

Docket No. 4-422

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 2019

JAYNE AUSTIN,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

TABLE OF CONTENTS

ISSUES PRESENTED..... vi

STATEMENT OF FACTS 1

SUMMARY OF THE ARGUMENT 3

STANDARD OF REVIEW 5

ARGUMENT 6

 I. Austin cannot challenge the search of the rental car because she lacked a legitimate expectation of privacy in the rental car..... 6

 A. After *Byrd*, Austin must still demonstrate she had permission from someone legitimately connected to the car in order to prove standing. 7

 1. Permission was essential to finding the driver in *Byrd* had a legitimate expectation of privacy..... 7

 2. The Court did not drastically expand Fourth Amendment protections in *Byrd*. 10

 B. Austin did not meet her burden of proof to establish standing in the *YOUBER*..... 12

 C. Austin did not have a legitimate expectation of privacy in the rental car under the reasonable expectation of privacy test. 13

 1. Austin did not have a subjective expectation of privacy in the *YOUBER*. 13

 2. Even if Austin did have a subjective expectation of privacy it is not one that society recognizes as reasonable. 14

 D. Austin also lacked a sufficient property-based interest in the rental car to give her a legitimate expectation of privacy in the car. 17

 E. Austin did not have a legitimate expectation of privacy in the items she stored in the rental car’s trunk. 18

 II. This Court should affirm the Thirteenth Circuit because the government complied with Austin’s Fourth Amendment right and did not conduct a search as there was no reasonable expectation of privacy in *YOUBER*’s location data. 19

A. Because there is no reasonable expectation of privacy in YOUNBER’s rental car’s limited location data, the government receiving the location data is not a search under the Fourth Amendment.	19
1. Receiving the limited location data of YOUNBER’s rental car during Austin’s six bank robberies falls short of more extreme, continuous GPS tracking and is not a search under the Fourth Amendment.	20
2. Receipt of YOUNBER’s limited location data falls within the scope of the prevailing third party doctrine set by this Court and reinforced by Circuit Courts.	21
i. Affirmance is consistent with this Court’s third party doctrine.	21
ii. Affirmance is consistent with Circuit Courts’ third party doctrine.	23
B. Even if Austin had a subjective reasonable expectation of privacy in YOUNBER’s location data, her claimed expectation of privacy is objectively unreasonable.	24
CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases

Anderson v. Gouldberg, 53 N.W. 636 (Minn. 1892) 17

Byrd v. United States, 138 S. Ct. 1518 (2018)..... passim

Carpenter v. United States, 138 S. Ct. 2206 (2018) 19, 20, 23

Concrete Pipe & Prods. v. Constr. Laborers Pension Tr., 508 U.S. 602 (1993)..... 5

Florida v. Jardines, 569 U.S. 1 (2013)..... 6, 17

Florida v. Jimeno, 500 U.S. 248 (1991) 19

Jones v. United States, 362 U.S. 257 (1960) 8, 9

Katz v. United States, 389 U.S. 347 (1967) 6, 20, 24

Klee v. United States, 53 F.2d 58 (9th Cir. 1931)..... 16, 18

Minnesota v. Carter, 525 U.S. 83 (1998) 14

Minnesota v. Olson, 495 U.S. 91 (1990)..... 6, 8

Motor Vehicle Acc. Indem. Corp. v. Continental Nat’l Am. Grp. Co., 319 N.E.2d 182 (N.Y. 1974) 15

Odd Fellows' Hall Ass'n v. McAllister, 26 N.E. 862 (Mass. 1891) 17

Parker v. State, 182 S.W.3d 923 (Tex. Crim. App. 2006)..... 10, 13

People v. Hennenberg, 302 N.E.2d 27 (Ill. 1973) 18

People v. Sotelo, 336 P.3d 188 (Colo. 2014)..... 18

Rakas v. Illinois, 439 U.S. 128 (1978)..... passim

<i>Rawlings v. Kentucky</i> , 448 U.S. 98 (1980)	12, 14
<i>Simmons v. United States</i> , 390 U.S. 377 (1968)	12
<i>Smith v. Maryland</i> , 442 U.S. 735 (1979)	passim
<i>State v. Bass</i> , 300 P.3d 1193 (Okla. Crim. App. 2013)	10
<i>State v. Van Dang</i> , 120 P.3d 830 (N.M. 2005)	10
<i>United States v. Amaral-Estrada</i> , 509 F.3d 820 (7th Cir. 2007)	14
<i>United States v. Best</i> , 135 F.3d 1223 (8th Cir. 1998)	10
<i>United States v. Buchner</i> , 7 F.3d 1149 (5th Cir. 1993).....	18
<i>United States v. Cortez-Dutrieuille</i> , 743 F.3d 881 (3d Cir. 2014)	11
<i>United States v. Edwards</i> , 632 F.3d 633 (10th Cir. 2001)	18, 19
<i>United States v. Hargrove</i> , 647 F.2d 411 (4th Cir. 1981).....	18
<i>United States v. Hernandez</i> , 647 F.3d 216 (5th Cir. 2011).....	5, 9
<i>United States v. Jones</i> , 565 U.S. 400 (2012)	6
<i>United States v. Kennedy</i> , 638 F.3d 159 (3d Cir. 2011)	7
<i>United States v. Lyle</i> , 919 F.3d 716 (2d Cir. 2019)	11
<i>United States v. Maxwell</i> , 778 F.3d 719 (8th Cir. 2015)	12
<i>United States v. McRae</i> , 156 F.3d 708 (6th Cir. 1998).....	16
<i>United States v. Miller</i> , 425 U.S. 435 (1976).....	22
<i>United States v. Muhammad</i> , 58 F.3d 353 (8th Cir. 1995)	12

<i>United States v. Portillo</i> , 633 F.2d 1313 (9th Cir. 1980).....	11
<i>United States v. Thomas</i> , 447 F.3d 1191 (9th Cir. 2006).....	passim
<i>United States v. Walker</i> , 237 F.3d 845 (6th Cir. 2001).....	23
<i>United States v. Wellons</i> , 32 F.3d 117 (4th Cir. 1994)	18
<i>United States v. Worthon</i> , 520 F.3d 1173 (10th Cir. 2008)	18
<i>Virginia v. Moore</i> , 553 U.S. 164 (2008).....	11
Constitutional Provisions	
U.S. CONST. amend. IV.....	6, 19
Other Authorities	
8 C.J.S. Bailments, § 18.....	9
Restatement (Second) of Torts, § 171.....	16
Restatement (Second) of Torts, § 214.....	16
Restatement (Second) of Torts, § 222.....	17
Restatement (Second) of Torts, § 256.....	18
Tracey Maclin, <i>Byrd v United States: Unauthorized Drivers of Rental Cars Have Fourth Amendment Rights? Not as Evident as it Seems</i> , No. 19-1 Boston University School of Law, Public Law and Legal Theory Research Paper (2019).	9

ISSUES PRESENTED

1. The Fourth Amendment protects people with a legitimate expectation of privacy from unreasonable searches and seizures of their property. Austin rented and paid for a YOUNBER vehicle under the name of her former partner, Martha Lloyd. Austin did not have Lloyd's express permission to do either. Did the Thirteenth Circuit correctly hold that Austin lacked standing to contest the search of the YOUNBER rented under Lloyd's account when she was unable to demonstrate she had permission from Lloyd to rent the car?

2. This Court's precedent states if the individual lacks a subjectively reasonable, objectively legitimate expectation of privacy in the information, it is not a Fourth Amendment Search. Pursuant to the third party doctrine the government received YOUNBER location data limited to the six bank robberies associated with the temporary, pay-by-the-hour YOUNBER that was driven by Austin, inspected daily by YOUNBER employees, and available to rent by a limitless number of people. Did the Thirteenth Circuit correctly hold the government did not conduct a Fourth Amendment search of the YOUNBER's data and correctly deny Austin's motion to suppress?

STATEMENT OF FACTS

Traffic Stop Due to Austin's Failure to Stop at a Stop Sign

Officer Kreuzberger stopped the YOUBER rental car Ms. Austin was driving after he observed her commit a traffic infraction. R. at. 2. After asking for her license and car insurance, Austin presented the Officer with a cell phone application called YOUBER. R. at 2. The parties concede Austin consented to a search of her phone by the Officer. R. at 31. Upon noticing the YOUBER app account on Austin's phone was registered under a different individual's name, the Officer examined the car and located a modified BB gun modeled after a .45 caliber handgun, a duffel bag containing \$50,000 USD, blue dye packs, and a maroon ski mask. R. at 3.

Dispatch's Lookout Call for Bank Robbery Suspect in a YOUBER Car

During the traffic stop, the Officer received a dispatch to look out for a bank robbery suspect with a .45 caliber handgun and maroon ski mask. R. at 3. Dispatch explained the bank surveillance camera captured footage of the suspect driving a 2017 Black Toyota Prius with a YOUBER logo and partial license plate "R0L". R. at 3. The Officer was then examining a 2017 Black Toyota Prius, license plate "R0LL3M", with a YOUBER logo. R. at 2. Based on the traffic violation, the information from the dispatch, and items found in the YOUBER, the Officer arrested Austin under suspicion of bank robbery. R. at. 3.

Austin's Past Relationship with YOUBER Account User Ms. Martha Lloyd

Austin explained she uses Martha Lloyd's, her former partner's, YOUBER account to rent the YOUBERs. R. at 2. Austin received Ms. Lloyd's YOUBER login information while they were dating, and Austin would use Ms. Lloyd's credit card and reimburse Ms. Lloyd in cash. R. at 18. Her former partner testified she and Austin were on a break and had not seen each other during the months leading up to Austin's arrest. R. at 18.

Ms. Lloyd testified she had not given Austin permission to continue to use Ms. Lloyd's YOUNBER account and that she told Austin she was trying to distance herself from her. R. at 19-20. YOUNBER's terms and conditions, agreed to by YOUNBER customers, explain it automatically collects and stores location information, every two minutes, from the car via GPS and Bluetooth. R. at 29-30. YOUNBERs are rented by the hour, limited to one week or 500 miles. R. at 2.

YOUNBER Subpoena Resulting in Austin's Indictment for Six Bank Robberies

The investigating officer served a subpoena duces tecum on YOUNBER specifying the three-month timespan of the six bank robberies in order to obtain YOUNBER's records of the GPS and associated Bluetooth data for the YOUNBER account associated with Austin's former partner. R. at 3. Officers discovered Ms. Lloyd's account had at least six separate UBER rentals in the locations and at the times of each of the robberies. R. at 4. Investigators also found Austin's public blog posts and poems which disavowed property interests. R. at 26-27.

District Court and Thirteenth Court of Appeals Opinions

The District Court held an evidentiary hearing in which Austin did not testify. R. at 1-30. Based on Austin's lack of standing because she lacked a legitimate property interest in the YOUNBER, the court denied Petitioner's motion to suppress evidence obtained during the search of the YOUNBER. R. at 6, 8. The District Court also denied the motion to suppress the YOUNBER car's location data based on a lack of Fourth Amendment privacy infringement. R. at 8.

The Thirteenth Circuit affirmed the district court's denial of the motion to suppress evidence based on a lack of standing due to fraud and illegality. R. at 12. The Thirteenth Circuit also affirmed the district court's denial of the motion to suppress the receipt of YOUNBER's car's location's data because Austin had no reasonable expectation of privacy, nor property interest, in the YOUNBER's location data. R. at 15.

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit correctly held Austin lacked standing to assert a Fourth Amendment interest in the rental car she was driving and correctly held the collection of limited location data from a rental car did not constitute a search under the Fourth Amendment.

Austin lacks Fourth Amendment standing in her former partner's rental car

Austin lacked the legitimate connection to the rental car she was driving needed to form an expectation of privacy protected by the Fourth Amendment. Society would not recognize Austin's possession of the car as reasonable because of the tenuous relationship with her former partner and YOUNBER's terms and conditions. First, Austin used the YOUNBER account of her former partner (Ms. Lloyd), she had not spoken with Lloyd over three months, and nevertheless Austin continued to use Lloyd's credit card. Second, the temporary nature of a YOUNBER rental cuts against Austin's claim. A YOUNBER rental is paid for by the hour, its rental terms are restrictive, and YOUNBER employees check on the rented vehicles one time a day. Austin did not have a legitimate expectation of privacy while these YOUNBER vehicles to engage in criminal activity.

Under this Court's decision in *Byrd*, Austin must still demonstrate permission to establish her expectation of privacy. In *Byrd*, the unlisted driver would have been in unlawful or otherwise wrongful possession of the car he was driving if he lacked permission from the renter. But here, not only did Austin lack Lloyd's permission, she also failed to meet her burden of proof to establish standing. She did not prove a subjective expectation of privacy. Nor did she prove the expectation was objectively reasonable, as demonstrated by Lloyd's testimony.

While traditional notions of property rights *can* also establish standing in easy cases, they cannot help Austin. Under common law property rights, the right to exclude extends to people in unlawful or wrongful possession. However, under the Fourth Amendment, unlawful or otherwise

wrongful possessors do not have a right to exclude. Austin's possession here was too wrongful and unreasonable for notions of property law to grant her standing. Furthermore, Austin lacked an expectation of privacy in the items found inside the car's trunk. Because no evidence indicated the items were locked, sealed, or in closed containers, her standing to contest the search of those items must fail.

Austin does not have a Fourth Amendment privacy claim in the rental car's data

The Fourth Amendment does not protect Austin from *reasonable* collections of commercial data. Because Austin did not have a subjectively reasonable expectation of privacy, nor objectively, in the YOUNBER rental car's location data, the government's conduct did not constitute a search under the Fourth Amendment. This Court's third party doctrine precedent set by *Miller* and *Smith* demonstrate Austin did not have a subjectively reasonable expectation of privacy in the YOUNBER's location data. Unlike the Court's decision in *Carpenter*, the YOUNBER data collected does not rise to the level of precise and continuous smartphone tracking that case hinged on. The data in this case came from a temporary, pay-by-the-hour YOUNBER car rental that was not registered in Austin's name, and could have been rented by anyone at any time. Furthermore, Austin agreed to daily monitoring by YOUNBER employees consistent with the YOUNBER terms and conditions.

Because Austin does not have standing to assert a Fourth Amendment claim, and the government did not conduct a Fourth Amendment search, this Court should affirm the Thirteenth Circuit's denial of both motions to suppress.

STANDARD OF REVIEW

On appeal of a motion to suppress, the district court’s legal conclusions are reviewed de novo. *See e.g., United States v. Thomas*, 447 F.3d 1191, 1196, n. 7 (9th Cir. 2006). The findings of fact are reviewed for clear error in the light most favorable to prevailing party, which in this case is the Government. *See United States v. Hernandez*, 647 F.3d 216, 218 (5th Cir. 2011). The findings may be affirmed “on any basis established in the record.” *Id.* Generally a district court’s findings of fact are “clearly erroneous” only if the court “is left with the definite and firm conviction that a mistake has been committed.” *Concrete Pipe & Prods. v. Constr. Laborers Pension Tr.*, 508 U.S. 602, 622 (1993).

ARGUMENT

I. Austin cannot challenge the search of the rental car because she lacked a legitimate expectation of privacy in the rental car.

The decision to deny Austin’s motion to suppress evidence obtained after searching her car should be affirmed because the YOUBER driven by Austin was not unreasonably searched and seized in violation of the Fourth Amendment. The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures of their “persons, houses, papers, and effects.” U.S. CONST. amend. IV. That protection allows a defendant to move the Court to exclude evidence obtained in violation of the rights afforded by the Fourth Amendment. *See Katz v. United States*, 389 U.S. 347, 357 (1967). A car is generally an “effect” for purposes of the Fourth Amendment. *See United States v. Jones*, 565 U.S. 400, 404 (2012). But this Court also requires the defendant to demonstrate “a cognizable Fourth Amendment interest in the [effect] searched before seeking relief for an unconstitutional search.” *Byrd v. United States*, 138 S. Ct. 1518, 1530 (2018). This required interest is also known as “standing.”¹

To assert standing Austin must demonstrate a legitimate expectation of privacy in whatever was searched. *Id.* at 1526. Austin has a legitimate expectation of privacy if she can demonstrate she had a subjective expectation of privacy, and her expectation was “one that society is prepared to recognize as reasonable.” *See Minnesota v. Olson*, 495 U.S. 91, 95-96 (1990). But sometimes, in “easy cases” such as “when the government gains evidence by physically intruding on” the curtilage of a home, the court may also look to “traditional property-based understanding[s]” to find standing. *Florida v. Jardines*, 569 U.S. 1, 11 (2013). This case, involving possession of a car

¹ This brief will use ‘standing’ as a “useful shorthand,” but its use should not be confused with Article III standing.” *See id.* at 1530.

rented under another person’s name—without their knowledge or permission—using a ride-sharing application accessed through a smartphone, is not one of those “easy cases.”

A. After *Byrd*, Austin must still demonstrate she had permission from someone legitimately connected to the car in order to prove standing.

In *Byrd v. United States*, this Court held that the driver of a car he did not own may still have a legitimate expectation of privacy in that car so long as he could demonstrate he was in lawful, and not wrongful, possession and control of the vehicle, and that his expectation of privacy in that car was reasonable. 138 S. Ct. at 1531. Under *Byrd*, Austin did not demonstrate standing to contest the search of the YOUBER rental car because she was in wrongful, and not lawful, possession of the YOUBER, and the expectation of privacy she claimed was not reasonable.

Austin’s claim here would have been dismissed in most circuits prior to *Byrd* simply because she was driving a vehicle rented in another person’s name. *See e.g., United States v. Kennedy*, 638 F.3d 159, 165 (3d Cir. 2011). This Court changed that in *Byrd*. *See Byrd*, 138 S. Ct. at 1526 (acknowledging conflict in the circuit courts). Now, the “mere fact that a driver . . . of a rental car is not listed on the rental agreement will not defeat his or her *otherwise reasonable* expectation of privacy.” *Id.* at 1541 (emphasis added). “Central to the inquiry” is not only whether that unlisted driver has a reasonable expectation of privacy, but also whether that driver is in “lawful possession and control” of the vehicle, and not wrongfully present. *Id.* at 1529. A thief does not have standing to contest the search of a stolen car. *Id.* at 1530.

1. Permission was essential to finding the driver in *Byrd* had a legitimate expectation of privacy.

The defendant’s unauthorized use of a rental car in *Byrd* was only lawful, and entitled to Fourth Amendment protection, because he had express permission from the renter to drive the car. *See id.* at 1524. In *Byrd*, the defendant and the renter drove together in the defendant’s car to the

rental company. *Id.* The defendant remained in his car, while the renter “went to the [rental company] desk and rented” a car. *Id.* Then, “with the rental keys in hand, [the renter] returned to the parking lot” and exchanged keys with the defendant. *Id.* The defendant drove off in the rental car and the renter drove off in the defendant’s car. *Id.* Not only did the Government concede these facts, but they used them to argue that the defendant and the renter intentionally and fraudulently schemed the rental company. *Id.* at 1530.

To find legitimacy in the *Byrd* defendant’s expectation of privacy this Court compared him to the defendant in *Jones v. United States*. *Id.* at 1528; *Jones v. United States*, 362 U.S. 257 (1960). In *Jones*, the defendant’s reasonable expectation of privacy in his friend’s apartment apparently stemmed from his “complete dominion and control over the apartment,” and his ability to “exclude others from it.” *Byrd*, 138 S. Ct. at 1528 (citing *Rakas v. Illinois*, 439 U.S. 128, 149 (1978)). But he only had those rights because his friend “permitted [him] to use [the apartment] in his absence.” *Id.* Without that permission, the defendant “by virtue of [his] wrongful presence,” could not have “invoke[d] the privacy of the premises searched.” *Jones*, 362 U.S. at 267. The same is true of the defendants in *Minnesota v. Olson*, 495 U.S. 91 (1990) and *United States v. Jones*,² two other cases where this Court held standing existed for a non-owner. In *Olson*, the person’s “status as an overnight *guest* [was] alone enough to show that he had an expectation of privacy” in the home. *Olson*, 495 U.S. at 96-97 (emphasis added). The weakness of his “dominion and control over the apartment” and his lacking right to exclude did not undermine his standing. *Id.* at 98.

In *Jones*, the defendant’s Fourth Amendment rights were violated when the Government physically intruded on his wife’s car by placing a small tracking device underneath it. 565 U.S. at

² *Jones v. United States*, from 1960, should not be confused with *United States v. Jones*, from 2012.

403. The defendant in *Jones* had standing because he “was the exclusive driver” of his wife’s car and the Government trespassed on her car after he began using it. *Id.* at 404 (leaving open the possibility of a different outcome had the device been placed on the car before the defendant possessed the car); *See Hernandez*, 647 F.3d at 220-21 (5th Cir. 2011) (defendant lacked standing to object when GPS device was placed on vehicle before he was in possession). Essentially, even if the defendant “was not the owner he had at least the property rights of a bailee.”³ At common law a bailment consisted of, among other things, “the delivery of personal property *from one person to another* for a specific purpose . . . and a *mutuality* of duty or obligation.” 8 C.J.S. Bailments, § 18 (emphasis added). In *Jones*, the Government did not contest the defendant and his wife had a bailor-bailee relationship.

Permission from the owner (*Jones*) or renter (*Olson*) was critical to finding standing in both of those cases. But this Court found standing in *Byrd* without specifically mentioning the defendant “had his partner’s permission to drive the car.” Tracey Maclin, *Byrd v United States: Unauthorized Drivers of Rental Cars Have Fourth Amendment Rights? Not as Evident as it Seems*, No. 19-1 Boston University School of Law, Public Law and Legal Theory Research Paper (2019), at 22. The Court focused instead on lawful possession and control. *See Byrd*, 138 S. Ct. at 1529. The argument, however, that permission is no longer relevant would mean this Court’s decision greatly expanded existing Fourth Amendment coverage in even the most defendant-friendly circuits. *See e.g., Thomas*, 447 F.3d at 1196-1199 (9th Cir. 2006) (requiring permission); *United*

³ The property rights of a bailee were protected at common law. *See* Brief for the Pet. at 44, *Byrd v. United States*, 138 S. Ct. 1518 (2018) (No. 16-1371) (citing 2 William Blackstone, *Commentaries* *452-53) (a bailee has “a special qualified property transferred from the bailor . . . together with the possession” and that “on account of this qualified property of the bailee, he may . . . maintain an action . . . against any stranger or third person” that may injure or take away these chattels”).

States v. Best, 135 F.3d 1223, 1225 (8th Cir. 1998) (same). A better understanding is that this Court did not mention permission because it has already “rejected the argument that legitimate presence alone [is] sufficient to assert a Fourth Amendment interest.” *Byrd*, 138 S. Ct. at 1528 (citing *Rakas*, 439 U.S. at 150). Permission from the authorized renter in *Byrd*, though not specifically mentioned, was not irrelevant. Rather it was essential to the finding of standing because it was what made the defendant’s possession lawful.

**2. The Court did not drastically expand Fourth Amendment
protections in *Byrd*.**

Arguing the Court ignored permissive use would also mean that the decision in *Byrd* ruled so strongly in favor of Austin that it gave him more than he even asked for. Brief for the Pet. at 2, *Byrd v. United States*, 138 S. Ct. 1518 (2018) (No. 16-1371) (arguing standing because defendant had possession and control with renter’s permission and he was not a thief); Transcript of Oral Argument at 3-5, *Byrd*, 138 S. Ct. 1518 (2018) (Counsel emphasized the importance of the renter’s permission and acknowledged *Byrd* would lose without it.). But the Court described the holding in *Byrd* as a middle ground between the two parties’ arguments. *See Byrd*, 138 S. Ct. at 1527-28 (describing the Government’s rule as “too restrictive,” and the defendant’s rule as better, but needing qualification). Furthermore, every jurisdiction, where unauthorized drivers may contest searches of rental cars, require the driver to demonstrate permission from, or a legitimate connection to, the renter. *See e.g., Thomas*, 447 F.3d at 1196-1199; *Best*, 135 F.3d at 1225; *State v. Bass*, 300 P.3d 1193, 1195 (Okla. Crim. App. 2013); *Parker v. State*, 182 S.W.3d 923, 925 (Tex. Crim. App. 2006); *State v. Van Dang*, 120 P.3d 830, 834 (N.M. 2005).

There are other reasons why permission from the owner remains integral to the standing analysis. First, requiring that the unauthorized driver be in “lawful possession and control” of the rental car usually means permission is necessary, just not sufficient. Standing also requires the

driver to demonstrate he is legally licensed to drive. *United States v. Lyle*, 919 F.3d 716, 729 (2d Cir. 2019) (unauthorized and unlicensed driver still lacks standing after *Byrd*, even with permission from the renter); *See also United States v. Cortez-Dutrieville*, 743 F.3d 881, 884 (3d Cir. 2014) (The defendant had girlfriend’s permission to be at her house but lacked standing because he was violating a protective order by being there.). Second, demonstrating lawful possession and control of a car cannot solely require demonstrating compliance with laws of the relevant jurisdiction. The reasonability of searches and seizures under the Fourth Amendment does not turn on the meaning of state statutes. *Virginia v. Moore*, 553 U.S. 164, 171 (2008). And Fourth Amendment standing should not depend on the variety of state laws either. Additionally, this Court has used ‘lawful’ and ‘not wrongful’ both interchangeably and disjunctively. *Byrd*, 138 S. Ct. at 1531 (Thomas, J., concurring) (disjunctively); *Rakas*, 439 U.S. at 143, n.12 (interchangeably). Either ‘lawful’ means ‘not wrongful’ and encompasses more than mere legality, or ‘lawful’ and ‘not wrongful’ combine to cover possession that is “illegal or *otherwise* wrongful . . .” *Byrd*, 138 S. Ct. at 1531 (Thomas, J., concurring) (emphasis added).

Lastly, allowing the unauthorized driver to contest a search of a rental car so long as she is not possessing the car in violation of any law creates an absurd result because non-owner drivers of personal cars need adequate permission from the car’s owner to have standing. *See e.g., United States v. Portillo*, 633 F.2d 1313, 1317 (9th Cir. 1980). And, aside from not making sense, granting the unlisted driver of a rental car stronger Fourth Amendment protection than the borrower of a personal car would further incentivize those engaged in criminal activity to rent cars in order to avoid detection. *See e.g., Thomas*, 447 F.3d at 1194-1195 (9th Cir. 2006) (drug conspirators rented cars, often in names of others, to transport drugs).

B. Austin did not meet her burden of proof to establish standing in the YOUNBER.

Even if Austin claims she had implied permission from Ms. Lloyd to use her accounts, she failed to meet her burden of proving it. The “Petitioner, of course, bears the burden of *proving* . . . that [s]he had a legitimate expectation of privacy” in the YOUNBER. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980) (emphasis added). This burden generally requires the defendant to submit evidence of standing in a motion or at a hearing. *See e.g., United States v. Maxwell*, 778 F.3d 719, 732 (8th Cir. 2015). And that requirement is why a defendant’s testimony at a suppression hearing may not later be used against him at trial. *Simmons v. United States*, 390 U.S. 377, 394 (1968). Unlisted drivers commonly fail to demonstrate standing because they cannot carry their burden of proof showing they had permission from the renter. *See e.g. Thomas*, 447 F.3d at 1196; *United States v. Muhammad*, 58 F.3d 353 (8th Cir. 1995).

Here, Austin similarly failed to meet her burden to demonstrate “adequate permission” from Lloyd. Lloyd and Austin had not seen each other since September 2018. R. at 18. Lloyd wrote Austin one time between September 2018 and January 2019. R. at 19. Lloyd shared her login information with Austin when they were together. R. at 18. And Austin reimbursed Lloyd in cash whenever she used the card linked to Lloyd’s account. *Id.* Lloyd stated she had not given Austin permission to continue to usage of the accounts, including her YOUNBER account. R. at 19. On cross-examination, Lloyd acknowledged she never explicitly withdrew permission for Austin to use her accounts, but that she told her she was trying to distance herself from Austin. R. at 20. Police discovered at least six separate YOUNBER rentals Austin made using Lloyd’s account. R. at 4. Nothing in the record indicates Austin reimbursed Lloyd for any of those rental purchases.

Austin thus failed to establish that she had adequate permission to rent the YOUNBER on January 3, 2019, or that her purchases were lawful. She provided no evidence that Lloyd was aware

of the five preceding YOUNBER rentals or had otherwise given Austin permission to continued usage of Lloyd's YOUNBER and credit card accounts.

C. Austin did not have a legitimate expectation of privacy in the rental car under the reasonable expectation of privacy test.

Putting aside the issue of adequate permission, Austin still had no legitimate expectation of privacy in the YOUNBER. First, Austin expressly disavowed a property interest in the items that were searched. R. at 26-27. Second, society does not recognize the continued usage of a former partner's credit card and YOUNBER accounts three months after separating as reasonable. And third, Austin lacked sufficient property-based rights in the YOUNBER because of the suspect way in which she acquired the car. Lastly, because Austin does not have standing to contest the search of the car itself, she also lacks standing to contest a search of personal items found inside the car.

1. Austin did not have a subjective expectation of privacy in the YOUNBER.

For Austin to demonstrate standing she must first prove that she had a subjective expectation of privacy in the car. *See Parker*, 182 S.W.2d at 926 (citing *Smith v. Maryland*, 442 U.S. 735, 740 (1979)). The Court only begins to objectively examine that expectation once it finds the defendant had an actual expectation. *Id.* Here, Austin's own admissions demonstrate she lacked an actual and subjective expectation of privacy in her possessions. Austin wrote on November 28, 2019 that she claimed no property. R. at 26. Similarly, on December 14, 2019, Austin wrote that "property is NOTHING" and that "[o]wnership is NOTHING." R. at 27. True, Austin wrote these words before January 3, 2019, but she failed to overcome her own rejection of property rights by showing an actual expectation of privacy in the car on the relevant date. No evidence indicates she objected to the search; or claimed possession of any of the items in the car. The parties also stipulate that she consented to the officer's search of her smartphone. R. at 31.

Austin may counter that we should assume she had a subjective expectation of privacy here because she stored her items in the car she was driving. *See Rawlings*, 448 U.S. at 105. But even legitimate presence alone cannot confer standing when the defendant “d[oes] not claim that they had any legitimate expectation of privacy” in the area searched. *Byrd*, 138 S. Ct. at 1528 (citing *Rakas*, 439 U.S. at 150). And in *Rawlings*, this Court held that the defendant forfeited any claim to standing when he freely admitted having no privacy expectation in the effects searched. *See Rawlings*, 448 U.S. at 104-05.

Austin’s standing claim is also weakened by the temporary and restrictive nature of a YOUNBER rental. YOUNBER drivers rent the car by the hour. R. at 2. Their use is also limited both in time (one week) and distance (500 miles). *Id.* Additionally, YOUNBER employees regularly check on the cars one time a day. *Id.* When a non-owning defendant possesses a car for the purpose of committing crime with the knowledge that his use of the car is temporary and that others will regularly enter; he lacks an expectation of privacy in that car. *See United States v. Amaral-Estrada*, 509 F.3d 820, 827 (7th Cir. 2007). For these reasons Austin, at the very least, failed to demonstrate she had a subjective expectation of privacy in the YOUNBER. *See Rakas*, 439 U.S. at 150.

2. Even if Austin did have a subjective expectation of privacy it is not one that society recognizes as reasonable.

Austin’s expectation of privacy in the YOUNBER rental car was not objectively reasonable because she acquired the YOUNBER using the accounts of her former partner without her express permission. Austin did so without having spoken with her former partner for almost four months. R. at 18-19. A legitimate expectation of privacy must have “a source outside of the Fourth Amendment,” including by reference to property law or “understandings that are recognized and permitted by society.” *Minnesota v. Carter*, 525 U.S. 83, 88 (1998). Legitimate presence alone is not enough for standing because “it creates too broad a gauge for measurement of Fourth

Amendment rights.” *Rakas*, 439 U.S. at 142. But legitimate presence is still a relevant requirement for standing. *Id.* at 149.

In *Byrd*, the unauthorized driver’s use of the car was not illegitimate or wrongful because the contractual provisions he violated only concerned allocation of risk between private parties. *Byrd*, 138 S. Ct. at 1529. The rental company did not have a right to immediately terminate the contract or to repossess the car. *Id.* Furthermore, the provisions could have been violated for “innocuous” reasons that society would surely recognize as reasonable. *Id.* (imagining a tired renter asking his unauthorized-driver-friend to take the wheel). And the contract “include[d] prohibitions on driving . . . on unpaved roads or driving while using a handheld cellphone.” *Id.* Even the Government conceded violation of those provisions would not undermine one’s expectation of privacy in the car. *Id.* And, similarly, courts often refuse to enforce these no-unauthorized driver-provisions because they recognize the foreseeability that a renter will nonetheless permit an unlisted driver to use the rental car. *See e.g., Motor Vehicle Acc. Indem. Corp. v. Continental Nat’l Am. Grp. Co.*, 319 N.E.2d 182, 185 (N.Y. 1974).

Because the contract provisions violated “ha[d] little to do with” expectations of privacy, the Court treated the defendant in *Byrd* like anyone else driving another’s car with that person’s permission. *Id.* at 1529. But even counsel for *Byrd* conceded the situation would have been quite different if the defendant drove the car exceeding the renter’s permission, or the contract specified either that the unauthorized driver must consent to a police search of the car, or that the company could consent on that driver’s behalf. Transcript of Oral Argument at 8-10, *Byrd*, 138 S. Ct. 1518 (2018).

Driving the car without the permission of the renter would have been wrongful. And wrongful possession is not entitled to Fourth Amendment protection. *Rakas*, 439 U.S. at 141, n. 9.

Austin's use of the YOUNBER here was wrongful because she never requested permission to use Lloyd's private accounts. Though Austin wrote Lloyd letters, no evidence indicates she ever communicated her continued use of Lloyd's account, or reimbursed Lloyd for the purchases she made using the account. R. at 18-20. When Lloyd permitted Austin, then her partner, to use her YOUNBER and credit card accounts she did not give Austin infinite access for the duration of her life. Society would understand Lloyd's permission only extended for the duration of the relationship. Lloyd had the same understanding. R. at 20. When asked whether she withdrew the permission she once gave Austin to her accounts, she responded: "[w]ell, I told her I tried to distance myself from her" *Id.* Furthermore, Lloyd was not aware of Austin's continued use. *Id.* This case would be different if, for example, Austin had continued to reimburse Lloyd for the purchases or communicated to Lloyd about the usage in any way. In either of those scenarios, Austin would have a stronger case that she had Lloyd's implied permission until it was affirmatively withdrawn.

Austin's lack of a legitimate expectation of privacy is clearer if we consider an analogous situation. Imagine Austin, instead of access to the accounts, retained possession of a copy of Lloyd's housekey. Three months after separating and having neither spoken with nor seen each other, Austin enters Lloyd's residence when Lloyd is not home in order to engage in criminal activity. Say, maybe, packing drugs. *See Carter*, 525 U.S. at 85. Austin's claim to standing in this situation would be moot because her actions almost certainly amount to trespass at common law. *See* Restatement (Second) of Torts, §§ 171, 214. And trespassers cannot claim standing under the Fourth Amendment. *Klee v. United States*, 53 F.2d 58, 59 (9th Cir. 1931); *See United States v. McRae*, 156 F.3d 708, 711 (6th Cir. 1998) (no standing when living in, but not renting or owning, vacant apartment).

D. Austin also lacked a sufficient property-based interest in the rental car to give her a legitimate expectation of privacy in the car.

Austin did not have a sufficient property interest here to overcome the objective unreasonableness of her expectation of privacy in the YOUNBER. Generally, standing may be rooted in “concepts of real or personal property law.” *Byrd*, 138 S. Ct. at 1527. And the reasonable expectation of privacy test only “supplements, rather than displaces, the traditional property-based understanding of the Fourth Amendment.” *Id.* at 1526 (citing *Jardines*, 569 U.S. at 11). But this Court has also stated that “arcane distinctions developed in property and tort law . . . ought not to control” the scope of the Fourth Amendment’s protections. *Rakas*, 439 U.S. at 143, n. 12. Per traditional property law, one who “possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of the right to exclude.” *Id.* That same body of law would allow the possessor of an effect to exclude all others, except those having superior interests, without regard to how that person gained possession. *See e.g., Anderson v. Gouldberg*, 53 N.W. 636, 636 (Minn. 1892) (possession is good title against all the world except those having a better title); *See also Odd Fellows' Hall Ass'n v. McAllister*, 26 N.E. 862, 863 (Mass. 1891); Restatement (Second) of Torts, § 222. But the Fourth Amendment does not afford any protection to a person in wrongful or unlawful possession of property. *Byrd*, 138 S. Ct. at 1529. Therefore, just like a person’s legitimate presence alone is not enough for standing, a person’s right to exclude is insufficient when the person’s possession is wrongful, unlawful, or “otherwise [un]reasonable.” *Id.*

Here, Austin’s possession of the YOUNBER through her continued usage of Lloyd’s private accounts is too suspect for standing under the Fourth Amendment. Even assuming Austin could claim a right to exclude strangers or hijackers from the car, she wrongfully possessed the car by using Lloyd’s accounts without Lloyd’s permission. As a bailee of Lloyd’s YOUNBER and credit

card accounts, Austin would have still been liable for trespass to Lloyd for exceeding the scope of permissive use set out in the bailment. Restatement (Second) of Torts, § 256. And, as mentioned, a trespasser is not protected by the Fourth Amendment. *See Klee*, 53 F.2d at 59.

E. Austin did not have a legitimate expectation of privacy in the items she stored in the rental car's trunk.

Austin also lacks standing to contest the search of the items located in the car's trunk. Her possession of the car was not only wrongful, but her items were not kept in locked, sealed, or closed containers. Someone in unlawful or otherwise wrongful possession of a car lacks standing to contest the search of both the car and any items inside the car. *United States v. Hargrove*, 647 F.2d 411, 413 (4th Cir. 1981); *People v. Hennenberg*, 302 N.E.2d 27, 31 (Ill. 1973); *See also Byrd*, 138 S. Ct. at 1529. If, however, the Court finds that Austin's expectation of privacy in the car was not wrongful, but simply that she failed to meet her burden, this Court may need to address whether Austin has standing to contest the search of the items found inside the car's trunk. *People v. Sotelo*, 336 P.3d 188, 196 (Colo. 2014); *United States v. Edwards*, 632 F.3d 633, 642 (10th Cir. 2001); *United States v. Buchner*, 7 F.3d 1149, 1154 (5th Cir. 1993).

Generally, a person without a legitimate expectation of privacy in a car likewise has no legitimate expectation of privacy in items kept within that car. *See e.g., United States v. Wellons*, 32 F.3d 117, 119-20 (4th Cir. 1994). But some cases find defendants have standing to contest the search of locked, sealed, or closed containers the defendant secured inside the car. *See e.g., Sotelo*, 336 P.3d at 196. Those cases, however, are distinguishable from the facts here because nothing in the record indicates that any of Austin's items were kept in locked, sealed, or closed containers. R. at 3; *See United States v. Worthon*, 520 F.3d 1173, 1182 (10th Cir. 2008) (distinguishing from *Edwards* and finding no expectation of privacy in the property because it was in an unlocked duffel bag). Instead the record only establishes Austin kept the searched items in the trunk. R. at 3. And

because Austin had no legitimate expectation of privacy in the car itself, none of her Fourth Amendment rights were violated when the officer opened the car's trunk and discovered the gun, the mask, and the duffel bag containing "\$50,000 and blue dye packs."⁴

II. This Court should affirm the Thirteenth Circuit because the government complied with Austin's Fourth Amendment right and did not conduct a search as there was no reasonable expectation of privacy in YOUNBER's location data.

The trial court and the circuit court correctly held the government's receipt of a rental car's location data from the rental car company, YOUNBER, is not a search under the Fourth Amendment. The government complied with Austin's Fourth Amendment right to be secure from "*unreasonable* searches and seizures" because YOUNBER owned both the cars and the location data the government used to tie Austin to six bank robberies over a three-month period. *See* U.S. CONST. amend. IV (emphasis added); R. at 3. This Court held obtaining evidence is only a search under the Fourth Amendment if (1) there is a reasonable expectation of privacy and (2) that expectation is legitimate. *See Carpenter v. United States*, 138 S. Ct. 2206, 2214-16 (2018) (citing *Smith*, 442 U.S. at 743 (1979)). Because Austin does not have an objectively reasonable expectation of privacy in YOUNBER's location data, and her subjective expectation of privacy is not legitimate, the government has not conducted a search and has not violated Austin's Fourth Amendment right.

A. Because there is no reasonable expectation of privacy in YOUNBER's rental car's limited location data, the government receiving the location data is not a search under the Fourth Amendment.

Although the car rental smartphone application technology here is new, the Fourth Amendment legal principles this Court has articulated are not. The touchstone of the Fourth Amendment is reasonableness. *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). Chief Justice John

⁴ Dye packs are used by banks to mark stolen money. *Edwards*, 632 F.3d at 637.

Roberts explained, the Fourth Amendment *may* protect “what [the individual] seeks to preserve as private.” *Carpenter*, 138 S. Ct. at 2218 (emphasis added). To answer this question, the court first looks to whether the individual, by her conduct, has “exhibited an actual (subjective) expectation of privacy”. *See Smith*, 442 U.S. at 740 (citing *Katz*, 389 U.S. at 361).

1. Receiving the limited location data of YOUNBER’s rental car during Austin’s six bank robberies falls short of more extreme, continuous GPS tracking and is not a search under the Fourth Amendment.

In its 5-4 decision last year, the *Carpenter* court stressed the unique circumstance involved with precise, continuous, omnipresent smartphone tracking. *See Carpenter*, 138 S. Ct. at 2211-13. This Court explained the third party doctrine continues to apply to less extreme, non-continuous “business records that might incidentally reveal location information”. *See Id.* at 2220. Accordingly, Austin’s case is distinguishable from *Carpenter* for the following reasons:

First, as Justice Sonia Sotomayor pointed out, cell phone tracking involves infringing upon the “privacies of life”: people bring their cell phones into public restrooms and sleep with their phones under their pillows at night. *See* Transcript of Oral Argument at 14, *Carpenter*, 138 S. Ct. 2206 (2018). In contrast, Austin used different YOUNBER cars, the YOUNBER cars were parked in different locations around the city, and the YOUNBER terms and conditions restricted the amount of time and mileage for the YOUNBER rental. R. at 1, 29-30.

Second, the decision in *Carpenter* hinged on a cell phone’s ability to collect an “all-encompassing record” of its owner’s whereabouts. *See Carpenter*, 138 S. Ct. at 2217. The case at hand involves a limited collection of the YOUNBER’s location specifically during Austin’s six bank robberies. R. at 4, 29-30. Third, *Carpenter* involved the ability to track a person through his cell phone location down to the very footsteps and heartrate of a person. *See Id.* at 2211. However, the

location of the YOUNBER ceased to be tracked the moment Austin exited the temporary pay-by-the-hour car. R. at 29-30.

This Court should affirm the Thirteen Circuit and hold the receipt of limited YOUNBER location data is not a search because such a holding is consistent with this Court's Fourth Amendment precedent in *Smith*, *Miller*, and *Carpenter*.

2. Receipt of YOUNBER's limited location data falls within the scope of the prevailing third party doctrine set by this Court's precedent and reinforced by Circuit Courts.

Austin did not have a reasonable expectation of privacy in YOUNBER's location data and no Fourth Amendment violation occurred because the government's receipt of YOUNBER's data is consistent with the preserved third party doctrine. As recently as last year, this Court confirmed that "a person has no legitimate expectation of privacy in information... voluntarily turn[ed] over to third parties," even if the information is revealed on the assumption that it will be used only for a limited purpose. *See Id.* at 2216. Although *Carpenter* fell outside of the scope of the third party doctrine, Austin's case falls comfortably within the third party doctrine and other similarly situated forms of permissible third party data collection.

i. Affirmance is consistent with this Court's third party doctrine.

In *Smith*, this Court expanded on the third party doctrine when it held an individual has no expectation of privacy in the phone numbers it voluntarily discloses to place a phone call through its phone company provider. *See Smith*, 442 U.S. at 740-46 (1979). The *Smith* court based its decision on the foundation that the mechanism used to place the phone calls records and stores only the digits of the dialed phone number, not any actual conversation or information about the contents of the call. *See Id.* at 741. Likewise, in the case at hand, by collecting the YOUNBER location data, the company collected no communication content from Austin, only the physical

coordinates of the YOUNBER car during the time she was using YOUNBER's transportation service. R. at 29-30.

Furthermore, the *Smith* court explained that all phone users realize they must share the phone numbers they dial in order for the phone company to connect their calls. *Smith*, 442 U.S. at 742. The user is made further aware of the requirement they share the phone numbers they dial because the company shares its phone call log record with the phone users via monthly bills and online access. *See Id.* at 742. Austin realized she must share the location of the YOUNBER she was using both (1) every time she voluntarily connected her phone's Bluetooth to the YOUNBER she was renting, and (2) by complying with YOUNBER's terms and conditions in the contract which states YOUNBER "automatically collect[s] and store[s] location information from any vehicle you use via Bluetooth". R. at 29. Austin was further made aware of the location data from the YOUNBERs she rented because the YOUNBER contract explains "this [location] information is uploaded to YOUNBER's mainframe" and is accessible on Austin's phone through the YOUNBER application. R. at 29.

This Court held in *Miller* that a bank depositor has no "legitimate expectation of privacy" in financial information "voluntarily conveyed to banks" in the ordinary course of business. *United States v. Miller*, 425 U.S. 435, 436 (1976). As a result, the collection of bank records was no intrusion into any area which an individual has a protected Fourth Amendment interest. *Miller*, 425 U.S. at 440. Just as in *Smith*, Austin's acceptance of YOUNBER's terms and conditions contract and her voluntary choice to connect her phone to the YOUNBER's Bluetooth, demonstrate she had no "legitimate expectation of privacy" in the YOUNBER she temporarily rented. R. at 29. Because no Fourth Amendment interests of Austin are implicated here, this case is governed by the third party doctrine articulated in *Miller*, and obtaining YOUNBER's records does not constitute a search.

ii. Affirmance is consistent with Circuit Courts' third party doctrine.

Another example of the court affirming the third party doctrine that withstands *Carpenter* is when the Sixth Circuit upheld the government's collection of mileage trip records from a traditional rental car company as not a search under the Fourth Amendment. *See United States v. Walker*, 237 F.3d 845, 847-50 (6th Cir. 2001). The *Walker* court held the mileage information gathered from the rental car company was not a search because the defendant did not have a reasonable expectation of privacy in vehicles he temporarily rented, due to his lack of legitimate ownership or possessory interest in the rented vehicle. *See Id.* at 849. Analogously, Austin did not have a legitimate ownership or possessory interest in a car she temporarily rented by-the-hour that was available for use by any citizen walking by; therefore, she lacked a reasonable expectation of privacy.

This Court has never abandoned the principle that an individual has no reasonable expectation of privacy in information the individual has willingly exposed to a third party. *See Carpenter*, 138 S. Ct. at 2217. The *Carpenter* court carefully explained its decision not to extend *Smith* and *Miller*'s the third party principle to a cell phone's "all-encompassing record" was a "novel", "unique" decision. *See Id.* at 2217. The Court's dicta preserved the third party doctrine for instances such as Austin's where she has no reasonable expectation of privacy in a by-the-hour rental car that gets left around the city for every Netherfield citizen to drive. R. at 1, 29-30. As such, this Court should affirm the Thirteenth Circuit's decision that receipt of limited YOUTER location data is not a search.

B. Even if Austin had a subjective reasonable expectation of privacy in YOUNBER's location data, her claimed expectation of privacy is objectively unreasonable.

To answer this inquiry, the court looks to whether the individual's expectation of privacy, viewed objectively, is "justifiable under the circumstances" and therefore legitimate. *See Smith*, 442 U.S. at 740 (citing *Katz*, 389 U.S. at 353, 361). To be objectively reasonable under *Katz*, the individual's expectation of privacy must stem from either (1) "a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law" or (2) "from understandings of privacy expectations that are recognized and permitted by society." *Rakas*, 439 U.S. at 143, n. 12. Because Austin's claimed expectation of privacy is not objectively reasonable under property law theory or accepted societal theories, it is not a search under the Fourth Amendment.

The inability of Austin to exclude others from her unauthorized, rent-by-the-hour use of multiple YOUNBER cars, indicates her expectation of privacy claim is objectively unreasonable under property law theories and therefore not a search. By accepting YOUNBER's terms and conditions, Austin relinquished her right to exclude all others from the YOUNBER she used to rob the banks. R. at 29. Specifically, Austin could not exclude YOUNBER employees who automatically checked on the YOUNBER at least once a week. R. at 2. Additionally, because YOUNBER policy owned multiple parking spots around town, multiple Netherfield citizens could access the YOUNBER as soon as Austin relinquished the car. R. at 2. By agreeing to YOUNBER's terms and conditions, the Thirteenth Circuit found this served as an indication that Austin objectively forfeited her right to exclude and therefore any expectation of privacy. *See R.* at 15. Because Austin lacked an objectively reasonable expectation of privacy that society is not prepared to accept, this Court should affirm the Thirteen Circuit.

CONCLUSION

For the foregoing reasons, this Court should affirm the Thirteenth Circuit's denial of the motion to suppress the evidence obtained during the search of the YOUBER and denial of the motion to suppress the location data collected from YOUBER.