No. 4-422

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**

BRIEF FOR THE PETITIONER

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ISSUES PRESENTED

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)?

STATEMENT OF THE CASE

Ms. Austin requests this Court to reverse the decision made by the United States Court of Appeals for the Thirteenth Circuit. The petition for certiorari was granted for two issues: (1) whether an individual has standing to contest a search of a rental vehicle that the individual rented on another's account, and (2) whether the acquisition of location data of a rental vehicle is a "search" within the meaning of the Fourth Amendment.

I. Factual Background

Jayne Austin is an enthusiastic poet and blogger, as well as a naturalist and minimalist. R. at 1. As part of this lifestyle, Ms. Austin has no permanent residence but prefers to utilize co-habitation facilities such as PODSHARE for her busy lifestyle, where she can rent a space for a period of one night to a maximum of fourteen nights. *Id*. Like PODSHARE, Ms. Austin also utilizes an incredibly popular transportation service called YOUBER to travel to work and protests. *Id*. at 2. YOUBER is a software rental applications "app" available on mobile devices. *Id*. This app is similar to a standard rental car service with much higher technology. *Id*. This service allows people to rent YOUBER owned cars at an hourly rate, for a period of one week or for up to 500 miles and drop them off at YOUBER owned parking lots and facilities after the rental period is up. *Id*. Additionally, the YOUBER app connects to your cell phone via Bluetooth and GPS, and the rental application is completed n in the app, as well as making the payment for the rental fee. *Id*.

Due to her minimalist lifestyle, Ms. Austin prefers not to have her name being used on social media, so she has been sharing the log in information of her former partner, Ms. Lloyd for the past couple of years. *Id*. Ms. Lloyd made Ms. Austin an authorized agent on her credit card,

which is linked to the apps on Ms. Austin's phone. *Id*. When she uses it, she reimburses Ms. Lloyd for the charges she incurred on her account by paying her cash. *Id*. at 18.

On January 3, 2019 Ms. Austin rented a 2017 Black Toyota Prius with the license plate number R0LL3M through the YOUBER app on her phone. *Id*. at 2. Later in the day Ms. Austin was stopped by Officer Kreuzberger for failure to stop at a stop sign. *Id*. Ms. Austin showed Officer Kreuzberger her license and the YOUBER app on her cell phone. *Id*. Once Officer Kreuzberger realized Ms. Austin's name was not the renter on the rental agreement in the YOUBER app, he stated he did not need her consent to search the car. *Id*. at 3.

Upon the warrantless search, Officer Kreuzberger searched the trunk where Ms. Austin had been keeping her personal effects. *Id*. Personal effects in the trunk included clothes, bedding, a pillow, inhaler, three pairs of shoes, collection of signed Kendrick Lamar records, BB gun modeled after a .45 caliber handgun, with the orange tip removed, a maroon ski mask, and a duffel bag containing $50,000 and blue dye packs. *Id*. After finding these personal effects, Officer Kreuzberger noted in his report that be thought the car to be "lived in", after finding additional personal effects including a cooler stocked with tofu, kale, and homemade kombucha. *Id*.

During the investigation, Officer Kreuzberger received a dispatch watch for a 2017 Black Toyota Prius with a YOUBER logo, driven by an alleged suspect who potentially robbed a nearby Darcy and Bingly Credit Union. *Id*. A surveillance camera was able to catch a portion of the license plate number that included "R0L". *Id*. The suspect was seen wearing a maroon ski mask using a .45 caliber handgun. *Id*. Ms. Austin was arrested under suspicion of bank robbery. *Id*.

Detective Hamm was then put on Ms. Austin's case, where he realized that four of the five bank robberies took place in California and one in Nevada. *Id.* at 3. He noted that Ms. Austin's car had a YOUBER logo on it and was used the date of her arrest. *Id*. He then served a YOUBER with

a subpoena deuces tecum looking to obtain all of the GPS and Bluetooth information related to the account Ms. Austin used between October 3, 2019 through the time of her arrest on January 3, 2019. *Id.*

YOUBER complied with the subpoena deuces tecum. *Id.* Those records disclosed that whomever was using Ms. Lloyd's account rented cars in the locations and times of the five robberies. *Id.* Using surveillance footage from the bank, Detective Hamm saw a 2017 Black Toyota Prius at four of the banks, and a different YOUBER car at the sixth. *Id.* The mapping data was the integral part in the charges that Detective Hamm recommended to the US Attorney's Office. *Id.*

II. Procedural Background

Ms. Austin filed two pre-trial motions to suppress evidence. The first motion was regarding the evidence gathered from the initial arrest. *Id.* at 1. The second motion was regarding the location data obtained through a private company, Smoogle. *Id*. at 1, 4. On February 25th, 2019 the District Court for the Southern District of Netherfield denied Ms. Austin's motions on the grounds that Ms. Austin lacked standing to contest the legality of the search of the vehicle from the initial arrest on January 3, 2019. *Id.* at 6. Additionally, the District Court denied the motion to suppress evidence obtained through Smoogle on the grounds that the data did not infringe on "the privacies of life", and on the grounds that she willingly accepted YOUBER's terms and conditions. *Id*. at 8.

Further, on April 1, 2019, the Court of Appeals for the Thirteenth Circuit denied both of Ms. Austin's motion to suppress and affirmed the decision of the District Court. *Id*. at 15. The Court of Appeals held that Ms. Austin had no valid property interest in the rental car, nor a reasonable expectation of privacy. *Id*. at 12. Additionally, the Court of Appeals reasoned that Ms. Austin, along with other YOUBER users have no property interest or reasonable expectation of privacy within the data or information collected. *Id.* at 15.

SUMMARY OF ARGUMENT

Included as a fundamental protection in the Bill of Rights to the United States, the Fourth Amendment protects individuals from unlawful search and seizures. As a fundamental right, all American's should be afforded this protection.

Regarding the evidence obtained through the initial search of the rental vehicle, this Court is bound by the holding in *Byrd v. United States*, which states that as a general principle, someone who is in otherwise lawful possession and control of a rental car had a reasonable expectation of privacy in it even though the rental agreement did not list him or her as an authorized driver. Additionally, since Ms. Austin was storing her personal effects within the car, and the fact that she was the sole operator of the rental car, not merely a passenger, she had a reasonable expectation of privacy within the car.

This Court should hold that Ms. Austin has standing to contest the search of the rental vehicle, because she was in lawful possession of the rental car, and she also had a possessory interest of the personal effects stored within her vehicle, as shown through the notation of Officer Kreuzberger's report that the car "appeared to be lived in". Ms. Lloyd, as stated in her testimony, had never told Ms. Austin that she could no longer use her YOUBER app. Ms. Austin had been doing things this way for the duration of their relationship, and had paid Ms. Lloyd for using the app. There was no express statement given that Ms. Austin could no longer use Ms. Lloyd's YOUBER app.

Therefore, this Court should hold that Ms. Austin had a reasonable expectation of privacy within the rental vehicle. Ms. Austin had ownership of the items within the vehicle, as shown through her storage of personal effects within the rental vehicle. Ms. Austin was the sole operator of the rental car during the entirety of the rental period. Since she did not have a stable home, she

had personal belongings such as bedding, a pillow, food stored in a cooler, and even her collection of records. Based upon these facts, she believed she had an expectation of privacy within the vehicle she was using. Therefore, Ms. Austin also had a reasonable expectation of privacy and that expectation of privacy is one that society is ready to recognize as reasonable.

Regarding the evidence obtained through the data, this Court should adopt a reading of *Carpenter v. United States*, 138 S. Ct. 2206 (2018) that involves both a *Katz v. United States,* 389 U.S. 347 (1967) and *Jones v. United States,* 362 U.S. 257 (1960) tests of reasonableness and trespass. This Court should also follow *Carpenter* in terms of the third-party doctrine.

This Court should hold that Ms. Austin had a reasonable expectation of privacy for the phone location data compiled by the ride-sharing application, YOUBER, and the Government trespassed as they did not have a warrant to search her location data history. The courts have continually held the Fourth Amendment protects people, not just places. Ms. Austin has an expectation of privacy in cell phone application location data history and the court in *Carpenter* stated that society also has that expectation of privacy. In addition, by not obtaining a warrant first for the YOUBER data, the police officers trespassed on constitutionally protected areas, i.e. the cell phone application location data history.

Further, the Respondent is not saved in this case by the third-party doctrine. For the third-party doctrine, to apply in this case, Ms. Austin would have had to voluntarily given up her location data, something that no reasonable person would expect when signing up for a ride-sharing cell phone application. In addition, the seminal cases regarding the third-party doctrine are antiquated. It would be unreasonable and unconstitutional to apply the third-party doctrine to this case.

For the foregoing reasons, the lower court's decision to deny both of Ms. Austin's motions to suppress evidence should be reversed because the evidence was obtained during

unconstitutional searches of Ms. Austin's rental car and cell phone location dated provided by YOUBER under the Fourth Amendment.

ARGUMENT

I. STANDARD OF REVIEW

The United States Court of Appeals for the Thirteenth Circuit denied Ms. Austin's two motions to suppress. The first motion to suppress was to suppress all evidence found in the unconstitutional search of Ms. Austin's rental car. The Court of Appeals stated that Ms. Austin did not have standing to bring a motion to suppress. To determine standing in a Fourth Amendment search, the court reviews de novo. *United States v. Pollard*, 215 F.3d 643, 646 (6th Cir. 2000). The second motion to suppress was to suppress all evidence unconstitutionally collected from a third-party, YOUBER. The Court of Appeals stated that Ms. Austin did not have a reasonable expectation of privacy to the third-party information. A review of whether the district court inappropriately denied the motion to suppress evidence is reviewed de novo. *United States v. Walker*, 941 F.2d 1086, 1090 (10th Cir. 1991).

Therefore, the review of Ms. Austin's standing to bring a motion to suppress for the unconstitutional search of her rental car and the review of Ms. Austin's motion to suppress her cell phone location data that was unconstitutionally searched are both reviewed de novo.

II. MS. AUSTIN HAS STANDING TO CONSENT TO THE UNLAWFUL SEARCH OF THE RENTAL VEHICLE.

Engrained within this country, as well as written into the Bill of Rights, is the fundamental right of people to be free from unreasonable search and seizures. The Fourth Amendment to the United States Constitution provides "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Due to the Fourth Amendment and its extensive history, the Courts generally unfavorably view practices that permit police officers unbridled discretion to rummage at will among a person's private

effects. *Byrd v. United States,* 138 S. Ct. 1518, 1526 (2018). This viewpoint must be balanced with the diminished expectation of privacy in automobiles. *See California v. Acevedo,* 500 U. S. 565, 579, 111 S.C. 1982, 114, L. Ed. 619 (1991).

A warrantless search is presumed unreasonable and therefore invalid under the Fourth Amendment. *Katz v. United States*, 389 U.S. 347, 357 (1967). To succeed, the government must overcome the burden that an exception to the general warrant requirement applies to searches conducted without a warrant. *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971). The Supreme Court has articulated that "the concept of standing in Fourth Amendment cases can be useful shorthand for capturing the idea that a person must have a cognizable Fourth Amendment interest in the place searched before seeking relief for an unconstitutional search [.]" *Byrd,* 138 S.Ct. at 1530. To challenge the legality of a search under the Fourth Amendment, an individual must first have standing by either exhibiting a legitimate property interest in the place searched or have a reasonable expectation of privacy in the place subject to the warrantless search. *Katz,* 389 U.S. at 361, *Florida v. Jardines*, 569 U. S. 1, 11, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013). The traditional property rights-based understanding of the Fourth Amendment is supplemented by the "reasonable expectation of privacy test" of Justice Harlan's concurrence in *Katz,* rather than displaced by it. *Byrd,* 138 S.Ct. at 1526. Therefore, to establish standing, a person need not always have a common law in the place searched to be able to claim a reasonable expectation of privacy within it. *Id.* at 1527.

A. Ms. Austin lawfully possessed the rental car and had a substantial possessory interest in the premises searched.

It has been long held that the Fourth Amendment protects people, not places. *Katz*, 389 U.S. at 351. Although Ms. Austin does not claim to have common law property ownership of the rental car, but she does have an interest in her personal effects located within the rental car that

were searched. These personal effects included her pillow and bedding, food she had been eating in a cooler, clothes, shoes, her inhaler, and her collection of Kendrick Lamar records. R. at 3. Additionally, Ms. Austin had not stolen the rental car, nor had she fraudulently rented it without permission of the Ms. Lloyd, who was listed on the rental agreement. R. at 20. This is not a case of a car thief claiming a possessory interest in a car he or she criminally stole, Ms. Austin was in lawful possession and control of the rental car and has a possessory interest in her personal items which were unlawfully searched.

Although Ms. Austin was not the authorized user on the rental agreement, she used Ms. Lloyd's credit card to purchase the rental vehicle, just as she had many times throughout their relationship, with many other apps as well. R. at 20. Ms. Austin was an authorized user on Ms. Lloyd's credit card, so she was able to use the apps and reimburse her for what she purchased. Id. Ms. Austin had used Ms. Lloyd's log in information for many other apps for the majority of their relationship because she did not want to be on the grid with many forms of social media, like YOUBER, or YOUBEREATS, and only wanted to be associated with her blog. R. at 18.

If Ms. Lloyd did not want Ms. Austin to continue to use her log in for apps, she would have taken the initiative to change the passwords and taken Ms. Austin's authorized credit card off the account. Additionally, had Ms. Lloyd never expressly told Ms. Austin that she could no longer use her log in information for the apps. R. 20. On January 3, 2019 when Ms. Austin had rented the Toyota Prius, she was simply doing what she had always done. It was nothing out of the ordinary. Ms. Lloyd acknowledges that she did not expressly tell Ms. Austin that she no longer had permission to be using her information like she had for years in the past. This is shown in the Pretrial Evidentiary Hearing by stating:

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

A: Well, no."

R. 20.

The present case in unlike *Rakas*, a case upon which the State relies. R. 6, *Rakas v. Illinois*, 439 U.S. 128, 130, (1978). In *Rakas*, the defendants were passengers of a vehicle who had no possessory interest, nor a legitimate expectation of privacy in the car that was searched. *Rakas*, 439 U.S. at 130. Additionally, the defendants did not assert they owned the items which were seized, the sawed-off rifle and shells. *Id*. Therefore, the Court in Rakas held the defendant's motion to suppress was denied because their rights were not violated, as they were passengers in the car who did not own the items found in the glove compartment. Id. at 50.

In the present case, Ms. Austin was not a passenger, nor did she lack a possessory interest in the rental car, and the personal items within it. In fact, she had been the only person using the rental car for the duration of the rental and had rented cars through Ms. Lloyds YOUBER app many times before. This is very much unlike being a passenger in *Rakas* but similar to the facts set forth in *Jones v. United States*, 362 U.S. 257 (1960). In J*ones*, a friend had given the defendant permission to use his apartment while he was out of town and given him a key to access. *Id.* at 259. Jones had kept clothes at the apartment but had not paid anything to stay there. *Id.* Recognizing the difference between wrongful presence and consent to use premises, the Court in *Jones* reasoned that there is "no just interest of the Government in the effective and rigorous enforcement of the criminal law will be hampered by recognizing that anyone legitimately on premises where a search occurs may challenge its legality by way of motion to suppress, when its fruits are proposed to be used against him." *Id.* at 259. Analogous to the case at hand, and the testimony given by Ms. Lloyd, Ms. Austin had a possessory interest in the rental car being searched, and despite not being the authorized user on the rental agreement, had been given consent

to use Ms. Lloyd's information previously. R. 20. Ms. Lloyd never expressly prohibited Ms. Austin from using her YOUBER app, nor did she take the necessary steps to ensure she was not using it. *Id.*

For this Court to find that Ms. Austin did not have a legitimate property interest in her personal effects located within the rental car simply because she was not listed on the agreement would open the door for serious Fourth Amendment violations to anyone who drives a rental car that someone else payed for. This position would discourage driving a rental car not authorized to you, if the authorized user is drowsy or inebriated.

B. Ms. Austin had a reasonable expectation of privacy in the rental vehicle.

Courts have set forth a two-part analysis to protect against unreasonable searches and seizures as follows: (1) a person have exhibited an actual (subjective) expectation of privacy and, (2) that the expectation be one that society is prepared to recognize as 'reasonable.' *Katz*, 389 U.S. at 361. Courts have since held that as a general rule, someone who is in otherwise lawful possession and control of a rental car had a reasonable expectation of privacy in it even though the rental agreement did not list him or her as an authorized driver". *Byrd*, 138 S.Ct. at 1524. In the present case, Ms. Austin exhibited an actual expectation of privacy and that expectation is one that society is ready to recognize as reasonable.

In *Byrd*, Terrance Byrd was driving a vehicle rented by Latasha Reed when the police conducted an unlawful search after a traffic stop. *Id.* at 1521. When Reed was filling out the rental agreement, Reed she listed no additional drivers on the form, but she gave the keys directly to Byrd upon exiting the building. *Id*. Byrd was later stopped by a trooper who stated that he did not need Byrd's consent to search the car since he was not listed on the rental agreement as an authorized driver, although he had been using the trunk to store his personal affects. *Id*. at 1523.

The Court reasoned that although Byrd was not an authorized user of the rental car on the rental agreement, he was entitled to a reasonable expectation of privacy. *Id.* Therefore, the Court found that not being an authorized user on the rental agreement did not bar Byrd from having a reasonable expectation of privacy. *Id.*

Second, the Court in *Katz* stressed the importance of the Fourth Amendment freedom from unreasonable searches and seizures in location other than homes by stating, "[t]hese considerations do not vanish when the search in question is transferred from the setting of a home, an office, or a hotel room to that of a telephone booth. *Katz*, 389 U.S. at 359. Additionally, the Court states wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures. *Id.* In *Katz*, wiretapping a public telephone booth to listen to phone conversations was an unreasonable search and seizure under the Fourth Amendment. *Id*. at 358. The Court determined that despite being in a public place, Mr. Katz did not seek to exclude the intruding eye of the public, but the uninvited ear. *Id.* at 352. The Court went on to reason, that despite being visible, one who occupies [the telephone booth] shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world. *Id*. at 352.

In the present case, just as Katz has a reasonable expectation of privacy within the public phone booth, Ms. Austin had a reasonable expectation of privacy in the rental car. This can be shown through the personal effects she stored, which included her bedding, pillow, clothing, food, as well as a cooler with tofu, kale and homemade kombucha and even a collection of records. R. 3. This can even be seen through the notation in Officer Kreuzberger's report. *Id*. He noted that he thought the rental car had been "lived in". *Id.* Additionally, Ms. Austin used the rental vehicle to

store her personal effects, as she did not have a home to keep her personal effects as she traveled place to place. R. 1.

Further, Ms. Austin's expectation of privacy within the rental car, is one that society is prepared to recognize as reasonable. As stated earlier, finding that an unauthorized user of a rental car does not have a reasonable expectation of privacy would run contrary to public policy, which includes everyone who volunteers to drive a friend home who is overly tired, or even inebriated.

Therefore, because Ms. Austin had a possessory interest in the rental vehicle, a legitimate property interest in her personal effects searched, and a reasonable expectation of privacy, this Court should find that Ms. Austin's motion to suppress shall be granted.

III. THE LOWER COURTS IMPROPERLY DENIED MS. JANE AUSTIN'S MOTION TO SUPPRESS ALL EVIDENCE THAT WAS IMPROPERLY SEIZED DURING AN UNCONSTITUTIONAL SEARCH OF MS. AUSTIN'S GPS LOCATION.

The protection against unlawful searches and seizures is an integral part of this society since the founding of the United States of America. This case centers around a citizen, Ms. Austin, who utilizes her first amendment right of free speech through poetry and blogging. As part of her free-spirited lifestyle, Ms. Austin supports YOUBER, an environmentally friendly ride-share cell-phone application. It is through YOUBER that Ms. Austin's Fourth Amendment right was violated.

The Fourth Amendment guarantees "the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. Protecting people themselves, not just places, the Fourth Amendment asserts, "what [an individual] seeks to preserve as private, even in areas accessible to the public, may be constitutionally protected." *Katz*, 389 U.S. at 351 (Harlan concurring). "A majority of [The Supreme Court] has

already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements." *Carpenter v. United States*, 138 S. Ct. 2206, 2218 (2018).

The Supreme Court consistently emphasizes an individual's reasonable expectation of privacy. *Katz*, 389 U.S. at 356. Two issues intertwine when cell phone location records are at hand. First, a person's expectations of privacy in location. *See, e.g., Jones,* 565 U.S. at 132. To determine whether police trespassed on a person's expectation of privacy in location, a court must determine whether the area searched was constitutionally protected and then determine whether the government trespassed on that area. *Id.* at 405. The second issue for cell phone location records is what a person's expectation of privacy is regarding information voluntarily given to third party. *See United States v. Miller,* 425 U.S. 435, 96 S.Ct. 1619. Cell phone location records are protected by the Fourth Amendment and third-party doctrine does not extend to those records. *Carpenter,* 138 S. Ct. at 2217.

Ms. Austin's cell phone location record data is protected by the Fourth Amendment. It is reasonable that the Fourth Amendment would stretch to encompass cell phone location data. It is unreasonable that any person who utilizes cell phone applications would expect that they were voluntarily giving a third-party access to the person's everyday movements. Therefore, Ms. Austin's cell phone location record data is protected by the Fourth Amendment. Ms. Austin respectfully asks the Court to reverse the lower court's decision and suppress all evidence obtained during the unconstitutional search of Ms. Austin's cell phone location record data.

A. Ms. Austin had a reasonable expectation of privacy in her cell phone location record data and law enforcement officers unconstitutionally trespassed by not obtaining a warrant with probable cause.

A large majority of citizens in the United States of America have and use cell phones in their everyday life. Thirty-six percent of adults in the United States have used ride-hailing

services.[1] The courts have recently stated that individuals have an expectation of privacy in their movements. *Jones*, 566 U.S. at 404. Ms. Austin, like many people her age, utilize ride-sharing smartphone application for environmental reasons.

Although Fourth Amendment protections span a wide berth, the Supreme Court has followed two basic guidelines. *Carpenter*, 138 S. Ct. at 2214. First, the amendment is used to secure private life from arbitrary power, and second, to place barriers in between private citizens and the police. *Id.* As technology advances, so must the reach of the Fourth Amendment protections.

The Fourth Amendment protects people, not places. *Katz,* 389 U.S. at 351. To determine the reasonableness of a warrantless search, courts look at a two-part reasonableness requirement outlined by *Katz*; "[F]irst, that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" *Id.* at 361. When there is an official invasion into private life, there is a need for a warrant that is supported by probable cause. *Smith v. Maryland*, 442 U.S. 735, 740, 99 S.Ct. 2477 (1979).

The Fourth Amendment embodies a particular concern for Government trespass upon constitutionally protected areas. In an effort to further capture Fourth Amendment protections, the Supreme Court devised an additional two-step test to discern trespass. *Jones,* 565 U.S. at 407. First, a court must determine whether the item or area searched is constitutionally protected. *Id.* Second, a court must determine whether the Government trespassed. *Id. Jones* played an important role in reinforcing the original meaning of the Fourth Amendment: a search is unreasonable when the Government trespasses on a constitutionally protected area or item. *Id.* at 412.

[1] More Americans are Using Ride-Hailing Apps, https://www.pewresearch.org/fact-tank/2019/01/04/more-americans-are-using-ride-hailing-apps/ (Last visited September 15, 2019).

New technology presents even greater privacy concerns then those originally thought of by the Supreme Court at the time of the Founding Fathers. *Carpenter,* 138 S.Ct. 2206, 2215. In *Carpenter,* the court held that a person has a reasonable expectation of privacy to his or her cell phone location records. *Id.* at 2214. The defendant in *Carpenter* was convicted through a warrantless search of his historical cell phone location records. *Id.* at 2212. The court found that society had an expectation that government agencies would not be able to secretly monitor individuals using cell phone records. *Id.* at 2217. The court ruled that unfettered access to a person's cell phone record data was deeply revealing to a person's life and should be protected under the fourth amendment. *Id.* at 2223.

This court should follow the ruling of *Carpenter,* rather than the ruling by the lower courts in this case. Ms. Austin had a reasonable expectation that her cell phone data record would be secure from police interference without the police first obtaining a warrant showing probable cause. "Society's expectation has been that law enforcements agents and others would not – and indeed, in the main, simply could not – secretly monitor and catalogue every single movement of an individual's car for a very long period." *Jones,* 565 U.S. at 430. Therefore, the police officers in this case trespassed on to a constitutionally protected area without the proper warning. This court should hold that Ms. Austin's cell phone location record data is protected under the Fourth Amendment against unreasonable searches and seizures.

B. Ms. Austin's cell phone location record data that is stored with the phone application "YOUBER" is not obtainable under the third-party doctrine and the cell phone location record data is protected under the Fourth Amendment.

The Supreme Court made the conscious decision to shift Fourth Amendment protections alongside the shifts in digital technology. *Id.* at 2219. Third-party doctrine is antiquated when set against the technology of today. With the advent of the cell phone and cell phone applications,

third-party doctrine leaves the cell phone user vulnerable to widespread and persuasive monitoring without probable cause. *Id.* Therefore, Ms. Austin's cell phone location record data stored by YOUBER cannot be obtained without a warrant showing probable cause and does not fall under the bounds of the third-party doctrine.

Diminished privacy interest does not negate protections of the Fourth Amendment. *Riley v. California*, 573 U.S. 373, 392, 134 S. Ct. 2473, 2488 (2014). Third-party party doctrine relies on the theory that an individual who voluntarily and knowingly share his or her information with a third-party has a reduced expectation of privacy in the information shared. *Carpenter*, 138 S. Ct. at 2219. Only by examining the nature of the information shared with the third party can a court determine what privacy expectations exist. *Miller*, 425 U.S. at 442. Cell phone and cell phone applications such as YOUBER are a necessary part of daily modern life. *Carpenter*, 138 S. Ct. at 2220. Fourth Amendment protection in the case of a cell phone location data history outweighs the reach of the third-party doctrine.

The documented information gathered by YOUBER of Ms. Austin's cell phone location data without a proper warrant was an unconstitutional search under the Fourth Amendment. The third-party doctrine does not apply to information location data gathered by a cell phone application company. Ms. Austin's cell phone location data distributed to YOUBER are protected under Fourth Amendment.

CONCLUSION

For the foregoing reasons, the lower court's decision to deny both of Ms. Austin's motions to suppress evidence should be reversed because the evidence was obtained during unconstitutional searches of Ms. Austin's rental car and cell phone location data provided by YOUBER under the Fourth Amendment.