasonable
11 suspicion.

12 First, Agent Ludgate’s search was non-routine, and thus required reasonable suspicion.
13 Although normally non-routine label is reserved for searches of a person and not their belongings,
14 here we find a unique situation. Ms. Koehler’s laptop contained hundreds, if not thousands of
15 personal files and information that the government should not be privy to. The laptop itself can store
16 a boundless amount of information, and the introduction of cloud technology (such as Apple’s
17 iCloud or Google Drive) has only expanded the amount of information accessible on a computer.
18 The fact that Agent Ludgate had this level of access into Ms. Koehler’s personal information is
19 unusual. To label this as a “routine” search would not serve to protect the privacy of any individual
20 crossing the border with a phone or laptop. Here, the level of access Agent Ludgate had was just as
21 intrusive as the search of a person. For these reasons, Agent Ludgate’s search of Ms. Koehler’s
22 laptop must be deemed non-routine and subject to a reasonable suspicion analysis.

23 Second, Agent Ludgate did not have the requisite reasonable suspicion to search Ms.
24 Koehler’s laptop. So, while there may have been reasonable suspicion to search the car, there was
25 no reasonable suspicion to search the laptop. Even if we concede to the fact that Mr. Wyatt was
26 acting suspicious and that he had a personal relationship to Ms. Koehler, there is no reason to
27 believe that there would be any further evidence of crime or wrongdoing in Ms. Koehler’s laptop.
28 Had Agent Dwyer and Agent Ludgate only searched the vehicle, this may be a different ruling.

1 Even then, Agent Ludgate and Agent Dwyer had every opportunity to obtain a search warrant for
2 the laptop, especially given the fact that they eventually arrested Mr. Wyatt. However, there are
3 certainly insufficient articulable facts that give rise to reasonable suspicion to search the laptop.

4 Finally, if not for the non-routine nature of the search and lack of reasonable suspicion, here
5 an analysis under *Riley* reveals that Agent Ludgate's search violated Ms. Koehler's rights. While
6 the Court in *Riley* dealt with cell phone searches incident to lawful arrest, the Court's analysis of
7 digital searches is directly applicable to the Agent Ludgate's search of Defendant's laptop at the
8 Eagle City border station. As stated earlier, Ms. Koehler's laptop was a literal treasure trove of
9 personal information, and contained hundreds, if not thousands of personal files and information
10 that the government should not be privy to. This is further compounded by the fact that software
11 such as iCloud and Google Drive allows the user of a laptop to access a virtually infinite amount of
12 information. The fact that Agent Ludgate merely opened the laptop and scanned through already
13 open documents has no bearing on the fact that Agent Ludgate had Ms. Koehler's entire world and
14 private life at her fingertips. To rule otherwise would allow a government intrusion that would be
15 perhaps even more intrusive than the warrantless entrance into a home.

16 **B. Use of Technology Under the Fourth Amendment**

17 Ms. Koehler also contends that the searches of Macklin Manor via Officer Lowe's use of
18 PNR-1 drone and Detective Perkins's use of a handheld Doppler radar device were violations of her
19 Fourth Amendment rights. The Court agrees.

20 **1. Officer Lowe's Use of the PNR-1 Drone**

21 No matter how much technology advances, the question of whether a search violates an
22 individual's Fourth Amendment rights will always begin and end with reasonableness. *Katz*, 389
23 U.S. at 360. The District Court may believe that the use of drone technology to conduct a search is
24 reasonable – we, on the other hand, do not. While the District Court analogizes to *California v.*
25 *Ciraolo* and *Florida v. Riley*, those cases were explicit in requiring a fact based, case-by-case
26 analysis. And under the parameters set up in *Katz*, any court would be hard pressed to find that
27 drone surveillance can result in a reasonable search.

1 Justice Harlan’s concurrence in *Katz* provides a two-prong test to determine whether the
2 government has intruded upon an individual’s reasonable expectation of privacy – (1) did the
3 individual have a subjective expectation of privacy and (2) is society prepared to objectively view
4 that expectation of privacy as reasonable. *Katz*, 389 U.S. at 361. Many courts have relied on the
5 *Katz* test in the context of aerial surveillance.

6 No reasonable expectation of privacy exists when an aerial search occurs in navigable
7 airspace in a nonintrusive matter, and any member of the public flying in the same airspace would
8 have seen the area being searched. *California v. Ciraolo*, 476 U.S. 207, 213 (1986). However,
9 merely flying within navigable airspace does not satisfy the search requirements of the Fourth
10 Amendment. *Florida v. Riley*, 488 U.S. 445, 451 (1989). Also of importance is whether the aerial
11 flight itself violated any laws and whether aircraft routinely flew in that given area. *Florida v.*
12 *Riley*, 488 U.S. at 464.

13 *California v. Ciraolo*, and to some extent *Florida v. Riley*, show the importance that aerial
14 surveillance occur in navigable airspace, in a nonintrusive way, in an area accessible to the public
15 and routinely used by other aircraft, without violating any laws. Our sister circuits reveal the
16 complex inquiry that takes place when it comes to aerial surveillance. *See United States v.*
17 *Broadhurst*, 805 F.2d 849, 855-56 (9th Cir. 1986); *see also United States v. Breza*, 308 F.3d 430,
18 434 (4th Cir. 2002).

19 Here, the PNR-1 drone has been experiencing network connectivity problems that allow it to
20 fly a full sixty feet higher than what is considered navigable airspace. The use of the drone is also
21 highly intrusive – Mount Partridge is on the outskirts of Eagle City, away from any major airport,
22 and is frequently avoided by oncoming aircraft. The perpetual fog and clouds surrounding Macklin
23 Manor tends to show that a reasonable person would not expect aircraft to fly above Mount
24 Partridge and see what goes on in Macklin Manor. In fact, airplanes often avoid flying over Mount
25 Partridge because of the perpetual fog and clouds and the dangers they present. For these reasons,
26 we hold that the use of the PNR-1 drone violated Ms. Koehler’s Fourth Amendment rights.

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1 **2. Detective Perkins’s Use of the Handheld Doppler Radar Device**

2 In its analysis of Detective Perkins’s use of the handheld Doppler radar device, the lower
3 court distinguishes from *Kyllo v. United States*, 533 U.S. 27, 40 (2001). Why the lower court did so
4 is beyond our understanding – the thermal imaging device *Kyllo* is completely analogous to the
5 issue of handheld Doppler radar devices and as such, Detective Perkins violated Ms. Koehler’s
6 Fourth Amendment rights.

7 An inquiry under *Kyllo* rests on two prongs: whether the information the Doppler device
8 gained would not otherwise be obtainable without entering the house and whether the device is in
9 common use. First, there is no conceivable way for a person to know how many people are inside a
10 building and exactly where they are positioned inside the building without actually entering the
11 building. This is pure common sense, and the handheld Doppler radar device clearly fails the first
12 prong of the *Kyllo* test. Second, although the device is used by law enforcement, the standard is
13 whether the device is *generally* in common use. While law enforcement (and the military) may be
14 using handheld Doppler radar devices, the public is not, and therefore the device is not in common
15 use under *Kyllo*. For these reasons, the use of the handheld Doppler radar device on Macklin Manor
16 violated Ms. Koehler’s constitutional rights. The Doppler information was used to obtain the search
17 warrant and thus, the fruits of the search should be suppressed.

18 **3. Fruit of the Poisonous Tree**

19 Probable cause turns on “the assessment of probabilities in particular factual concepts.”
20 *Illinois v. Gates*, 462 U.S. 213, 232 (1983). Probable cause is determined by looking at factual and
21 practical considerations of everyday life in which a reasonable and prudent person would act.
22 *Brinegar v. United States*, 338 U.S. 160, 176 (1990).

23 The Government contends, and the district court agreed, that probable cause to search
24 Macklin Manor existed purely from Agent Ludgate’s search of Mr. Wyatt’s car at the Eagle City
25 border station. We do not agree. All the Government had to rely on was the \$10,000 in Mr. Wyatt’s
26 car, the laptop with the initials “AK,” and the documents showing Macklin Manor was owned by a
27 shell company owned by one of Ms. Koehler’s known aliases. These facts surely fall short of
28 probable cause to search. The officers had no information to establish probable cause that Macklin

1 Manor was linked to the Ford kidnappings. Rather, the officers were only able to link Macklin
2 Manor to the kidnappings *after* the using the PNR-1 drone and the handheld Doppler radar device.
3 Further, if the officers had the requisite probable cause to search, they would have obtained the
4 search warrant prior to conducting the PNR-1 drone and the handheld Doppler radar device.

5 Because the officers could not establish probable cause for a search warrant without the
6 searches conducted by the PNR-1 drone and the handheld Doppler radar device, any evidence
7 retrieved as a result would be “fruits” of the search. And because, as stated above, the searches
8 conducted by the PNR-1 drone and the handheld Doppler radar device were impermissible, the
9 “fruits” of those searches must be suppressed.

10 **III. CONCLUSION**

11 For the reasons above, the decision of the District Court is **REVERSED and**
12 **REMANDED.**

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IN THE
Supreme Court of the United States

United States of America,

Petitioner,

v.

Amanda Koehler,

Respondent,

**On Writ of Certiorari to
the United States Court of Appeals
for the Thirteenth Circuit**

Petition for certiorari is granted. The Court grants certiorari limited to the following questions:

1. Was the government's search of Respondent's laptop at a border station a valid search pursuant to the border search exception to the warrant requirement?
2. Did the use of a PNR-1 drone and handheld Doppler radar device constitute a search in violation of Respondent's 4th Amendment rights?

EXHIBIT A

1 **SUPPRESSION HEARING BEFORE THE HONORABLE MARIETTA MEAGLE**

2 **BORDER PATROL AGENT ASHLEY LUDGATE**

3 Direct Examination by AUSA Morales

4 Q: Good morning.

5 A: Good morning ma'am.

6 Q: Could you please state your name and spell your last name for the record?

7 A: Ashley Ludgate. L-U-D-G-A-T-E.

8 Q: What do you do for a living?

9 A: I am a border patrol agent with the United States Border Patrol.

10 Q: How long have you been a border patrol agent?

11 A: About 7 years.

12 Q: And what is your current assignment?

13 A: I am currently assigned to the Eagle City border station in Pawndale. It is located on the
14 United States and Mexico border.

15 Q: How long have you been assigned to the Eagle City border station?

16 A: I've only been there for about a year and a half. Eagle City has seen an uptick in criminal
17 activity at that border station in the past two or three years, so lot of my fellow agents and I
18 were transferred there in that span.

19 Q: I see. Do you conduct traffic stops at that border station?

20 A: I do.

21 Q: Could you describe how these stops are conducted?

22 A: Sure. How we stop cars really depends on how much traffic is coming through, what time of
23 day or night it is. My partner, Agent Dwyer, and I typically work shifts early in the morning,
24 usually something like midnight to 8:00 A.M. Because we work the early morning shift, we
25 don't see a lot of cars coming through the station. So we'll stop every car, ask the driver a
26 few routine questions, and keep an eye out for any objective signs of criminal activity.

27 Q: Now I want to direct your attention to August 17, 2016. Were you on patrol that day?

28 A: Yes I was.

1 Q: Did you stop anyone that night?

2 A: Yes. Agent Dwyer and I stopped a black Honda Civic with a male driver and no passengers.

3 Q: And who was the driver?

4 A: The driver identified himself as Scott Wyatt.

5 Q: Why did you stop his vehicle?

6 A: Well, like I said, I work the early morning shift and because there aren't a lot of cars coming
7 through the station at that time, we stop all of them. That night was unusually quiet, I think
8 we only stopped five or six cars the entire shift.

9 Q: Now based on your training and experience, when is the peak time for criminal activity at a
10 border station?

11 A: At Eagle City or in general?

12 Q: Let's start with in general.

13 A: It's actually during rush hour. Conventional wisdom would think not, but to be honest, most
14 criminal activity at the border stations I've worked at occur when the border station is
15 busier. It's usually right before peak traffic hours, when there are so many cars that we can't
16 possibly stop all of them, but few enough for cars to drive by quickly without being noticed.

17 Q: Did you observe the same trend at the Eagle City border station?

18 A: Well, like I said I've only been at the Eagle City border station for about a year and half. But
19 from what I've seen, yes that trend is consistent. I would say a majority of our arrests have
20 occurred right before peak traffic hours. Rarely do we make arrests late at night or early in
21 the morning.

22 Q: But it isn't out of the question that someone would be arrested during your shift?

23 A: No it isn't. I'm not saying that criminals don't ever travel across the border early in the
24 morning, I'm just saying it's more common for them to do so at a different time.

25 Q: Alright, back to Mr. Wyatt's stop. What did you do when you stopped Mr. Wyatt?

26 A: As the Civic approached, I waved to the driver to stop. When he stopped, Agent Dwyer and
27 I approached the car and asked Mr. Wyatt, who had identified himself verbally, what he was
28 doing crossing the border.

1 Q: What happened next?

2 A: Mr. Wyatt seemed incredibly agitated and uncooperative.

3 By Mr. Barkley: Objection, speculation.

4 The Court: Overruled.

5 Q: What do you mean?

6 A: He wouldn't make eye contact with either myself or Agent Dwyer. He was using his fingers

7 to fidget with the steering wheel. His answers to our questions were always brief. He was

8 also very pale.

9 Q: What did you do next?

10 A: Well, we gave him our routine questions and admonishments.

11 Q: And what does that consist of?

12 A: Anytime we stop a car, we ask the same questions. First, we ask whether the person we

13 stopped is traveling with \$10,000 or more on their person. Second, we inform them that this

14 is a routine stop and that we have a right to search their vehicle. And third, if we believe

15 there is a reason to conduct a search, we let the person know and ask them to step out of the

16 vehicle for officer safety.

17 Q: And did you search Mr. Wyatt's car?

18 A: Yes, based on the way he was acting, we suspected that he might be hiding something. So

19 we asked him to step out and open his trunk.

20 Q: Did you find anything in the trunk?

21 A: Yes, a laptop with the letters "AK" initialed on it. And a bunch of \$20 bills. When we

22 counted out the bills, they came out to \$10,000.

23 Q: Whom did the initials belong to?

24 A: We asked Mr. Wyatt whom the initials belonged too, and he informed us that they belonged

25 to his fiancé, Ms. Amanda Koehler.

26 Q: Who is Ms. Koehler?

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1 A: According to our database, Ms. Koehler has multiple felony convictions for a variety of
2 violent crimes. She was also listed as a person of interest in a recent, high profile
3 kidnapping.

4 Q: Which kidnapping?

5 A: The Ford kidnappings. The story was all over the news, and all the agents at the Eagle City
6 border station had been briefed on the case. Three teenagers were kidnapped in San Diego
7 and the FBI and Eagle City Police Department Eagle City believed they were somewhere in
8 Eagle City.

9 Q: What happened next?

10 A: Well, based on our briefings about the case, I knew that the kidnappers had asked for
11 \$10,000 in \$20 in exchange for proof of life. I suspected Mr. Wyatt may be involved with
12 the kidnapping because the money in his trunk matched the kidnappers's demands. Plus, he
13 had a close personal relationship with Koehler, a person of interest in the case.

14 Q: Did you let Mr. Wyatt leave after that?

15 A: No, he was placed under arrest for failing to declare his \$10,000.

16 Q: Thank you Agent Ludgate. No further questions your Honor.

17 Cross Examination by Mr. Barkley

18 Q: Good morning Agent Ludgate.

19 A: Good morning.

20 Q: Did you have a warrant to search Mr. Wyatt's car?

21 A: No I did not.

22 Q: Did you have time to retrieve a warrant?

23 A: I mean I suppose. But my understanding, and the way we're trained, is that no warrant is
24 necessary for the type of routine search we conducted of Mr. Wyatt's car.

25 Q: Now, speaking of the car search, what else did you search?

26 A: I conducted a search of the laptop in Mr. Wyatt's car.

27 Q: Did you ask Mr. Wyatt for permission to search the laptop?

28 A: No.

1 Q: And he never gave any indication that he was fine with you searching his car?

2 A: No, he was silent.

3 Q: Was the laptop password protected?

4 A: No.

5 Q: What did you find?

6 A: When I opened the laptop, a bunch of documents were open on the desktop. A lot of them

7 had Mr. Timothy H. Ford's personal information and . . .

8 By AUSA Morales: Objection, hearsay.

9 The Court: Overruled. You may finish answering the question Agent Ludgate.

10 A: Thank you. So the documents had Mr. Ford's information on them. Bank statements, his

11 personal schedule, his employees's schedules. That kind of stuff.

12 Q: And who is Mr. Ford?

13 A: Mr. Ford is a biotech mogul. He owns a tech company called Eclipse. He's the father of the

14 teenagers that were kidnapped in San Diego.

15 Q: What else did you find?

16 A: I found a lease agreement for an address that did not match the other documents. The

17 document was the only one without Mr. Ford's information. Instead, a "Laura Pope" was

18 listed.

19 Q: And who is Laura Pope?

20 A: Well, I ran the name through our database. Laura Pope is an alias for Ms. Koehler.

21 Q: And just to clarify, you searched this laptop without a warrant?

22 A: That is correct.

23 Q: Even though you had time to get one?

24 A: That is correct.

25 Q: And even though Mr. Wyatt gave no explicit consent to search his laptop, you did so

26 anyway correct?

27 A: Yes. I just figured it was part of the search of the car, the border search that we're allowed to

28 conduct. And besides, he was silent.

1 Q: He may have been silent, but he never explicitly said something along the lines of “You may
2 search the laptop,” isn’t that right?

3 A: That is correct, sir.

4 Q: Thank you for your time Agent Ludgate. No further questions.
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EXHIBIT B

1 **SUPPRESSION HEARING BEFORE THE HONORABLE MARIETTA MEAGLE**

2 Detective Raymond Perkins

3 Direct Examination by AUSA Morales

4 Q: Good morning.

5 A: Good morning, ma'am.

6 Q: Please state your name and spell your last name for the record.

7 A: Raymond Perkins. P-E-R-K-I-N-S.

8 Q: What do you do for a living?

9 A: I am a detective with the Eagle City Police Department.

10 Q: How long have you been with ECPD?

11 A: I have worked as a detective for about six years now. But I have been with ECPD for
12 twenty-two years, since the beginning of my law enforcement career.

13 Q: And as a detective what kind of cases do you specialize in?

14 A: Because of my extensive law enforcement experience, I usually deal with higher profile
15 cases. For example, this past year I was assigned to work on the kidnappings of John, Ralph,
16 and Lisa Ford.

17 Q: Were you the lead detective on the Ford kidnappings?

18 A: Yes, I was.

19 Q: Now I want to direct your attention to August 17, 2016. Do you remember that day?

20 A: I do.

21 Q: What were you doing that day?

22 A: Well, that morning I received information from Border Patrol Agent Ludgate regarding a
23 potential lead in the Ford kidnappings.

24 Q: What was that lead?

25 A: We received information that an individual named Scott Wyatt was stopped at the Eagle
26 City border. The Border Patrol Agents that stopped him searched his vehicle and found
27 \$10,000 and a laptop containing documents connected to our main person of interest in the
28 kidnappings, Amanda Koehler.

1 Q: Is the \$10,000 significant?

2 A: Yes. The kidnapers had requested \$10,000 in \$20 bills in exchange for proof of life. So the
3 \$10,000 led us to believe that Mr. Wyatt may be connected to the kidnapping.

4 Q: What did you do next?

5 A: Well, the documents found on the laptop in Mr. Wyatt's car had listed an address in Eagle
6 City. That address was to an estate called Macklin Manor. ECPD had also recently obtained
7 information that Amanda Koehler, our main person of interest, had used an alias to rent out
8 Macklin Manor here in Eagle City. So we decided to head there.

9 Q: What is Macklin Manor?

10 A: Macklin Manor is a large estate on top of Mount Partridge on the outskirts of town. Pretty
11 isolated place, been abandoned for 6 months now.

12 Q: And when you arrived at Macklin Manor, did you conduct a search?

13 A: Not right away. Ms. Koehler has a history of felony convictions for violent crimes. So we
14 didn't want to search the estate right away.

15 Q: Why not?

16 A: Just for the safety of our officers. Because it was so early in the morning, I only had two
17 officers with me. Given the size of the estate and Ms. Koehler's felony convictions, I just
18 wanted to be sure it would be safe to enter the premises.

19 Q: How did you ensure it was safe to enter the premises?

20 A: I had Officer Lowe and Officer Hoffman with me at the time. So I had Officer Hoffman
21 patrol the area on foot. I also had Officer Lowe conduct an aerial search using our drone.

22 Q: I want to talk about the drone a bit. How does the drone work?

23 A: Well, the Department has been using drones for the past 3 years now. Other than that, I
24 don't know much about it. Officer Lowe is the Department expert on that stuff, you should
25 ask her.

26 Q: I appreciate the honesty. What did the drone search reveal?

27 A: We were able to retrieve some high definition photographs of the layout of the estate, which
28 consisted of a main house, a pool about 15 feet away from the house, and a pool house about

1 50 feet away from the main house. The pictures also showed a single, young female near the
2 pool house.

3 Q: Who was that individual?

4 A: We ran the picture through our database and it returned a positive ID for Amanda Koehler.

5 Q: What did you do next?

6 A: After we confirmed Ms. Koehler was on the premises, we wanted to see if we were
7 outnumbered and if it was safe to conduct a search.

8 Q: How did you do so?

9 A: Officer Hoffman and I approached the main house with a handheld Doppler radar device.

10 Q: Could you quickly explain how it works?

11 A: Sure. So these have been super popular amongst a bunch of different law enforcement
12 agencies. My buddy two cities over is a detective and introduced it to me. I actually had
13 Officer Lowe hold a meeting on the device just because so many officers within our
14 department use them. The device basically sends out a radio wave and measures movement
15 inside a building.

16 Q: How far does the radio wave go?

17 A: About 50 feet.

18 Q: And how does the device measure movement?

19 A: Typically it keys in on a person's breathing. It can tell me how many individuals are
20 breathing and gives a rough estimate of where that individual is at inside the house.

21 Q: Does the device have the ability to reveal the specific layout of a building?

22 A: I wish, but no. Just says how many people are inside and roughly where they are. Tells us
23 what direction and roughly how far away they are from the person deploying the device.

24 Q: Where did you deploy the device?

25 A: On the main house. I scanned the main house once and then conducted a second scan on the
26 pool house.

27 Q: And what did the scans reveal?

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1 A: The scan of the main house revealed one individual, to the left of the front door. Maybe 10-
2 15 feet away from the front door. The scan of the pool house revealed three unmoving
3 individuals close together, maybe 10 feet from the front of the pool house entrance. Another
4 individual appeared to be pacing near the front of the pool house.

5 Q: What did you do next?

6 A: Well, we felt like we had probable cause to search Macklin Manor from the results of Agent
7 Ludgate's border search. So after confirming how many individuals were on the premises
8 and how many officers we would need to bring with us, we obtained a search warrant.

9 Q: And what happened?

10 A: We conducted a no-knock and notice pursuant to the search warrant. When we entered, we
11 drew our weapons and detained two individuals in the living room.

12 Q: But your Doppler device only identified one individual didn't it?

13 A: Yes that is correct. I'm not sure if more individuals arrived in the time it took us to get the
14 warrant. But luckily we had brought in a SWAT team, so we had enough officers to handle
15 the situation.

16 Q: Was one of those individuals Ms. Koehler?

17 A: No, she ran out the back. So Officer Lowe and Officer Hoffman chased after her and were
18 able to detain her.

19 Q: Did you search the pool house?

20 A: Yes, the search warrant encompassed the pool house also.

21 Q: What did you find?

22 A: We entered the pool house and detained the individual standing guard. Once he was secured,
23 we found the three Ford children, tied to chairs.

24 Q: Were they harmed?

25 A: No. They were unharmed.

26 Q: Thank you, no further questions.

27 Cross Examination by Mr. Barkley

28 Q: Good morning.

1 A: Good morning.

2 Q: Just some quick questions. You said a lot of police departments use handheld Doppler radar
3 devices. How much does one cost?

4 A: Um, last time I checked? Roughly \$400, but that's on the low end.

5 Q: Are they available on sites such as Amazon?

6 A: Not that I'm aware. The Department special orders them directly from the manufacturer.

7 Q: And are the radar devices popular amongst the public?

8 A: I don't believe so.

9 By AUSA Morales: Objection, speculation.

10 The Court: Overruled.

11 Q: What makes you say that?

12 A: Well, they really are built for law enforcement purposes. I don't see any reason why the
13 average citizen would own one. I don't think I've ever actually seen anyone who isn't a
14 police officer use one.

15 Q: Now with your Doppler radar device. Is it fairly accurate?

16 A: Yes, usually.

17 Q: But on the day you searched Macklin Manor, the device identified one individual when there
18 was actually three correct?

19 A: Yes. Nothing's perfect I guess.

20 Q: Did you obtain a warrant prior to deploying the drone?

21 A: No.

22 Q: Did you obtain a warrant prior to deploying the Doppler radar device?

23 A: No.

24 Q: Why not?

25 A: Well, we felt as though we had probable cause to search the area. The only real reason we
26 deployed the drone and the Doppler was because we wanted to be safe as we approached.

27 Q: What made you think you had probable cause?

28 A: Well, the results of Agent Ludgate's search.

1 Q: Right. Agent Ludgate searched Mr. Wyatt's car correct?

2 A: Correct.

3 Q: Thank you, no further questions.

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EXHIBIT C

1 **SUPPRESSION HEARING BEFORE THE HONORABLE MARIETTA MEAGLE**

2 Officer Kristina Lowe

3 Direct Examination by AUSA Morales

4 Q: Good morning.

5 A: Good morning.

6 Q: Please state your name and spell your last name for the record.

7 A: Kristina, K-R-I-S-T-I-N-A. Lowe. L-O-W-E.

8 Q: Thank you. What do you do for a living?

9 A: I am an officer with the Eagle City Police Department. Specifically, I am the Department's
10 technology specialist.

11 Q: How long have you been an officer?

12 A: I've been with ECPD for about 6 years now. I have been the Department's tech specialist for
13 3 of those years.

14 Q: What qualifies you to be a technology specialist?

15 A: I have a bachelor's in Computer Engineering from the University of California, Irvine and
16 earned my Master's in Cyber Security from the University of San Diego. I have attended an
17 annual weeklong conference regarding the use of technology in the law enforcement context
18 each of the past 6 years. And since joining ECPD, I have spent at least 2-3 hours a day
19 familiarizing myself with the technology the Department receives.

20 Q: Now I want to direct your attention to a specific piece of technology – the PNR-1 drone.
21 What can you tell us about this drone?

22 A: Well, the PNR-1 drone is one of the more affordable drones, in terms of comparing price
23 and quality, on the market right now. Last I checked, the PNR-1 has been going for about
24 \$4000, depending on the year and model. Honestly, a drone enthusiast would look at the
25 PNR-1 and consider it a great bargain at that price.

26 Q: Is \$4000 expensive for a drone?

27 A: No, that's about middle of the pack. I've seen drones made for kids go for as little as \$10.
28 I've seen very simple drones for enthusiasts go for about \$40 to \$50. I've also seen much

1 more expensive drones. I think the most expensive one on the market right now goes for
2 \$250,000. But typically, most drone enthusiasts purchase drones in the range from \$3000 to
3 \$7000.

4 Q: What makes the PNR-1 drone such a bargain?

5 A: Well, \$4000 may seem like a lot to the normal person. And it is. But the qualities of the
6 PNR-1 make it a bargain for that price.

7 Q: What are these qualities?

8 A: Well first off, the PNR-1 comes with a digital single-lens reflex camera, or DSLR as they
9 are more commonly called.

10 Q: I'm sorry, I'm unfamiliar with that type of camera. What is a DSLR?

11 A: A DSLR camera, as opposed to a regular point and shoot camera like someone would have
12 on their phones or on a low end digital camera, has a number of advantages. DSLR cameras
13 allow an individual to see exactly what the lens is seeing when taking pictures, as opposed to
14 regular cameras. A DSLR camera also has a large image sensor, which produces high
15 definition photos. There is also zero lag time in a DSLR between the moment a
16 photographer presses the button to take a picture and the actual taking of the picture. In
17 short, this all means that the PNR-1 can take high definition photographs and is perfect for
18 taking action shots.

19 Q: Any other qualities that separate the PNR-1 from other drones aside from the camera?

20 A: Absolutely. So on top of the DSLR, the PNR-1 is equipped with a video camera that can
21 record video, albeit at a lower quality than the DSLR. The PNR-1 also has a state of the art
22 battery, one that withstands corrosion much better than other batteries on the market. Oh,
23 and for sure the preprogrammed flight plan.

24 Q: Preprogrammed flight plan?

25 A: Yeah, so in recent years there has been a lot of controversy with drones flying too high,
26 interfering with planes and such. So the state of Pawndale, and other states as well, have
27 imposed a maximum flight altitude of 1640 feet for all drones. The PNR-1 comes
28 preprogrammed to accommodate with this flight altitude by connecting to a network. The

1 network pinpoints the drone's geographical location via satellite and will automatically
2 impose a max altitude based on the region's laws.

3 Q: How accurate is this preprogrammed flight plan?

4 A: Unfortunately, there have been a lot of network connectivity errors lately. I know that in
5 Pawndale, some drones have gone haywire and flown as high 2000 feet. Other regions have
6 reported similar problems. The developers of the PNR-1 are still working on a fix, but I'm
7 fairly certain that update will take at least a year.

8 Q: Are there any negative qualities of the PNR-1?

9 A: Sure, nothing is perfect. For example, for as great as the battery is, it only lasts about 35
10 minutes on a single charge. The other thing is that the company that makes the PNR-1 has
11 not equipped it with a lot of digital storage. The PNR-1 only holds about 30 photos and 15
12 minutes of video at a time.

13 Q: How popular is the PNR-1?

14 A: Well, I know for sure that the PNR-1 is popular amongst drone enthusiasts. Like I said, the
15 price for the quality can't be beat. But in terms of law enforcement, ECPD is the only
16 Department within the state that uses a PNR-1 drone. And we only have one.

17 Q: How long has ECPD had their PNR-1 drone?

18 A: We got it recently. Maybe six months?

19 Q: Thank you, no further questions.

20 Cross Examination by Mr. Barkley

21 Q: Officer Lowe, just some quick questions. First, how often do you deploy the PNR-1?

22 A: Well, not often to be honest.

23 Q: Why not?

24 A: We just received the PNR-1 and have been wary of using it because of the network
25 connectivity errors. We've done a few test runs at ECPD headquarters, but Macklin Manor
26 was actually the first time we've deployed it.

27 Q: When you deployed the PNR-1 on Macklin Manor, did you experience any difficulties?
28

1 A: Yeah, the visibility was not very clear. Lots of clouds and fog. So the PNR-1 had to hover
2 for a little bit over the estate before taking pictures.

3 Q: You mentioned on direct that there had been recent network connectivity errors with the
4 drone's preprogrammed flight plan. Was there any issue with the preprogrammed flight plan
5 at Macklin Manor?

6 A: Technically, yes. When I was monitoring the PNR-1, we lost track of it for about 4-5
7 minutes.

8 Q: What do you mean by technically?

9 A: Well, even though we lost track of the drone's altitude, there is no way of telling whether the
10 drone exceeded the 1640 feet limit or just hovered at the height it was at when we lost track
11 of it.

12 Q: So there's a possibility that the drone did exceed the 1640 feet?

13 A: Yes there's a possibility.

14 Q: And do you happen to know how often the PNR-1 drones exceed the altitude limit?

15 A: Not specifically in Pawndale. But based on a statement by the manufacturers, I know that
16 about 60% of the time the PNR-1 drone will exceed this altitude limit. Not sure what the
17 stats are in Pawndale though.

18 Q: You still chose to deploy the drone despite these network connectivity errors?

19 A: That is correct.

20 Q: Why?

21 A: Well, we knew about the errors sure. But during our test runs the drone never exceed the
22 pre-programmed altitude limit.

23 Q: How often did you conduct these test runs?

24 A: I try to do one at least once a month. So since ECPD got the drone, I've conducted a total of
25 six test runs. I actually took the drone for a test run just three days prior to the search of
26 Macklin Manor.

27 Q: And did you experience any difficulties on that test run?

28 A: None.

1 Q: How busy is the airspace around Macklin Manor?

2 A: Not too busy. Which is why I was confident in deploying the PNR-1. Planes typically avoid
3 Mount Partridge, the mountain Macklin Manor is located on. The area is constantly cloudy,
4 foggy, stormy, just all kinds of visibility issues all the time. I remember the day we
5 deployed the drone, I didn't see or hear a single plane the entire time we were there.

6 Q: Thank you, no further questions.

7 The Court: Anything on redirect?

8 By AUSA Morales: Yes Your Honor, just one question.

9 Q: Officer Lowe, why did you deploy the drone despite the poor visibility?

10 A: We had to. We had no choice. We were worried that Mr. Wyatt could have communicated
11 with Ms. Koehler. He was arrested and booked, sure, but there's always the possibility that
12 he could have contacted Ms. Koehler or an associate before or during the stop. If we didn't
13 act quickly, if we didn't determine that we could safely enter the premises and hopefully
14 apprehend Ms. Koehler and save the Ford children, we were worried they would get away
15 and we would have to start from scratch.

16 Q: Thank you, no further questions.

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EXHIBIT D



Since 1945, the Eagle City Tribune has been your source for the latest news in Pawndale's historic capital.

GONE BUT NOT FORD-GOTTEN TEENAGE CHILDREN OF BILLIONAIRE TECH MOGUL KIDNAPPED!

It was just another day. John, Ralph, and Lisa Ford were on the way to their school gym for offseason training. John and Ralph star on the local basketball team and Lisa is one of the best swimmers on the swim team. All three are well known and beloved in the community.



Contact Detective Raymond Perkins of ECPD if you have any tips on the Ford kidnappings.

On July 15th, the Ford children left their home around 9:00AM. This is the last time anyone saw the Ford children. An hour later, coaches reported that the Ford children had not shown up to their respective practices.

Two days later, a ransom note was sent to Mr. Ford's personal address. The ransom note informed Mr. Ford that his children were safe, but would only be returned for \$300,000. The case has garnered national headlines, and the FBI have become involved.

Recently, the FBI and Eagle City Police Department received information that the Ford children may be somewhere in Eagle City. However, there are no further leads at this time.

"It is a shame that anyone would

take advantage of the vulnerability of a teenager, let alone three teenagers, just for the sake of profit," Detective Raymond Perkins, lead detective on the case, stated at a recent press conference. "If you have any tips regarding these kidnappings, please do not hesitate to contact ECPD."



(L-R) John, Lisa, and Ralph Ford, picture above, were kidnapped on their way to school in San Diego, CA.

EXHIBIT E

“Best Bang For Your Buck” - A Few Reasons Why the PNR-1 is Your New Favorite Drone

By: Justin Davis of Droning On



Justin Davis is Lead Editor for Droning On, Pawndale's leading newsletter on all things drone related.

Hi everyone! It's your favorite drone enthusiast, Justin Davis, giving you a review of a drone that has been storming the market - the PNR-1! Here are a few reasons why I love the newest addition to the drone market.



Sleek Design

The PNR-1 is the latest drone model to undergo a sleek redesign. The model is aerodynamic and capable of reaching a top speed of 30 miles per hour. The redesign comes in both black and white, with multiple attachments to fill your specifications.



State Of The Art DSLR Camera

The PNR-1 comes with an attachable DSLR camera. The DSLR is state of the art, capable of taking multiple action shots in high definition. The zoom lens on the camera allows the user to zoom in on a target up to 15 feet away.



Perfect for Law Enforcement

The PNR-1 drone was specifically designed for law enforcement and is helpful for speed and road enforcement, surveillance, and security. The PNR-1 is used in police departments in 35 states and is popular for its discreet design, available attachments, and DSLR camera. As a drone enthusiast, how awesome is it that the police is using your drone? Pretty awesome if you ask me.



Best Bang For Your Buck

The PNR-1 drone is one of the most affordable on the market. At a cost of \$4000, the PNR-1 is a bargain based on its affordability and capabilities. Drone Magazine recently rated the PNR-1 drone as the #2 best drone based on price, and the drone website The Aerialist called the PNR-1 “a steal at this price.”



Exclusivity Ensures Quality

To cut costs, they cut the middleman. The PNR-1 drone is not available on other websites. Special orders can be placed on the PNR-1 website, and the drone is shipped directly from the manufacturer to you. Only a limited amount of PNR-1 drones are available every year, ensuring that their focus remains on quality not quantity.