

IN THE
Supreme Court of the United States

Jayne Austin,

Petitioner,

v.

United States of America,

Respondent.

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

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for the Thirteenth Circuit**

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

1. Does an individual have standing to contest a search of a rental vehicle that the individual rented on another's account without that other person's permission?
2. Is the acquisition of the location data of a rental vehicle a "search" within the meaning of the Fourth Amendment and *Carpenter v. United States*, 138 S. Ct. 2206 (2018)?

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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NETHERFIELD**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAYNE AUSTIN,

Defendant.

Case No.: 20-PKS12-20-RCN15

**ORDER DENYING
DEFENDANT'S MOTIONS TO
SUPPRESS EVIDENCE**

Date: February 25, 2019

Time: 9:00AM

Department: 12B

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I. INTRODUCTION

On January 21, 2019, Jayne Austin was charged by an indictment of six counts of 18 U.S. Code § 2113 Bank Robbery and Incidental Crimes. Specifically, Ms. Austin is alleged to have robbed six different *Darcy and Bingley Credit Unions* in California and Nevada. Ms. Austin filed two motions to suppress evidence in the trial court. The first motion regarded evidence gathered from the initial arrest. The second motion regarded location data obtained by a private company. For the reasons set forth below, this Court **DENIES** Ms. Austin's motions.

II. STATEMENT OF FACTS

Jayne Austin is an avid poet and blogger. Her blog *LET IT ALL FALL DOWN!*, features short poems of alleged and proven financial corruption in the United States banking industry. Many of Ms. Austin's posts focus on the bank *Darcy and Bingley Credit Union*. In Ms. Austin's posts, she calls for rebellion against this particular bank, and has even called for its downfall. She focuses on this bank's series of fees and decreasing interest rates which marginalize the bank's lower-income members and prioritize higher-income earning members. Ms. Austin is a naturalist and minimalist who prides herself on her immaterial lifestyle. She has no permanent residence; instead, Ms. Austin lives in co-habitation facilities like PODSHARE. These facilities allow individuals to rent spaces and living quarters for a minimum of one night and a maximum of fourteen nights.

1 In order to travel to work and protests, Ms. Austin uses the relatively new car rental
2 software application (“app”) available on mobile devices, YOUBER. YOUBER allows a
3 person to rent YOUBER-owned cars at a fixed hourly rate. This app is immensely popular,
4 with more than 40 million users across the United States. The YOUBER app is accessible via
5 an individual’s cellphone, which connects to YOUBER vehicles via Bluetooth and GPS.
6 YOUBER works much like a standard car rental service; a rental agreement is made in the
7 app, and the renter pays a fixed fee per hour for use of the car. YOUBER cars are parked on
8 the street and are identifiable by a small, bright pink YOUBER logo on the bottom corner of
9 the passenger side of the windshield. The cars are parked in YOUBER-owned parking stalls
10 and facilities. The parking stalls and facilities are mobile and made of biodegradable plastics.
11 The YOUBER company signs short-term leases with vacant lots and construction zones in
12 and around the United States to act as parking facilities and stalls. Only YOUBER users may
13 rent YOUBER cars. The user may rent a vehicle for a maximum distance of 500 miles or a
14 time period of up to one week. At the end of the rental period, the user parks the car in a
15 designated YOUBER parking stall or facility. YOUBER employees check on the cars once
16 every 24 hours, unless the user submits a maintenance request in the app. If the car is rented
17 for more than 24 hours, YOUBER checks on the car at the end of the rental period. Ms. Austin
18 does not have an account of her own with YOUBER. She uses the account of her on-and-off-
19 again partner, Martha Lloyd. Ms. Lloyd’s account first became active on July 27, 2018. Ms.
20 Austin has the YOUBER app on her personal cell phone. Ms. Austin is an authorized user on
21 Ms. Lloyd’s credit card account.

22 On January 3, 2019, Jayne Austin rented a 2017 Black Toyota Prius (license plate
23 number: R0LL3M) through the YOUBER app on her phone. Later that day, Officer Charles
24 Kreuzberger stopped Ms. Austin for failure to stop at a stop sign. During the traffic stop, Ms.
25 Austin showed Officer Kreuzberger her license and the YOUBER app on her cell phone.
26 While verifying the information provided by Ms. Austin, Officer Kreuzberger noticed Ms.
27 Austin’s name was not listed as the renter on the rental agreement in the YOUBER app.
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1 Accordingly, Officer Kreuzberger told Ms. Austin that he did not need her consent to search
2 the car. Officer Kreuzberger searched the trunk where she kept personal effects. He found a
3 BB gun modeled after a .45 caliber handgun with the orange tip removed, a maroon ski mask,
4 and a duffel bag containing \$50,000 and blue dye packs. Officer Kreuzberger also found
5 clothes, an inhaler, three pairs of shoes, and a collection of signed Kendrick Lamar records.
6 Officer Kreuzberger notated in his report that he believed the car to be “lived in,” as there
7 were many other personal items in the car, including a cooler full of tofu, kale, and homemade
8 kombucha. Additionally, Officer Kreuzberger found bedding and a pillow in the backseat of
9 the car.

10 During his investigation, Officer Kreuzberger received a dispatch to look out for a
11 2017 Black Toyota Prius with a YOUBER logo driven by a suspect who allegedly robbed a
12 nearby *Darcy and Bingley Credit Union*. A surveillance camera caught a partial license plate
13 number “R0L.” The suspect was seen wearing a maroon ski mask and using a .45 caliber
14 handgun. Based on the items found in Ms. Austin’s car, the dispatch, and the partial match of
15 the license plate, Officer Kreuzberger arrested Ms. Austin under suspicion of bank robbery.

16 Two days later, Detective Boober Hamm took on Ms. Austin’ case. Upon further
17 investigation, Detective Hamm discovered five open bank robbery cases occurring between
18 October 15, 2018 and December 15, 2018 which matched the modus operandi of the robbery
19 on January 3, 2019. Four of the robberies took place in California and one in Nevada.
20 Detective Hamm checked his notes and saw there was a YOUBER logo on the car Ms. Austin
21 used on the date of her arrest. He served a subpoena duces tecum (“SDT”) on YOUBER to
22 obtain all the GPS and Bluetooth information related to the account Ms. Austin allegedly used
23 between October 3, 2018 through January 3, 2019.

24 Per its corporate policies and procedures, YOUBER tracks each and every YOUBER
25 vehicle using GPS technology and Bluetooth signals from each user’s cellphone in order to
26 ensure that no one other than the registered renter operates YOUBER vehicles. Upon creating
27 an account in the app, the user must accept YOUBER’s terms and conditions, including a
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1 clause permitting YOUBER to track each user's location when renting a vehicle. The GPS
2 and Bluetooth activate once the cellphone with the user's account is located within the vehicle.
3 Each user is assigned a computer-generated location number which YOUBER uses to track
4 his or her vehicle during the rental period. The GPS information is then transferred through
5 the company's mainframe and filtered by the search engine Smoogle using satellite mapping
6 technology. Every two minutes, YOUBER tracks the timestamped location of the vehicle for
7 security purposes, regardless of whether the vehicle is rented.

8 Records from YOUBER revealed that Martha Lloyd's account was used to rent cars in
9 the locations and at the times of each of the other five robberies. Surveillance footage from
10 the banks showed the same 2017 Black Toyota Prius was used at four of the bank robberies.
11 The vehicle used in the sixth robbery was also a YOUBER car: a yellow 2016 Volkswagen
12 Beetle. After reviewing all of the mapping data sent by YOUBER, Detective Hamm
13 recommended charges with the US Attorney's Office to have Ms. Austin charged with six
14 counts of bank robbery under 18 U.S. Code § 2113, Bank Robbery and Incidental Crimes.

15 Prior to trial, Ms. Austin's Defense Counsel filed two motions to suppress evidence.
16 The first motion moved to suppress the evidence obtained during Officer Kreuzberg's search
17 of the rental car on January 3, 2019. The second motion moved to suppress the location data
18 YOUBER provided to Detective Hamm. Both motions asserted that the respective searches
19 were warrantless searches within the meaning of the Fourth Amendment, and defense counsel
20 argued that any evidence obtained therefrom should be suppressed.

21 For the reasons set forth below, we **DENY** both of Ms. Austin's motions.

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1 **III. ANALYSIS**

2 **A. Search of the YOUBER Rental Car.**

3 The Fourth Amendment to the United States Constitution guards, “[t]he right of the
4 people to be secure in their persons, houses, papers, and effects, against unreasonable searches
5 and seizures.” U.S. Const. amend. IV. A warrantless search is presumed unreasonable, and
6 therefore invalid under the Fourth Amendment. *Katz v. United States*, 389 U.S. 347, 357
7 (1967). Accordingly, the burden rests on the government to prove that an exception to the
8 general warrant requirement applies to searches conducted without a warrant previously
9 issued by a neutral and detached magistrate. *Coolidge v. New Hampshire*, 403 U.S. 443, 455
10 (1971).

11 An individual must have standing in order to contest the legality of that search. The
12 Supreme Court stated in *Byrd* that “the concept of standing in Fourth Amendment cases can
13 be a useful shorthand for capturing the idea that a person must have a cognizable Fourth
14 Amendment interest in the place searched before seeking relief for an unconstitutional search
15 [.]” *Byrd v. United States*, 138 S. Ct. 1518, 1530 (2018). The Court in *Byrd* concluded, “the
16 mere fact that a driver in lawful possession or control of a rental car is not listed on the rental
17 agreement will not defeat his or her otherwise reasonable expectation of privacy.” *Byrd*, 138
18 S. Ct. at 1531. As this law is current and has not been overruled, this Court is bound to follow
19 the law set out in *Byrd*.

20 Further, as the Court in *Byrd* noted, “one who owns or lawfully possesses or controls
21 property will in all likelihood have a legitimate expectation of privacy by virtue of [the] right
22 to exclude.” *Byrd*, 138 S. Ct. at 1527. The Court emphasized that the individual must have a
23 property-based interest in order to have an expectation of privacy. The Court noted, “the test
24 most often associated with legitimate expectations of privacy, which was derived from the
25 second Justice Harlan’s concurrence in *Katz* supplements, rather than displaces, ‘the
26 traditional property-based understanding of the Fourth Amendment.’” *Florida v. Jardines*,
27 569 U. S. 1, 11 (2013).

1 The question left open by the Court in *Byrd* was whether an individual in unlawful
2 possession of a rental car has standing. *Byrd*, 138 S. Ct. at 1531. Further, the Court noted in
3 reference to the case of *Rakas v. Illinois*, “that one who intentionally uses a third party to
4 procure a rental car by a fraudulent scheme for the purpose of committing a crime is no better
5 situated than a car thief.” *Rakas v. Illinois*, 439 U. S. 128, 1531 (1978). For such an inquiry
6 we must turn to the case of *Rakas* in our jurisprudence.

7 *Rakas* makes clear that, “‘wrongful’ presence at the scene of a search would not enable
8 a defendant to object to the legality of the search.” *Rakas v. Illinois*, 439 U. S. 128, n.9 (1978).
9 Further, “a burglar playing his trade in a summer cabin during the off season may have a
10 thoroughly justified subjective expectation of privacy, but it is not one which the law
11 recognizes as, ‘legitimate.’” *Rakas*, 439 U. S. at 143. Given this understanding, we turn to the
12 facts of the case at bar.

13 Given Ms. Austin’s temporary and limited relationship with the rental car supplied to
14 her by YOUBER, this Court does not see how Ms. Austin had a legitimate property interest
15 or expectation of privacy in the vehicle. Ms. Austin did not own the vehicle, the vehicle was
16 not rented in her name, and she did not have a sufficiently sustained relationship with the
17 vehicle to garner a legitimate property interest. Further, this Court is unconvinced that Ms.
18 Austin had adequate permission from Ms. Lloyd to rent cars in Ms. Lloyds name. The
19 volatility of the relationship between the two women gives this Court great pause.

20 In light of those facts, this Court finds Ms. Austin lacks standing to contest the legality
21 of the of the initial search of the vehicle performed by Officer Charles Kreuzberger on January
22 3, 2019.

23 **B. Obtaining of Location data from YOUBER and Smoogle.**

24 The Supreme Court has ruled that a “person does not surrender all Fourth Amendment
25 protection by venturing into the public sphere.” *Carpenter v. United States*, 138 S. Ct. 2206,
26 2218 (2018). To the contrary, “what [the individual] seeks to preserve as private, even in an
27 area accessible to the public, may be constitutionally protected. A majority of [The Supreme
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1 Court] has already recognized that individuals have a reasonable expectation of privacy in the
2 whole of their physical movements.” *Carpenter*, 138 S. Ct. at 2218.

3 Further, when an individual “seeks to preserve something as private,” and her
4 expectation of privacy would be “one that society is prepared to recognize as reasonable,” the
5 government intrusion in the aforementioned private sphere qualifies as a search and requires
6 a warrant supported by probable cause. *See Smith v. Maryland*, 442 U. S. 735, 740 (1979).

7 Historically, the Fourth Amendment secured “the privacies of life” against “arbitrary
8 power.” *Boyd v. United States*, 116 U. S. 616 (1886). Further, the drafters meant to use the
9 Fourth Amendment, “to place obstacles in the way of a too permeating police surveillance.”
10 *United States v. Di Re*, 332 U. S. 581, 595 (1948).

11 As technology has garnered easier access for the Government’s ability to intrude upon
12 the personal life and information of private citizens, the Court has sought to “assure
13 preservation of that degree of privacy against government that existed when the Framers
14 adopted the Fourth Amendment.” *Kyllo v. United States*, 533 U. S. 27, 34 (2001). We must
15 be mindful that “what [one] seeks to preserve as private, even in an area accessible to the
16 public, may be constitutionally protected.” *Katz*, 389 U. S. at 351-352. When considering GPS
17 information, the time stamps and data provide a detailed window into a person’s private life.
18 Given the advancement of society, the Court has adopted the rule that we “must take account
19 of more sophisticated systems that are already in use or in development.” *Kyllo*, 533 U. S. at
20 36. However, the Court has never abandoned the principle that an individual has no
21 reasonable expectation of privacy in information the individual has willingly exposed to a
22 third party. *See Smith*, 442 U. S. 740. This Court sides with this principle in the present case
23 at bar, with further explanation.

24 In the instant matter, this Court heard testimony from experts at YOUNBER concerning
25 their DATA recovery procedures and the extent of the data that is collected by YOUNBER.
26 This Court, however, does not find Ms. Austin’s arguments persuasive.

1 We do not find that the data collected by YOUBER and supplied to Detective Hamm
2 rises to the level of concern analyzed in *Carpenter*. Further, Ms. Austin willingly exposed the
3 data she wishes to suppress to a third party, Smoogle, as she accepted YOUBER's terms and
4 conditions. Given that YOUBER only collected this location data when the Ms. Austin used
5 the vehicle, this Court does not see how such monitoring infringes upon "the privacies of
6 life," as noted in *Carpenter*. *Carpenter*, 138 S. Ct. at 2214.

7 Due to Ms. Austin's use of the vehicles in the public sphere and her unsubstantiated
8 relationship with the vehicles, this Court does not see how the data could provide a, "intimate
9 window into a person's life, revealing not only [her] particular movements, but through them
10 [her] familial, political, professional, religious, and sexual associations." *United States v.*
11 *Jones*, 565 U.S. 400, 415 (2012).

12 Therefore, we deny Ms. Austin's motion to suppress the information procured by
13 Detective Hamm regarding Ms. Austin's location.

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15 **IV. CONCLUSION & ORDER**

16 This Court **DENIES** Ms. Austin's motions to suppress evidence, finding she had no
17 standing in the rental car, and the data collected by YOUBER did not rise to the level of
18 infringement as mentioned by the Court in *Carpenter*.

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20 **IT IS SO ORDERED.**

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23 Sarah Early

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SARAH EARLY

25 United States District Court

26 Judge
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FOR PUBLICATION

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JAYNE AUSTIN,
Defendant-Appellant.

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

DATE: April 1, 2019

Appeal from the United States
District Court for the Southern District of Netherfield
Sarah Early, District Judge, Presiding

Argued and Submitted
March 4, 2019
City of Steventon, Netherfield

Filed February 1, 2019
Before Judge Kaitlyn Enticknap, Judge Alexandria Heins, and Judge Maura Duffy
Circuit Judges

Opinion by Kaitlyn Enticknap

1 **OPINION**

2 ENTICKNAP, J. Circuit Judge:

3 Appellant Jayne Austin (“Appellant”) appeals her conviction of six charges of bank
4 robbery. Appellant reserved her right to appeal the District Court’s ruling on her two
5 suppression motions. Appellant contends the District Court erred in denying her motions to
6 suppress evidence prior to her conviction. For the foregoing reasons, we disagree with
7 Appellant and affirm the District Court’s judgment entered against her.

8 **I. BACKGROUND**

9 The District Court has already set forth the facts relevant to this case in detail. Because
10 the facts of this case are not in dispute, this Court hereby adopts and incorporates by reference
11 the District Court’s recitation of the facts. The District Court denied Appellant’s two motions
12 to suppress evidence, finding first that Appellant did not have standing to contest the search
13 of the rented vehicle. Second, the District Court found that the government’s warrantless
14 search of the YOUBER data pertaining to the Appellant’s interactions with YOUBER did not
15 violate the Appellant’s Fourth Amendment rights.

16 Based on the facts presented, Appellant was convicted of six charges of 18 U.S. Code
17 § 2113. Appellant now appeals her conviction and the orders of the District Court.

18 **II. ANALYSIS**

19 **A. Search of the YOUBER Rental Car**

20 We agree with the District Court’s use of the rationale embraced in *Rakas* to deny
21 Appellant standing to contest the warrantless search to her rental vehicle. Here now, we wish
22 to expand on our support of the District Court’s ruling.

23 While endeavoring to elaborate on the trespass theory of *Olmstead*, the Court in *Katz*
24 held that the capacity to claim the protection of the Fourth Amendment depends not upon a
25 property right in the invaded place, but upon whether the person who claims the protection of
26 that Amendment has a legitimate expectation of privacy in the invaded place. *See Rakas v.*
27 *Illinois*, 439 U. S. 128, 143 (1978).

1 If we view standing from these twin perspectives – property rights and reasonable
2 expectation of privacy – under a cursory analysis, Appellant should be successful in her
3 claim. However, upon further inspection into Appellant’s claimed property interest and
4 expectation of privacy, the Court finds the possible illegality of her claims deters any standing.

5 The Fourth Amendment makes clear the constitutional rights are personal to the holder
6 of the property interest or the reasonable expectation of privacy. It follows that a “person who
7 is aggrieved . . . only through the introduction of damaging evidence secured by a search of a
8 third person’s premises or property has not had any of his Fourth Amendment rights
9 infringed.” *Rakas*, 439 U.S. at 134.

10 Here, we find the interaction between Appellant and the rental vehicle meritless for an
11 assertion of Fourth Amendment protection. Appellant’s name was not on the rental
12 agreement. Appellant did not get explicit permission from the holder of the rental agreement
13 to rent vehicles through the holder’s account. Appellant used more than one vehicle during
14 her period of criminal activity. We find these facts dispositive in our analysis of standing. In
15 Justice Kennedy’s opinion in *Byrd*, the Court revived the trespass theory by combining the
16 theory of standing with the reasonable expectation of privacy theory established in *Katz v.*
17 *United States*, 389 U.S. 347, 357 (1967). *See Byrd*, 138 S. Ct. at 1531.

18 In *Byrd*, the Court maintained support for the language in *Rakas* by stating, “the Court
19 instead rejected the argument that legitimate presence alone was sufficient to assert a Fourth
20 Amendment interest, which was fatal to the petitioners’ case there because they had ‘claimed
21 only that they were “legitimately on [the] premises” and did not claim that they had any
22 legitimate expectation of privacy in the areas of the car which were searched.’” *Byrd*, 138 S.
23 Ct. at 1529. The Court’s focus on whether or not the presence was “legitimate” informs our
24 opinion today.

25 In the case at hand, Appellant argues her presence in the vehicle was legitimate given
26 her action of renting the car. However, this Court is persuaded by the suspect nature of the
27 Appellant’s relationships with the vehicle and the YUBER account. The record indicates
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1 the actual renter of the vehicle was Appellant’s on-and-off-again partner, Martha Lloyd. In
2 turning to the record, Ms. Lloyd indicates Appellant’s use of Ms. Lloyd’s login information
3 was suspect at best; while Appellant was an authorized user of Ms. Lloyd’s credit card,
4 Appellant had not secured explicit permission to use Ms. Lloyd’s account for these particular
5 rentals. This Court notes the language of *Rakas*, “a burglar plying his trade in a summer cabin
6 during the off season may have a thoroughly justified subjective expectation of privacy, but
7 it is not one which the law recognizes as ‘legitimate’ . . . a person present in a stolen
8 automobile at the time of the search may [not] object to the lawfulness of the search of the
9 automobile.” *Rakas*, 439 U.S. at 141. While we do not believe there exists sufficient evidence
10 that Appellant stole the vehicle, we do believe that is not the kind of “reasonable expectation
11 of privacy” that Justice Harlan intended to protect in his concurrence in *Katz*. *Katz*, 389 U.S.
12 at 361.

13 Turning to the property rights theory of standing, this Court uses the rule stated in
14 *Jones*: “[t]o establish ‘standing,’ Courts have generally required that the movant claim either
15 to have owned or possessed the seized property or to have had a substantial possessory interest
16 in the premises searched.” *United States v. Jones*, 565 U.S. 400, 262 (2012). Appellant argues
17 she had a “substantial possessory interest in the premises searched” given the fact that her
18 items were in the searched YUBER vehicle. *Jones*, 565 U.S. at 262. However, this Court
19 does not wish to extend protections to legitimize Appellant’s attenuated relationship with the
20 property or vehicle in this case. Appellant argues for and seeks a valid property interest in a
21 rental vehicle, which was not registered in her name, despite Appellant’s failure to receive
22 explicit permission from the actual renter. Appellant also used this vehicle to commit crimes.
23 This Court is not inclined to comply with the Appellant’s arguments.

24 Under either of the aforementioned theories, Appellant fails. An individual cannot have
25 a valid property interest in a vehicle she has fraudulently leased. Further, said individual has
26 no reasonable expectation of privacy in a vehicle she shares with third parties and uses in
27 connection with illegality.

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B. Acquisition of the location data from YOUBER and Smoogle

We are inclined to agree with the lower court; however, we are concerned with the possible ramifications of our decision.

We agree with the decision in *Carpenter*, where the Court noted, “for much of our history, Fourth Amendment search doctrine was ‘tied to common-law trespass’ and focused on whether the Government ‘obtains information by physically intruding on a constitutionally protected area. . . .’” *United States v. Jones*, 565 U. S. 400, 405 (2012). More recently, the Court has recognized that ‘property rights are not the sole measure of Fourth Amendment violations’” *Carpenter*, 138 S. Ct. at 2213.

The Court established in *Katz* that “the Fourth Amendment protects people, not places,” and expanded the conception of the Fourth Amendment to protect certain expectations of privacy as well. *Katz*, 389 U. S. at 351. When an individual “seeks to preserve something as private,” and her expectation of privacy is, “one that society is prepared to recognize as reasonable,” this court will find that what is private is protected. *Id.*

Moreover, we must analyze what the Court means when it refers to an individual who “seeks to preserve something as private” and whether or not said individual’s expectation of privacy is “one that society is prepared to recognize as reasonable.” *Katz*, 389 U. S. at 351. We are informed by Justice Sotomayor’s concurrence in *Jones* , which states,

“[a]wareness that the government may be watching chills associational and expressive freedoms. And the government’s unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse. The net result is that GPS monitoring--by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the government, in its unfettered discretion, chooses to track--may ‘alter the relationship between citizen and government in a way that is inimical to democratic society.’”

Jones, 565 U.S. at 415. This Court believes we must be aware of the dangers of such aggressive expansion of government power, while simultaneously maintaining our

1 jurisprudence. In the instant matter, this Court is inclined to reinforce our established third-
2 party doctrine.

3 This Court, as did the Court in *Carpenter*, breathes new life into the third-party
4 doctrine stated in *Smith* and *Miller*. We join in Justice Gorsuch’s statement in dissent in
5 *Carpenter*, “[s]o apparently *Smith* and *Miller* aren’t quite left for dead; they just no longer
6 have the clear reach they once did.” *Carpenter*, 138 S. Ct. at 2267. We are of the opinion that
7 the “reach” of *Miller* and *Smith* extend to the data under these circumstances. However, we
8 are reminded by Justice Brandeis’s dissent in *Olmstead* where the Court stated it cannot assist
9 a “[s]ubtler and more far-reaching means of invading privacy have become available to the
10 Government” and ensure that the “progress of science” does not erode Fourth Amendment
11 protections. *Olmstead v. United States*, 277 U. S. 438, 473-474 (1928).

12 As we turn to the facts of the matter at bar, we must ask ourselves whether this type of
13 warrantless intrusion should be legitimized. This question deals with more than the inquiry
14 into the views of society today, but society in the coming future.

15 The renter’s phone supplies the data in question while the user leases the property of
16 another, in this case, the YOUNBER corporation. The user accepts the terms and conditions in
17 order to use the app. The user exchanges such data to lease the property by activating the GPS
18 and Bluetooth functions on their cellular device. These interactions monitor the location and
19 time of the user’s interactions with the leased property. Given the user’s interface with this
20 third party, we do not see how an expectation of privacy is “reasonable” under these
21 circumstances.

22 For so much of our history, the jurisprudence of the Court has looked to whether the
23 individual has an established property interest in the item searched or whether there is a
24 reasonable expectation of privacy in the information, item, or place searched. Here, we find
25 that the information the user allowed YOUNBER to use and collect was neither protected by
26 an established property interest, nor a reasonable expectation of privacy.

1 We rule Appellant was constructively aware of the collection of the data, and that she
2 voluntarily gave up such information to a third party. The Court has held that individuals have
3 no Fourth Amendment interests in records which are possessed, owned, and controlled by a
4 third party. *United States v. Miller*, 425 U. S. 435, 442-443 (1976); *Smith v. Maryland*, 442
5 U. S. 735 (1979). This “third-party doctrine” remains alive today. *Carpenter*, 138 S. Ct. at
6 2267.

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8 “*Miller* and *Smith* hold that individuals lack any protected Fourth Amendment
9 interests in records that are possessed, owned, and controlled only by a third
10 party . . . And the defendants had no reasonable expectation of privacy in
information they ‘voluntarily conveyed to the [companies] and exposed to their
employees in the ordinary course of business.’”

11 *Id.* at 2227. This Court holds the third-party doctrine, as alive today, may be limited
12 by *Carpenter*, but it is not extinct. Thus, we determine that Appellant’s exposure of her
13 information to a third party for such a maintained period serves as a forfeiture of a reasonable
14 expectation of privacy.

15 Therefore, we hold Appellant, and other YOUBER users, have no property interest,
16 nor reasonable expectation of privacy in the data or information collected in this case. Our
17 affirmation of the District Court’s ruling comes with our concern that this Court, not the
18 legislature, is making the decision about whether or not an expectation of privacy is
19 reasonable. However, we are bound by our precedent and the Court’s decision in *Carpenter*
20 to maintain the third-party doctrine, even in a so-called unclear state.

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III. CONCLUSION

For the reasons above, the decision of the District Court is **AFFIRMED**.

IT IS SO ORDERED.

Kaitlyn Enticknap

KAITLYN ENTICKNAP
United States Court of Appeals
Judge

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Exhibit A

1 **PRETRIAL EVIDENTIARY HEARING BEFORE**
2 **THE HONORABLE SARAH EARLY**

3 CITY OF DARBY, NETHERFIELD: Martha Lloyd

4 Direct Examination by Assistant United States Attorney, Kayla Huynh

5 Q: Good morning.

6 A: Good morning ma'am.

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

8 A: Martha Lloyd, M-A-R-T-H-A, L-L-O-Y-D.

9 Q: Do you know a Jayne Austin?

10 A: Yes.

11 Q: How do you know that individual?

12 A: We are dating, but recently we've been kind of on a break

13 Q: What did you mean by kind of on a break?

14 A: We dated and lived together for a few years, but we had a falling out around September
15 2018.

16 Q: What happened in September 2018?

17 A: She has always hated "The Man," but I think her ideas got a little too radical, so I've
18 been trying to distance myself from her. I still love her, but I don't know how to handle it.

19 Q: Do you see Ms. Austin in the courtroom today?

20 A: Yes, she is sitting at counsel table in the grey pant suit.

21 Q: Do you and Ms. Austin share login information for services and electronic devices?

22 A: Yes.

23 Q: How so?

24 A: Jayne hates being on the "grid" as she calls it. So, she wouldn't use her own information
25 to sign up for anything; such as social media, YOUTUBE, or YOUTUBEATS. So, when we
26 were together, she would always use my information for everything and reimburse me in
27 cash. The only thing she would put her name on were her ranting blog posts.

28 Q: Did you give her permission to use your information during your relationship?

1 A: Yes, regrettably. She has a way with words that just makes you do whatever she says.
2 She's an authorized user on my credit card, but I've been thinking about taking her off that
3 on account of us having troubles. I haven't done it yet, but now I know I should.

4 Q: So the YOUBER account belongs to you?

5 A: Yes.

6 Q: Did you give Ms. Austin your YOUBER login information?

7 A: Yes.

8 Q: Did you give her permission to use your information since September 2018?

9 A: Well, no not really.

10 Q: What do you mean by "no not really"?

11 A: Well, I haven't changed the passwords to any of my accounts, but she hasn't asked me to
12 use anything like YOUBER or YOUBEREATS. I've just tried to move on and focus on my
13 writing.

14 Q: What do you write?

15 A: Short stories mostly and the occasional greeting card.

16 Q: Did you have any interaction with Ms. Austin after she left your apartment?

17 A: I would receive the occasional letter from her.

18 Q: What did those letters say?

19 Defense Counsel Caitlyn Emery: Objection, hearsay.

20 Court: Overruled.

21 A: She would write me letters about what she was doing and where she was and how she
22 was sorry.

23 Q: Would you ever respond to those letters?

24 A: Only once.

25 Q: What did you say?

26 A: I told her that I still loved her, but I needed time to heal if we were to ever going to be
27 back together.

28 Q: Did you give Ms. Austin permission to continue to use your YOUBER account?

1 A: No, but I hadn't checked.

2 Q: How were you not aware your account was being used without your permission?

3 A: I had switched over to a new app called BIFT for all my ridesharing. Also, I had
4 cancelled my credit card on YOUBER, but her authorized card was already on there.

5 AUSA: No further questions.

6 CROSS EXAMINATION by Defense Counsel, Caitlyn Emery

7 Q: Good morning.

8 A: Morning.

9 Q: You previously testified that you and my client were having "troubles" in your
10 relationship, correct?

11 A: Yes.

12 Q: Did you ever specifically tell Ms. Austin that you no longer wanted her to use your
13 YOUBER account information?

14 A: Well, no.

15 Q: Did you ever give her any indication that she could no longer use your account?

16 A: Well, I told her I tried to distance myself from her in that letter.

17 Q: Who setup the YOUBER account?

18 A: I did.

19 Q: So, you signed YOUBER's terms of release when you registered for a YOUBER
20 account?

21 A: Yes.

22 Q: And that includes agreeing to YOUBER's corporate policy regarding privacy?

23 A: Yeah, I guess so.

24 Q: Nothing further.

25 COURT: Any redirect?

26 AUSA: No, your honor. Thank you.

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Exhibit B

1 **PRETRIAL EVIDENTIARY HEARING BEFORE**
2 **THE HONORABLE SARAH EARLY**

3 CITY OF DARBY, NETHERFIELD: Chad David

4 Direct Examination by Assistant United States Attorney, Kayla Huynh
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6 Q: Good morning.

7 A: Good morning ma'am.

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

9 A: Chad David, C-H-A-D ... D-A-V-I-D.

10 Q: Mr. David, what do you do for a living?

11 A: I'm a data and information specialist at the car rental company YOUBER.

12 Q: To your knowledge, how many users does YOUBER have?

13 A: As of this morning we have 75 Million users around the world.

14 Q: How many in the US?

15 A: About 40 million.

16 Q: What are your responsibilities as a data and information specialist at YOUBER?

17 A: I oversee all DATA interactions between the user and YOUBER.

18 Q: Could you briefly describe how these data interactions work?

19 A: Well, YOUBER's policy is to track each user using GPS technology and Bluetooth
20 signals from their cellphone to ensure that the correct user is driving or operating the
21 YOUBER vehicle. The GPS and Bluetooth only activates once the YOUBER user's account
22 registers as being within the vehicle. Each user is assigned a computer-generated location
23 number which YOUBER uses to track the rented vehicle. While a YOUBER car is in use,
24 the GPS information is transferred through the company's mainframe and filtered by the
25 search engine Smoogle using satellite mapping technology. YOUBER tracks both the
26 location in real time of each vehicle. The location and time are updated to YOUBER'S
27 database every two minutes.
28

1 Q: Is the YOUBER user notified about this monitoring prior to using YOUBER?

2 A: Yes, but only during the initial signup period.

3 Q: What do you mean by the initial sign up period?

4 A: That is when the user first signs up to use YOUBER. Where she inputs all of her
5 personal information, financial information, and vehicle preferences. A message pops up
6 that says that YOUBER will track their information, and they must click a box to accept
7 those terms.

8 Q: Could you, for the Court and I, explain how a user rents a vehicle?

9 A: Sure. All services are controlled through the app on the user's cellphone and connects to
10 the vehicles via Bluetooth and GPS. The agreement works much like a standard car rental
11 service where a rental agreement is made, and then the renter pays per day for use of the car.
12 YOUBER cars are parked in our biodegradable parking stalls and are noticeable by the
13 small bright pink YOUBER logo on the bottom corner of the passenger side of the
14 windshield. The cars are rented by YOUBER users and when the user completes her term of
15 the rental agreement, the user parks the car in a designated YOUBER parking stall for the
16 next YOUBER user to use. The YOUBER user must return the vehicle with the same charge
17 or gas level, within ten miles.

18 Q: Earlier you testified that the user's data is transferred through Smoogle, why is that?

19 A: Well, YOUBER uses Smoogle's GPS analytics to track and locate our vehicles. Without
20 Smoogle and this partnership we could not keep track of all our vehicles.

21 Q: Can more than one user use a vehicle in a day?

22 A: Absolutely, once one user is done with a vehicle, another user is free to rent that vehicle.

23 Q: Are there any limits on the length of a rental term?

24 A: Yes, we only allow the user to use the vehicle for a maximum of 500 miles or a period of
25 one week.

26 Q: Are users allowed to sleep in the vehicles?

27 A: No, in the initial sign up period the users are told that they cannot sleep in the YOUBER
28

1 vehicles.

2 Q: Can one user use the login information of another user?

3 A: Yes, once the account is set up, all any user needs to use that account is the username and
4 password.

5 Q: No further questions.

6 THE COURT: Cross?

7 Defense Counsel Emery: Briefly, your honor.

8 Q: Mr. David, if a person is granted access to a YOUBER user's account, where the original
9 YOUBER user gives this other party her login information, is the other party ever notified
10 of the data YOUBER collects?

11 A: No, that information is only disclosed during the initial sign up period.

12 Q: No further questions.

13 THE COURT: Any redirect?

14 AUSA: No, your honor.

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EXHIBIT C

THEY ALL FALL DOWN!

SESSION 1

October 2, 2018

You may think that I'm on the grid

You may think that I will abide

You may think you can hide as you did

You may think you can ride the cash ride

You cannot, I won't let you

I have no home, I have only one name to use

I am everyone, I am no one ... all you will see

Is a small flash of pink then POOF I'm gone.

SESSION 2

November 5, 2018

Darcy and Bingley - you may think you're slick

You may think you are keen

I'll show you how mean

You can be.

Take your own medicine. Robbing and pillaging.

SESSION 3

November 28, 2019

I have no home, I claim no home

I claim no property

I've had no opportunity to claim any property.

SESSION 4

December 8, 2018

Now It is Time to Rise and Take What is Ours

All is One and One is All.

SESSION 5

December 14, 2019

I'll show you how we ride

I'll show you that property is NOTHING

Ownership is NOTHING, you are NOTHING

Without your velvet ropes and strings.

SESSION 6

January 1, 2019

Goodbye my sweet Martha, but i am

Still with You, i am still You,

You have always allowed me to be You.

You are my aid, my tool, my window into ~~my~~ their world.

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EXHIBIT D

YOUBER Corporate Privacy Policy

Last Updated: June 5, 2018

This YOUBER Inc. Privacy Policy (the “Privacy Policy”) applies to the information that we collect and process about users of our Services. In this Privacy Policy, “Services” means:

- YOUBER (“Sites”)
- YOUBER mobile applications (each an “App”),
- YOUBER vehicles (each a “Vehicle”), and
- the features and services available through our Sites, Apps and Vehicles.

THE INFORMATION WE COLLECT

We collect information related to our Services directly from users, automatically related to their use of the Services, as well as from third parties.

Information You Provide to Us.

We collect information directly from users:

- Account registration, management, profile creation and modification
- Account access and use, as well as uploading content to the Services and other associated activities
- Access to and use of the Sites and Apps
- Submission of payment information
- Customer service, technical support, and related communications

The types of information we collect directly from you are: your name, e-mail address, phone number, postal address, other contact information, credit card and billing details, including billing address, communications preferences, payment and transaction history, and any other information you submit to the Services or otherwise provide to us.

Automatically Collected Information.

We also collect information through automated and technical means as you browse our Sites, use our Apps, or otherwise use the Services:

- **Device and Online Usage.** We collect information about your computer, browser, mobile or other device that you use to access the Services. That data includes dates and times you access our Services, the length of time that you are logged into or using our Services, the links you click or features you use, and software crash reports.
- **Location Info and Vehicle Usage.** We automatically collect and store location information from your device and from any Vehicles you use via GPS and Bluetooth. This information is automatically collected every two minutes and uploaded to YOUBER’s mainframe. We track the timestamped location of the vehicle for security purposes, regardless of whether the vehicle is rented.

DISCLOSURE OF YOUR INFORMATION

We disclose the information we collect, in the following ways:

- **Third-Party Service Providers.** We use a variety of third-party service providers that perform functions on our behalf, such as hosting, satellite-mapping, billing and payment processing, push notifications, storage, bandwidth, content management tools, analytics, customer service, fraud protection, etc.

- **General Business Operations.** Where necessary to the administration of our general business, accounting, record keeping and legal functions, to our tax advisors, legal counsel and other professional services entities or agents.

YOUR CHOICES

In order to use YUBER and YUBER related Services, all users must agree to YUBER's privacy policies upon registration of a YUBER account. If you would like to opt out of marketing communications from us, you may do so at any time by updating the communication preferences in your account profile.

Stipulations & Assumptions

1. The Parties stipulate there are no exceptions to the warrant requirement for the search of the YOUBER data records.
2. The Parties stipulate there are no exceptions to the warrant requirement for the search of the YOUBER rental vehicle.
3. The Parties stipulate the terms of YOUBER's Corporate Privacy Policy are not in dispute.
4. The Parties stipulate Ms. Austin's cell phone was not illegally searched when she showed Officer Kreuzberger the rental agreement.
5. Do not cite any cases decided on or after September 6, 2019.
6. Assume the District Court's Statement of Facts and testimony exhibits are a complete record.
7. Assume all motions, defenses, and appeals have been timely and properly filed.
8. Questions or clarifications should be directed to sdcrimpro@gmail.com.