Team Number R2

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
Criminal Action No. 4-422

BRIEF FOR RESPONDENT

TEAM NUMBER R2

COUNSEL FOR Respondent

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QUESTIONS 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 FACT

Jane Austin was charged by an indictment of six counts of 18 U.S. Code section 2113 Bank Robbery and Incidental Crime. R. at 1. Austin moved to suppress evidence in trial court. first motion regarded evidence gathered from initial arrest. The second motion regarded location data obtained by a private company. Both motions were denied by United States district court for the southern district of Netherfield. R. at 1.

Austin was an avid poet and blogger. Her poem focus on the bank Darcy and Bingley Credit Union. R. at 1. She wrote " Darcy and Bingley-you might think you're slick.. take your own medicine. Robbing and pillaging." R. at 26.

She is a naturalist and minimalist who pride herself on her immaterial lifestyle. R. at 1. She mentioned that in her poem as well. " I have no home, I claim no home I claim no property" R. at 26. "

In order to travel Austin uses the new car rental application available on mobile devices. YOUBER. YOUBER allows a person to rent YOUBER-owned car. R. at 2.

the application is used by more that 40 million users across the United States. R. at 2. A rental agreement is made in the app and YOUBER cars are parked on the street and are identifiable by a small, bright pink YOUBER logo on the bottom corner of the passenger side. R. at 2.

The data and information between the user and YOUBER are overseen by data specialist at YOUBER. R. at 22.

"YOUBER's policy is to track each user using GPS technology and Bluetooth signal from their cell-phone" R. at 22. "while YOUBER car is used the GPS information is transferred through the company's mainframe and filtered by the search engine using satellite mapping technology. R. at 22.

YOUBER tracks the location in real time of each vehicle. R. at 22. During the initial signing up the YOUBER notifies the users about this monitoring. R. at 23. prior to put personal and financial information the YOUBER notifies the user about this monitoring. R. at 23.

YOUBER uses Smoogle's GPS to track and locate its vehicle. R. at 23.

Austin does not have an account of her own with YOUBER. She uses the account of her partner, Martha Lloyd. R. at 2. Martha and Austin are dating but recently Martha tried to distance herself form Austin. R. at 18. Austin did not use her own information to sign up for anything such as social media. R. at 18.

Martha states, "when we were together she always use my information for everything and reimburse me in cash" R. at 18. She only put her name on her blog post. R. at 18.

Martha gave her permission to Austin. Austin was an authorized user on Martha's credit card. Martha decided to have Austin off her credit but has not done it yet. R. at 19.

Martha did not give permission to Austin to use her credit card since September 2018. She changed her password. R. at 19.

On January 2019 Austin rented a 2017 Black Toyota Prius(license plate R0LL3M) through the YOUBER app on her phone. R. at 2. Later that day she was stopped by officer Kreuzberger for failing to stop at a stop sign. R. at 2. Austin showed her license and the YOUBER app on her cell phone. Officer noticed that Austin's name was not listed as the renter on the rental agreement in the YOUBER app. R. at 2.

Officer searched her trunk where she kept personal effects. He also found a BB gun ski mask, a duffel bag containing 50,000 and blue dye packs. R. at 3.

Office noted in his report that he believed the car to be "lived in" as there were many other personal items, including a cooler full of tofu, kale and homemade kombucha. He also found bedding and a pillow in the back seat. R. at 3.

The users are not allowed to sleep in the vehicle. R. at 23.o At the initial sing up period the used is told that they cannot sleep in the YOUBER car. R. at 24.

During the investigation the officer received a dispatch to look out for a Black Toyota Prius with a YOUBER logo driven by a suspect who allegedly robbed a nearby Darcy and Bingley Credit Union. A surveillance camera caught a partial license plate number "R0L". the suspect was seen wearing a maroon ski mask. R. at 3.

Based on these evidence officer Kreuzberger arrested Austin under suspicion of bank robbery. Two day later detective Hamm took on Austin's case. R. at 3.

Detective Hamm discovered 5 open bank robbery case occurring between October 15, 2018 and December 15, 2018 which match the modus operandi of the robbery on January 3,2019. Four the robberies occurred in California and one in Nevada R. at 3.

Detective Hamm served a subpoena duces tecum on YOUBER to obtain all GPS and Bluetooth information related to the account Ms. Austin allegedly used between October 3, 2018 through January 3,2019. R. at 3.

Record from YOUBER revealed that Martha's account was used to rent car in the location and at the times of the other five robberies. R. at 4.

After reviewing all of the mapping data sent by YOUBER detective Hamm recommended charges with the US attorney's office to have Ms. Austin charged with six counts of bank robbery under 18 U.S. Code Section 2113, Bank Robbery and incidental crime.

R. at 4.

SUMMARY OF ARGUMENT

I.

The United States District Court for the Southern District of Netherfield was correct in denying the Petitioner's two suppression motions. A Fourth Amendment violation "must have a cognizable Fourth Amendment interest"—a concept known as "Fourth Amendment standing." Byrd v. U.S., 138 S. Ct. 1518 (2018). The Petitioner do not have a legitimate Fourth Amendment Interest. Additionally, the Petitioner do not have standing because Fourth Amendment rights are personal rights which. . . may not be vicariously asserted." Rakas v. Illinois, 439 U.S. 128, 133 (1978). Under this rule, the Petitioner cannot vicariously invoke the Fourth Amendment because she used the information of someone else to obtain the YOUBER vehicle.

II.

YOUBER acquisition of the location date of their rental vehicle was within the meaning of the Fourth Amendment. By the Petitioner obtaining the property of YOUBER falsely, she was not in position to have an expectation of privacy because she could not properly opt in or out of that condition because she was using the information of another. In Smith v. Maryland, USSC in defining the expectation of privacy indicates that it would be "one that society is prepared to recognize as reasonable." Smith v. Maryland, 442 U.S. 735,740 (1979). Society is no prepared to recognize the Petitioner's actions as reasonable.

Standard of Review

This Court reviews the district court's factual findings in a suppression hearing for clear error, and reviews the district court's conclusions of law *de novo.*" U.S. v. Smith, 263 F.3d 571, 581 (6th Cir. 2001). A factual finding is clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been made. *See United States v. Ayen,* 997 F.2d 1150, 1152 (6th Cir.1993). The government urges the Court to consider the findings of fact in the light most favorable to the government. However, the Court considers the evidence "in the light most likely to support the district court's decision." Id.

ARGUMENT

I. PETITIONER HAD NO COGNIZABLE CLAIM TO A FOURTH AMENDMENT INTEREST IN A RENTAL CAR THAT SHE WAS NOT PROPERLY AUTHORIZED TO RENT NOR DRIVE

The Fourth Amendment protects "[t]he right of the people to be free from "unreasonable searches and seizures" in their "persons, houses, papers, and effects." U.S. Const. amend. IV. It does not, however, allow people to challenge searches on property that are not "their[s]." The Petitioner's unauthorized possession and use of YOUBER'S property do not provide the Petitioner a reasonable expectation of privacy during her unauthorized use. In renting a vehicle from YOUBER, the Petitioner deceitfully submitted the personal information of Ms. Martha Lloyd, without her permission. The Petitioner cannot argue a Fourth Amendment rights violation due to her lack of standing.

A. Petitioner Must Have a Cognizable Fourth Amendment Interest In Order To Have Standing

In attempting to establish a cognizable Fourth Amendment interest, the Petitioner asserts a single cause of standing to this Court. The Petitioner's sole cause of a Fourth Amendment interest is based solely on the fact that she was present in the vehicle at the time of the search and her renting the vehicle. Petitioner's sole argument failed in persuasion in the lower Court's, and that single cause and subsequent argument should also fail in this Court.

A Fourth Amendment violation "must have a cognizable Fourth Amendment interest"—a concept known as "Fourth Amendment standing." Byrd v. U.S., 138 S. Ct. 1518 (2018). The United States Supreme Court has held that "[a] defendant's Fourth Amendment standing depends on 1) whether the defendant is able to establish an actual, *subjective* expectation of privacy with respect to the place being searched or items being seized, and 2)

whether that expectation of privacy is one which society would recognize as *objectively* reasonable." United States v. Hernandez, 647 F.3d 216, 219 (5th Cir.2011) (emphasis added). This is so because "Fourth Amendment rights are personal rights which. . . may not be vicariously asserted." Rakas v. Illinois, 439 U.S. 128, 133 (1978). Under this rule, a defendant asserting a Fourth Amendment violation also has the burden to show "a justifiable, a reasonable, or a legitimate expectation of privacy that has been invaded by government action." U.S. v. Salemi-Nicoloso, 353 F. Supp. 3d 527, 536 (N.D. Miss. 2018).

B. The Petitioner Did Not Have a Reasonable Expectation of Privacy That Society Would View To Be Objectively Reasonable

A defendant maintains a subjective expectation of privacy under the Fourth Amendment when the defendant has shown that he sought to preserve something as private. U.S. v. Alabi, 943 F. Supp. 2d 1201 (D.N.M. 2013).

The Fourth Amendment allows a defendant to maintain a subjective expectation of privacy under the Fourth Amendment when the defendant has shown that he sought to preserve something as private. Id. The search took place in a lock car trunk. It is inarguable to suggest that the Petitioner did not seek to preserve to keep her property private, especially the BB gun modeled after a .45 caliber handgun, her maroon ski mask, $50,000 private. However, the question of expectation turns on if whether society would view the Petitioner expectation of privacy as objectively reasonable and if the Officer Kruzenberger intrusion infringes on a legitimate interest, based on the values which the Fourth Amendment protects. Id.

Based on the facts of this case, the Appellant did not have a subjective expectation of privacy that society would view to be objectively reasonable due to not being properly authorized to rent the vehicle in Ms. Martha Lloyd's name. The Petitioner's possession was

the illegitimate product of a calculated criminal plan to fraudulently acquire a rental car from YOUBER by using the information of a strawman, Ms. Martha Lloyd.

In determining whether society would view the expectation of privacy as objectively reasonable, this Court has repeatedly used the reasoning in United States v. Hernandez, 647 F.3d 216, 219 (5th Cir.2011). The Appellant argues that her presence in the vehicle and by renting the car, although deceitfully, gave her a legitimate Fourth Amendment interest. An unauthorized driver of a rental car may have the standing to challenge a search of that car if he or she has received permission to use the vehicle. United States v. Thomas, *447 F.3d 1191 (9th Cir. 2006)*. The Appellant will raise the argument that Ms. Martha Lloyd and the Appellant sharing accounts in the past, that permission could be inferred as ruled in United States v. Smith, 263 F.3d 571, 582 (6th Cir. 2001). This Court concluded in Smith, that the defendant had standing due to a Fourth Amendment search of the rental car he was driving, even though he was not listed as an authorized driver. Id. The Court based their decision on a few factors, one being that it was not illegal for the defendant to drive the vehicle since he was a licensed driver. Id. It was ruled by the Court to be merely a breach of the rental agreement because the defendant's wife was listed as an authorized driver. Id. However, the wife in Smith gave the defendant permission to drive that specific rental vehicle. Id. The Court also took into consideration that the defendant had a business relationship with the rental company. Id. The facts of the case at bar is not close to the facts that controlled Smith.

It is conceded that a bright-line rule saying all unauthorized drivers of rental vehicles, would not have standing, regardless of the circumstance, would be in error. Courts have discussed exceptional circumstances where it would be fitting to give standing to an unauthorized driver. The Third and Sixth Circuits have determined that an unauthorized driver generally does not have standing; however, they "noted the possibility that exceptional

circumstances might create the legitimate expectation of privacy." U.S. v. Gayle, 608 Fed. Appx. 783, 789 (11th Cir. 2015).

Exceptional circumstances such as but not limited to, the authorized driver becoming intoxicated and is not suitable to drive, so a friend drives the authorized driver home. We concede that the friend should have the protection of the Court regarding the reasonableness of privacy expectations while driving the authorized renter. However, in considering the reasonableness of asserted privacy expectations, the [Supreme] Court has recognized that no single factor invariably will be determinative." U.S. v. Smith, 263 F.3d 571, 586 (6th Cir. 2001); see e.g., Rakas, 439 U.S. at 152 (Powell, J., concurring).

Unlike the Defendant in Smith, Ms. Martha Lloyd, and the Appellant is not married, the Petition did not have an agreement of any sort with YOUBER to suggest that she had an agreement with anyone. We know from testimony, Ms. Martha Lloyd had no idea that the Appellant was using her information, nor was there a stated business relationship between YOUBER and the Petitioner. Therefore, the Petitioner's expectation of privacy is not reasonable to society.

The Fourth Amendment is not designed to protect a violent criminal's interest in remaining undetected. It is essential to view the Petitioner's actions as dangerous. The record does not state, but it is inferred with the success of the robberies that the Petitioner presented a level of violence in order to rob six different Darcy and Bingley credit unions successfully.

1. The Petitioner Had Diminished Expectation Of Privacy While Traveling Place to Place In The Rented Vehicle

In Byrd v. United States, 138 S. Ct. 1518 (2018), it was ruled that there is a diminished expectation of privacy in automobiles, which often permits officers to dispense with obtaining a warrant before conducting a lawful search. In Byrd, the Defendant conspired with his girlfriend to have her rent a vehicle for him to drive. Here, the Appellant did not conspire

with Ms. Martha Lloyd for the renting of the vehicle for her personal use. Therefore, the Appellant, in this case, could be viewed to have a more diminished expectation of privacy than the Defendant in Byrd. An individual who borrows a rental car without the permission or knowledge of the owner not only acts in contravention of the owner's property rights, but also deceives the owner of the vehicle while increasing the risk that the property will be harmed or lost. Although property law is not controlling, neither is it irrelevant. U.S. v. Kennedy, 638 F.3d 159, 165 (3d Cir. 2011), abrogated by Byrd v. U.S., 138 S. Ct. 1518 (2018).

In addition to showing that the use of Ms. Lloyd's information was part of the design, the Appellant also states that she had no property on November 28, 2018. This proclamation strikes directly at her expectation of privacy. Per the record, the Appellant appears to go out of her way not to own any property. In her poem, Session 3, November 28, 2019, the Appellant claims, "I have no home, I claim no home, I claim no property, I' ve had no opportunity to claim any property," The Petitioner request that this Court instantly legitimize a property concept on her behalf that she disowned at the height of her crime spree. R. at 25-27.

A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. United States v. Knotts, 460 U.S. 276, (1983). Therefore, while not absolute, the Appellant does not have a reasonable expectation of privacy due to being in an automobile on a public thoroughfare. The subjectivity of privacy is questionable and is similar to a burglar plying his trade in a summer cabin during the off season. Rakas, 439 U.S. at 143. The Court noted that while the burglar might not expect to be discovered, he does not enjoy a Fourth Amendment privacy interest in the summer cabin. Id. (quoting in United States v. Cunag, 386 F.3d 888, 893–94 (9th Cir.

2004)). Similarly, the Petitioner should not enjoy a Fourth Amendment privacy because, in her head, she wanted to keep her crime aids private.

2. By The Petitioner Using Ms. Martha Lloyd's Information She Cannot Assert Fourth Amendment Rights Vicariously

Additionally, Fourth Amendment rights are personal rights that may not be asserted vicariously. Rakas, 439 U.S. at 133. A person aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. Id. at 134. Here, this Court should not reward the Petitioner with standing because of her successes in using someone else's identity, pillaging and robbing six Darcy and Bingley Credit Unions in two different states, and her ability to stay off the grid came to an end on January 3, 2019. R. at 26.

The rule of standing to raise vicarious Fourth Amendment claims should not be extended by a so-called "target" theory whereby any criminal defendant at whom a search was "directed" would have the standing to contest the legality of that search and object to the admission at trial of evidence obtained as a result of the search. Id. at 128. Here, the Petitioner rented a YOUBER vehicle as Ms. Martha Lloyd. Now, Petitioner is requesting this Court to allow her to rent Fourth Amendment standing as if she was Ms. Martha Lloyd.

A. Petitioner Cannot Have Standing Because She Did Not Have The Right To Exclude Due To Not Having A Legitimate Possessory Interest

One of the main rights attaching to property is the right to exclude others. Byrd, 138 S. Ct. at 1518 (2018). By being unauthorized, the Appellant did not have the right to exclude due to never establishing a true possessory interest in the property. If Ms. Martha Lloyd were alerted that a YOUBER vehicle being rented under her name, the Petitioner possessory interest would have been powerless in resisting any attempt by Ms. Martha Lloyd

or YOUBER in ending the Petitioner's illegitimate possession of the vehicle. Due to the Petitioner's illegitimate possession of the vehicle, she would not have the right or the power to exclude YOUBER or Ms. Martha Lloyd. More importantly, the Petitioner would not have the power to recover from YOUBER under any legal theory, such as breach of contract like an authorized user would have had as a method of relief. Therefore, the Appellant did not possess the power to exclude, thus, not having a legitimate subjective expectation of privacy that society would find subjective.

Per the testimony of Ms. Martha Lloyd, the Petitioner was never interested in establishing her own YOUBER account. The Appellant clearly stated her criminal intentions in wanting to have her true identity concealed while she robbed and pillaged. R. 26. Her poetic writing of "They All Fall Down." In Session 6, on January 1, 2019, Petitioner wrote, "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 their world." Id. at 27. The usage of Ms. Martha Lloyd's information was not an accident; it was the central part of the Petitioner criminal design to avoid being detected and being able to use Ms. Martha Lloyd's identity as a tool and window into the world of Darcy and Bingley Credit Union. Id. The Petitioner never correctly established a possessory interest in the property. The Petitioner has never had a YOUBER account under her own name to establish a possessory interest, and she never desired an account of her own because that would have countered her goal of being everyone besides herself.

II. DUE TO THE INEVITABLE DISCOVERY DOCTRINE EVEN IF STANDING IS CONFERRED ON THE PETITIONER, THE SEARCH WILL STILL STAND.

While it is still our contention that the search was reasonable. If the Court finds in the alternative, it is our position that the search is still valid because the evidence would have been eventually obtained by means wholly independent of any constitutional violation. Nix

v. Williams, 467 U.S. 431, 444 (1984). Officer Kruzenburger would have discovered the evidence at the time of seizure or by a YOUBER employee at the time of the standardized inspection. Id. at 2.

The inevitable-discovery doctrine allows evidence procured as a result of an illegal search to be introduced if it "ultimately or inevitably would have been discovered by lawful means." Nix, 467 U.S. at 431. Here, the Appellant was in wrongful possession of the vehicle. There is nothing in the record that suggests that Officer Kruezberger was willing to allow the Petitioner to continue her unauthorized use of YOUBER property. Judging by the fact that Officer Kruezberger continued the detention once it was known that the Petitioner did not have the authority to have the rental car, it could be reasonably inferred that the Petitioner's unauthorized use came to an abrupt end. If Officer Kreuzberger did not inspect the vehicle, the YOUBER employee would have eventually inspected per YOUBER's standard operating procedures. An inventory search is a well-defined exception to the warrant requirement of the Fourth Amendment." United States v. Haro–Salcedo, 107 F.3d 769, 772 (10th Cir. 1997). The search is "an administrative procedure designed to produce an inventory" of an arrestee's personal belongings. Id. at 773. It has three purposes: "protection of the owner's property, protection of the police against claims of lost or stolen property, and protection of the police from potential danger." Id. at 772. An inventory search must be reasonable, which means it must be "conducted according to standardized procedures" and "must not be a ruse for a general rummaging in order to discover incriminating evidence." United States v. Killblane, 662 F. App'x 615, 617 (10th Cir. 2016). In the case in chief, the evidence would not require the Officer to rummage. Therefore, if this Court gives the Petitioner standing, the evidence still stands.

III. EVEN WITH FOURTH AMENDMENT STANDING THE EVIDENCE OBTAINED BY THE SEARCH WAS PREMISED AFTER PROBABLE CAUSE WAS PREMISED AFTER PROBABLY CAUSE WAS ESTABLISHED

The search took place after probable cause was established. Owners and drivers of vehicles have an expectation of privacy in the vehicle's interior, and therefore, the police may not search under the automobile exception absent probable cause. United States v. Miller, 382 F. Supp. 2d 350 (N.D.N.Y. 2005). Here, Officer Kreuzberger, at the time of the search, only knew that the Petitioner was driving a rental car that she did not have the authorization to drive. That fact alone, establishes, at a bare minimal, probable cause to find out more about the unauthorized use of the vehicle and the person. Heien v. North Carolina, 574 U.S. 54, (2014). It is well known that drug dealers use rental vehicles in order to help evade detection by law enforcement. e.g. United States v. Coleman, 603 F.3d 496, 500 (8th Cir. 2010). It is equally clear that drug dealers often use straw renters to rent cars that the drug dealers then use to transport drugs, usually to avoid the drug forfeiture laws, See e.g generally., United States v. Thomas, 447 F.3d 1191, 1194-1195 (9th Cir. 2006). Therefore, Officer Kruezberger was reasonable in his suspicion that something more might be afoot than a mere traffic violation.

Additionally, it appeared that it was a moment during the search that Officer Kruezberger might have thought that the car was being lived in, thus, turning the vehicle into a mobile home. In California v. Carne, 471 U.S. 386, (1985) it was ruled that although defendant's mobile motor home possessed some attributes of a home, it was readily mobile, and there was a reduced expectation of privacy stemming from pervasive regulation of vehicles capable of traveling on highways; thus, warrantless search of the mobile motor home did not violate Fourth Amendment. Id. The policies of YOUBER forbids any user from using their vehicles for sleeping. R. 23. Therefore, Officer Kruzberger's noticing that it was a chance

that the car might be a home of some sort did not present a privacy expectation for the Petitioner. Officer Kreuzberger did not know for an absolute whether the vehicle was being used as a mobile home just like he did not know that he pulled over a serial bank robber.

Although not a direct stated issue, this Court might want to take a wholesome look at the Fourth Amendment issue in this case. Turning to the Supreme Court, if Officer Kreuzberger was wrong by telling the Petitioner that permission to search was not needed, that error, under these facts, would not result in an automatic violation of the Petitioner's Fourth Amendment Rights. That error should be deemed a reasonable mistake by Officer Kreuzberger, and the search should still stand. The ultimate touchstone of the Fourth Amendment, for searches and seizures, is reasonableness, and to be reasonable is not to be perfect, so the Fourth Amendment allows for some mistakes on the part of government officials, giving them fair leeway for enforcing the law in the community's protection. Heien, 574 U.S. at 54. It is not unreasonable to believe that a police officer does not need to secure the permission of an unauthorized person to search property that does not belong to the person, therefore, even if the comment by Officer Kruzberger was not perfect in law, it does not have to be. Id.

Traditionally, the Court has always given the Police Officer the benefit of the doubt because it is recognized that the Officer often has to make very quick decisions while in the law field and might make mistakes, and as long as those mistakes are reasonable, then the search is valid. Terry v. Ohio, 392 U.S. 1, (1968). Therefore, the search is valid under all relevant circumstances is reasonable.

IV. THE DEFENDANT DID NOT HAVE A REASONABLE EXPECTATION OF PRIVACY DUE TO THE TERMS AND CONDITIONS OF YOUBER PRIVATE

YOUBER's privacy policy applies to all information collected form its sites, mobile apps, vehicle and the feature and service available through the site. It specifically

indicates that it collects all information form mobile, computer and browsers that are used to access to YOUBER as well as location information and vehicle usage. In its disclosure part YOUBER specifically indicates that it would disclose its user's information in legal function. By signing and consenting to these terms the defendant would not have any reasonable expectation of privacy. In Smith v. Maryland, 442 U.S. 735,740 (1979), USSC in defining the expectation of privacy indicates that it would be "one that society is prepared to recognize as reasonable." Here, no society would be prepared to recognize as a reasonable. the user's information would be collected and be used and disclose to third party as well as in legal situation. The issue that distinguished this case form Carpenter is that in Carpenter the cell phone provider collected the location information of the user "cell cite" without the knowledge and consent of the users while in this case the individual with knowledge and freedom signed and consent to the terms and policy.

In Carpenter, the majority hold that even in the area accessible to the public, individual's information may be constitutionally protected. Carpenter v. United States, 138 S. Ct. 2206, 2218 (2018). The general principal that individual hare a reasonable expectation of privacy in the whole of their physical movement is not absolute and the court in Smith held that an individual has no reasonable expectation of privacy that the individual willingly expose to the third party. See Smith, 442 U.S 740

A. The defendant voluntarily and freely let his information to be used by and accessible to the public

In Schneckloth v. Bustamante, 412 U.S 218 (1973) the court held that the evidences obtained are admissible because the consent to search the car was given voluntarily. Id. The Fourth Amendment protection against unreasonable search and seizer does not require a knowing and intelligent waiver of the constitutional right. Id. Here the defendant without

voluntarily consented to use her information the location of the vehicle used was included in the information that collected by YOUBER. YOUBER in advance declared that they are collecting that information and the defendant had choice to not consent to that policy. Having knowledge of her constitutional right is not at issue because it would not make any difference in outcome. Thus, the information that obtained is admissible.

B. The defendant did not establish property interest in the item searched

In order for an individual to be successful in the 4th amendment claim that individual must establish that she/he owned or possessed the seized property or to have had a substantial possessory interest in the property searched. Unites States v. Jones, 562 U.S400, 262(2012). And also, Rakas v. Illinois 439 U.S 128,99 S. Ct. 421, 58(1978). In Rakas, the court denied Rakas' motion to suppress the evidence on the basis of the Fourth Amendment but the court denied the motion because Rakas was passenger of the car and did not have property interest thereby had no standing to claim that his Fourth Amendment was violated. Similarly, to Rakas case, here the defendant has no property interest or right in the information obtained by YOUBER. Because the information was the property of YOUBER and not one of the defendants. in addition, the defendant used the information and credit cart of her partner thereby the defendant herself has no property right and thus no standing to claim that he information regarding the location was abstained unconstitutionally

CONCLUSION

For the foregoing reasons, we respectfully request that this Court affirm the lower court's decision.

Respectfully Submitted,
/s/ R2 Team
R2 Counsel for the
Respondent

APPENDIX

Relevant Portions of the United States Constitution

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.