"THE FEDERAL CORNER"

40 Days of Search Cases From the Supreme Court

Buck Files

On June 22, May 29, and May 14, 2018, the Supreme Court released opinions in three cases that reversed the judgments of the United States Court of Appeals for the Sixth Circuit, the Supreme Court of Virginia, and the United States Court of Appeals for the Third Circuit. Each of these cases was concerned with a significant search issue. In each case, a motion to suppress evidence was filed by the defendant's lawyer and denied by the trial judge. In each case, the Judges of the Circuit Courts and the Justices of the Supreme Court of Virginia addressed the suppression issue, but affirmed the defendant's conviction and sentence.

For me, these cases present a challenge. Because of the space constraints that I have for "The Federal Corner," I cannot review each of these cases in depth; however, because of the importance of these cases, I determined that at least an overview of them would be helpful for the readers of the *VOICE*. I would urge you to *please* read each of these cases. As you look at the holdings of the courts, you will realize that there is more to these cases than I have been able to include in this column.

And a special thanks to Craig Hattersley who puts the *VOICE* together and agreed to let me have additional space for this month's column.

THE CELL SITE LOCATION INFORMATION (CSLI) CASE

The Fact Situation: Federal authorities needed the defendant's historical cell site location information to place him at the scene of several robberies.

On June 22, 2018, the Supreme Court held that:

- *An individual maintains a legitimate expectation of privacy, for Fourth Amendment purposes, in the record of his physical movements as captured through CSLI;*
- Seven days of historical CSLI obtained from defendant's wireless carrier, pursuant to an order issued under the Stored Communications Act (SCA), was the product of a "search";
- The Government's access to 127 days of historical CSLI invaded defendant's reasonable expectation of privacy; and,
- *The Government must generally obtain a search warrant supported by probable cause before acquiring CSLI from a wireless carrier*. (emphasis added)

Carpenter v. United States, ___S.Ct.___, 2018 WL 3073916 (June 22, 2018). [Opinion by Chief Justice Roberts with Justices Ginsburg, Breyer, Sotomayor, and Kagan joining. Kennedy filed a dissenting opinion, in which Thomas and Alito joined. Thomas filed a dissenting opinion. Alito filed a dissenting opinion, in which Thomas joined. Gorsuch filed a dissenting opinion.] Chief Justice Roberts' opinion reads, in part, as follows:

[The Question Presented]

This case presents the question whether the Government conducts a search under the Fourth Amendment when it accesses historical cell phone records that provide a comprehensive chronicle of the user's past movements.

* * *

[The Facts in More Detail]

In 2011, police officers arrested four men suspected of robbing a series of Radio Shack and (ironically enough) T–Mobile stores in Detroit. One of the men confessed that, over the previous four months, the group (along with a rotating cast of getaway drivers and lookouts) had robbed nine different stores in Michigan and Ohio. The suspect identified 15 accomplices who had participated in the heists and gave the FBI some of their cell phone numbers; the FBI then reviewed his call records to identify additional numbers that he had called around the time of the robberies.

Based on that information, the prosecutors applied for court orders under the Stored Communications Act to obtain cell phone records for petitioner Timothy Carpenter and several other suspects. . . . Altogether the Government obtained 12,898 location points cataloging Carpenter's movements—an average of 101 data points per day.

[In the District Court]

Carpenter was charged with six counts of robbery and an additional six counts of carrying a firearm during a federal crime of violence. See 18 U.S.C. §§ 924(c), 1951(a). Prior to trial, Carpenter moved to suppress the cell-site data provided by the wireless carriers. He argued that the Government's seizure of the records violated the Fourth Amendment because they had been obtained without a warrant supported by probable cause. The District Court denied the motion. App. to Pet. for Cert. 38a–39a.

* * *

[In the Court of Appeals]

The Court of Appeals for the Sixth Circuit affirmed. 819 F.3d 880 (2016). The court held that Carpenter lacked a reasonable expectation of privacy in the location information collected by the FBI because he had shared that information with his wireless carriers. Given that cell phone users voluntarily convey cell-site data to their carriers as 'a means of establishing communication,' the court concluded that the resulting business records are not entitled to Fourth Amendment protection. *Id.,* at 888 (quoting *Smith v. Maryland,* 442 U.S. 735, 741, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979)).

* * *

[The Fourth Amendment]

The Fourth Amendment protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The 'basic purpose of this Amendment,' our cases have recognized, 'is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.' *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 528, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967).

* * *

[Protecting the Right of Privacy]

As technology has enhanced the Government's capacity to encroach upon areas normally guarded from inquisitive eyes, this Court has sought to 'assure [ ] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.' *Kyllo v. United States*, 533 U.S. 27, 34, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001).

* * *

[Existing Precedents Do Not
Help With the Facts in This Case]

The case before us involves the Government's acquisition of wireless carrier cell-site records revealing the location of Carpenter's cell phone whenever it made or received calls. This sort of digital data—personal location information maintained by a third party—does not fit neatly under existing precedents.

* * *

[The Question Before the Court]

The question we confront today is how to apply the Fourth Amendment to a new phenomenon: the ability to chronicle a person's past movements through the record of his cell phone signals.

* * *

[An Individual's Reasonable Expectation of Privacy]

A person does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary, 'what [one] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.' *Katz*, 389 U.S., at 351–352, 88 S.Ct. 507. A majority of this Court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements. *Jones*, 565 U.S., at 430, 132 S.Ct. 945.

* * *

[The Government's Access to Cell Site
Records Contravenes that Expectation]

Allowing government access to cell-site records contravenes that expectation. Although such records are generated for commercial purposes, that distinction does not negate Carpenter's anticipation of privacy in his physical location. Mapping a cell phone's location over the course of 127 days provides an all-encompassing record of the holder's whereabouts.

* * *

… when the Government accessed CSLI from the wireless carriers, it invaded Carpenter's reasonable expectation of privacy in the whole of his physical movements.

* * *

[The Court's Decision is a Narrow One]

Our decision today is a narrow one. We do not express a view on matters not before us: real-time CSLI or 'tower dumps' (a download of information on all the devices that connected to a particular cell site during a particular interval).

* * *

[Generally, the Government Must Obtain a Search Warrant for Cell Site Location Information Records]

Having found that the acquisition of Carpenter's CSLI was a search, we also conclude that the Government must generally obtain a warrant supported by probable cause before acquiring such records. Although the 'ultimate measure of the constitutionality of a governmental search is "reasonableness," ' our cases establish that warrantless searches are typically unreasonable where 'a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing.' (emphasis added)

* * *

[Obtaining an Order Under the Stored Communications Act Falls Far Short of the Probable Cause Required for a Warrant]

The Government acquired the cell-site records pursuant to a court order issued under the Stored Communications Act, which required the Government to show 'reasonable grounds' for believing that the records were 'relevant and material to an ongoing investigation.' 18 U.S.C. § 2703(d). That showing falls well short of the probable cause required for a warrant. The Court usually requires 'some quantum of individualized suspicion' before a search or seizure may take place. *United States v. Martinez–Fuerte,* 428 U.S. 543, 560–561, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976). Under the standard in the Stored Communications Act, however, law enforcement need only show that the cell-site evidence might be pertinent to an ongoing investigation—a 'gigantic' departure from the probable cause rule, as the Government explained below. App. 34. Consequently, an order issued under Section 2703(d) of the Act is not a permissible mechanism for accessing historical cell-site records. Before compelling a wireless carrier to turn

over a subscriber's CSLI, the Government's obligation is a familiar one—get a warrant.

* * *

[The Government's Acquisition
of the Cell Site Records Was a Search]

We decline to grant the state unrestricted access to a wireless carrier's database of physical location information. In light of the deeply revealing nature of CSLI, its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection, the fact that such information is gathered by a third party does not make it any less deserving of Fourth Amendment protection. The Government's acquisition of the cell-site records here was a search under that Amendment.

[The Result]

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

As a matter of interest, *Carpenter* probably comes as a shock to federal prosecutors and law enforcement officers because – for more than 11 years – they have obtained historical cell site location information from cell phone service providers under the authority of the Stored Communications Act (18 U.S.C. §§ 2701 *et. seq.*). This information has assisted the Government in being able to place a defendant at the scene of a crime. Using WestLaw's All Federal database, I ran the query "stored communications act" & c.s.l.i. "cell site location information" & (motion /2 suppress!) and found 79 cases beginning with *In Re Application of U.S. for an Order for Prospective Cell Site Location Information on a Certain Cellular Telephone*, 460 F.Supp.2d 448 (S.D. New York 2006).

The Curtilage Case

The Fact Situation: A police officer was looking for a stolen motorcycle. He believed that it was in a shed in the defendant's yard and he walked through the curtilage to get to the shed and the motorcycle.

On May 29, 2018, the Supreme Court held that:

- A partially enclosed top portion of driveway of home, in which defendant's motorcycle was parked, was curtilage for Fourth Amendment purposes, and
- *The automobile exception to warrant requirement for searches did not justify police officer's invasion of curtilage of home*. (emphasis added)

Collins v. Virginia, ___S.Ct.___, 2018 WL 2402551 (May 29, 2018) [Justice Sotomayor, Chief Justice Roberts, Justices Kennedy, Thomas, Ginsburg, Breyer, Kagan, Alito, and Gorsuch. Opinion by Sotomayor. Thomas filed a concurring opinion. Alito filed a dissenting opinion.] Justice Sotomayor's opinion reads, in part, as follows:

[The Question Presented]

This case presents the question whether the automobile exception to the Fourth Amendment permits a police officer, uninvited and without a warrant, to enter the curtilage of a home in order to search a vehicle parked therein. It does not.

* * *

[The Fourth Amendment]

The Fourth Amendment provides in relevant part that the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.'

[The Tension Between the Automobile Exception
And the Curtilage of a Home]

This case arises at the intersection of two components of the Court's Fourth Amendment jurisprudence: the automobile exception to the warrant requirement and the protection extended to the curtilage of a home.

* * *

[The Automobile Exception]

The Court has held that the search of an automobile can be reasonable without a warrant. The Court first articulated the so-called automobile exception in *Carroll v. United States,* 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). In that case, law enforcement officers had probable cause to believe that a car they observed traveling on the road contained illegal liquor. They stopped and searched the car, discovered and seized the illegal liquor, and arrested the occupants. *Id.,* at 134–136, 45 S.Ct. 280. The Court upheld the warrantless search and seizure, explaining that a 'necessary difference' exists between searching 'a store, dwelling house or other structure' and searching 'a ship, motor boat, wagon or automobile' because a 'vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.' *Id.,* at 153, 45 S.Ct. 280.

The 'ready mobility' of vehicles served as the core justification for the automobile exception for many years. *California v. Carney,* 471 U.S. 386, 390, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985) (citing, *e.g., Cooper v. California,* 386 U.S. 58, 59, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967); *Chambers v. Maroney,* 399 U.S. 42, 51–52, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970)). Later cases then introduced an additional rationale based on 'the pervasive regulation of vehicles capable of traveling on the public highways.' *Carney,* 471 U.S., at 392, 105 S.Ct. 2066. As the Court explained in *South Dakota v. Opperman,* 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976):

> 'Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates

> or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.' *Id.,* at 368, 96 S.Ct. 3092.

[The Limitation to the Automobile Exception]

In announcing each of these two justifications, the Court took care to emphasize that the rationales applied only to automobiles and not to houses, and therefore supported 'treating automobiles differently from houses' as a constitutional matter. *Cady v. Dombrowski,* 413 U.S. 433, 441, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973).

[Officers May Search Without a Warrant]

When these justifications for the automobile exception 'come into play,' officers may search an automobile without having obtained a warrant so long as they have probable cause to do so. *Carney,* 471 U.S., at 392–393, 105 S.Ct. 2066.

* * *

[The Protection of the Curtilage]

Like the automobile exception, the Fourth Amendment's protection of curtilage has long been black letter law. '[W]hen it comes to the Fourth Amendment, the home is first among equals.' *Florida v. Jardines,* 569 U.S. 1, 6, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013). 'At the Amendment's "very core" stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." ' *Ibid.* (quoting *Silverman v. United States,* 365 U.S. 505, 511, 81 S.Ct. 679, 5 L.Ed.2d 734 (1961)). To give full practical effect to that right, the Court considers curtilage—'the area "immediately surrounding and associated with the home" '—to be ' "part of the home itself for Fourth Amendment purposes." ' *Jardines,* 569 U.S., at 6, 133 S.Ct. 1409 (quoting *Oliver v. United States,* 466 U.S. 170, 180, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984)). 'The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened.' *California v. Ciraolo,* 476 U.S. 207, 212–213, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986).

[An Intrusion on the Curtilage is a Search]

When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred. *Jardines,* 569 U.S., at 11, 133 S.Ct. 1409. Such conduct thus is presumptively unreasonable absent a warrant.

* * *

[The Automobile Exception and the Invasion of the Curtilage]

In physically intruding on the curtilage of Collins' home to search the motorcycle, Officer Rhodes not only invaded Collins' Fourth Amendment interest in the item searched, *i.e.*, the motorcycle, but also invaded Collins' Fourth Amendment interest in the curtilage of his home. The question before the Court is whether the automobile exception justifies the invasion of the curtilage. The answer is no.

* * *

[The Curtilage Protection Trumps the Automobile Exception]

Nothing in our case law, however, suggests that the automobile exception gives an officer the right to enter a home or its curtilage to access a vehicle without a warrant. Expanding the scope of the automobile exception in this way would both undervalue the core Fourth Amendment protection afforded to the home and its curtilage and ' "untether" ' the automobile exception ' "from the justifications underlying" ' it.

[The Result]

For the foregoing reasons, we conclude that the automobile exception does not permit an officer without a warrant to enter a home or its curtilage in order to search a vehicle therein. We leave for resolution on remand whether Officer Rhodes' warrantless intrusion on the curtilage of Collins' house may have been reasonable on a different basis, such as the exigent circumstances exception to the warrant requirement. The judgment of the Supreme Court of Virginia is therefore reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

The Driver Whose Name Is Not On the Rental Car Agreement Case

The Fact Situation: The driver of a rental car does not have his name on the rental agreement. Law enforcement officers stop the vehicle, search it and find a significant quantity of drugs. The defendant files a motion to suppress the evidence, but the judge denies the motion on the ground that the defendant lacked "standing" to contest the search and seizure as an initial matter.

On May 14, 2018, the Supreme Court held that:

- The Supreme Court would not consider, in the first instance, defendant's contention that he had common-law property interest in the rental car as a second bailee, which gave him cognizable Fourth Amendment interest;
- *The defendant violated rental car agreement signed by third party did not eliminate any reasonable expectation of privacy he had in the vehicle;*
- The Supreme Court would not consider, in the first instance, the Government's argument that the defendant was no better than a car thief and so had no expectation of privacy;
- The Court of Appeals would be required to address, on remand, whether troopers had probable cause that justified their warrantless search of the car; and,
- *The mere fact that a driver in lawful possession or control of a rental car is not listed as an authorized driver on rental agreement will not defeat his or her otherwise*

reasonable expectation of privacy under the Fourth Amendment, abrogating U.S. v. Kennedy, 638 F.3d 159, U.S. v. Seeley, 331 F.3d 471, U.S. v. Wellons, 32 F.3d 117, U.S. v. Roper, 918 F.2d 885. (emphasis added)

Byrd v. United States, 138 S.Ct. 1518 (May 14, 2018) [Justices Kennedy, Thomas, Gorsuch, and Alito. Opinion by Kennedy. Thomas filed a concurring opinion, in which Gorsuch joined. Alito filed a concurring opinion.] Justice Kennedy's opinion reads, in part, as follows:

[Why the Court Granted Certiorari]

> This Court granted certiorari to address the question whether a driver has a reasonable expectation of privacy in a rental car when he or she is not listed as an authorized driver on the rental agreement. The Court now holds that, as a general rule, someone in otherwise lawful possession and control of a rental car has a reasonable expectation of privacy in it even if the rental agreement does not list him or her as an authorized driver.

[A Remand is Necessary]

> The Court concludes a remand is necessary to address in the first instance the Government's argument that this general rule is inapplicable because, in the circumstances here, Byrd had no greater expectation of privacy than a car thief. If that is so, our cases make clear he would lack a legitimate expectation of privacy.

* * *

[The Government's Position]

> Here, the Government contends that drivers who are not listed on rental agreements always lack an expectation of privacy in the automobile based on the rental company's lack of authorization alone. This *per se* rule rests on too restrictive a view of the Fourth Amendment's protections. Byrd, by contrast, contends that the sole occupant of a rental car always has an expectation of privacy in it based on mere possession and control. There is more to recommend Byrd's proposed rule than the Government's; but, without qualification, it would include within its ambit thieves and others who, not least because of their lack of any property-based justification, would not have a reasonable expectation of privacy.

[The Court's Response]

> Stopped to its essentials, the Government's position is that only authorized drivers of rental cars have expectations of privacy in those vehicles. This position is based on the following syllogism: Under *Rakas*, passengers do not have an expectation of privacy in an automobile glove compartment or like places; an unauthorized driver like Byrd would have been the passenger had the renter been driving; and the unauthorized driver cannot obtain greater protection when he takes the wheel and leaves the renter behind. The flaw in this syllogism is its major premise, for it is a misreading of *Rakas*.

[The Court's Opinion in *Rakas* Does Not Apply]

The Court in *Rakas* did not hold that passengers cannot have an expectation of privacy in automobiles. To the contrary, the Court disclaimed any intent to hold 'that a passenger lawfully in an automobile may not invoke the exclusionary rule and challenge a search of that vehicle unless he happens to own or have a possessory interest in it.' 439 U.S., at 150, n. 17, 99 S.Ct. 421 (internal quotation marks omitted). The Court instead rejected the argument that legitimate presence alone was sufficient to assert a Fourth Amendment interest, which was fatal to the petitioners' case there because they had 'claimed only that they were "legitimately on [the] premises" and did not claim that they had any legitimate expectation of privacy in the areas of the car which were searched.'

[Here, the Defendant was the Driver – Not the Passenger]

What is more, the Government's syllogism is beside the point, because this case does not involve a passenger at all but instead the driver and sole occupant of a rental car. As Justice Powell observed in his concurring opinion in *Rakas,* a 'distinction ... may be made in some circumstances between the Fourth Amendment rights of passengers and the rights of an individual who has exclusive control of an automobile or of its locked compartments.' *Id.,* at 154, 99 S.Ct. 421. This situation would be similar to the defendant in *Jones, supra,* who, as *Rakas* notes, had a reasonable expectation of privacy in his friend's apartment because he 'had complete dominion and control over the apartment and could exclude others from it,' 439 U.S., at 149, 99 S.Ct. 421. Justice Powell's observation was also consistent with the majority's explanation that 'one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of [the] right to exclude,' *id.,* at 144, n. 12, 99 S.Ct. 421, an explanation tied to the majority's discussion of *Jones*.

[It Does Not Matter Whether the Car
is Rented or Privately Owned by Someone Else]

The Court sees no reason why the expectation of privacy that comes from lawful possession and control and the attendant right to exclude would differ depending on whether the car in question is rented or privately owned by someone other than the person in current possession of it, much as it did not seem to matter whether the friend of the defendant in *Jones* owned or leased the apartment he permitted the defendant to use in his absence. Both would have the expectation of privacy that comes with the right to exclude. Indeed, the Government conceded at oral argument that an unauthorized driver in sole possession of a rental car would be permitted to exclude third parties from it, such as a carjacker. Tr. of Oral Arg. 48–49.

* * *

[Standing in Fourth Amendment Cases]

> It is worth noting that most courts analyzing the question presented in this case, including the Court of Appeals here, have described it as one of Fourth Amendment 'standing,' a concept the Court has explained is not distinct from the merits and 'is more properly subsumed under substantive Fourth Amendment doctrine.' *Rakas, supra,* at 139, 99 S.Ct. 421.
>
> The concept of standing in Fourth Amendment cases can be a 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; but it should not be confused with Article III standing, which is jurisdictional and must be assessed before reaching the merits. *Arizona Christian School Tuition Organization v. Winn,* 563 U.S. 125, 129, 131 S.Ct. 1436, 179 L.Ed.2d 523 (2011)…. Because Fourth Amendment standing is subsumed under substantive Fourth Amendment doctrine, it is not a jurisdictional question and hence need not be addressed before addressing other aspects of the merits of a Fourth Amendment claim. On remand, then, the Court of Appeals is not required to assess Byrd's reasonable expectation of privacy in the rental car before, in its discretion, first addressing whether there was probable cause for the search, if it finds the latter argument has been preserved.
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> * * *
>
> [The Court's Ruling]
>
> *Though new, the fact pattern here continues a well-traveled path in this Court's Fourth Amendment jurisprudence. Those cases support the proposition, and the Court now holds, that the mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy.* The Court leaves for remand two of the Government's arguments: that one who intentionally uses a third party to procure a rental car by a fraudulent scheme for the purpose of committing a crime is no better situated than a car thief; and that probable cause justified the search in any event. The Court of Appeals has discretion as to the order in which these questions are best addressed. (emphasis added)

Alert! Alert! Alert! *Byrd* brings a change to motions to suppress in our Circuit. Prior to *Byrd*, a defendant whose name was not on the rental agreement lacked standing to challenge the search of a rental car by a motion to suppress. *United States v. Seeley*, 331 F.3d 471 (5th Cir. 2003) [per curiam] No more!

[My Thoughts on These Three Cases]

- *Carpenter v. United States*, ___S.Ct.___, 2018 WL 3073916 (June 22, 2018): I will be surprised if this case impacts us at all. The Government will have a higher hurdle to get over before they will be able to obtain cell site location information; however, there's nothing magic about obtaining a search warrant for this information.

- *Collins v. Virginia*, ___S.Ct.___, 2018 WL 2402551 (May 29, 2018): The fact situation here was unique and one that we might never see again. We all understand the sanctity of the curtilage and know how to file a motion to suppress evidence if we have a curtilage issue.
- *Byrd v. United States*, 138 S.Ct. 1518 (May 14, 2018): This is the case that will benefit defense lawyers the most. No longer will the Government be able to argue that the defendant's name is not on the rental agreement and give the court a reason to deny the defendant's motion to suppress evidence. *Seeley* is dead and gone.