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Pierre Grosdid
December 1, 2017

DANKE!
THANK YOU!
MERCI!
GRAZIE!
GRACIAS!
DANK JE WEL!

Article and case list

2

- *"Fourth Amendment standing bars a party from claiming injury for someone else's privacy violation,"* publication pending. *United States v. Gaulden*, 73 F.4th 390 (5th Cir. 2023); *United States v. Beaudion*, 979 F.3d 1092 (5th Cir. 2020).
- *Commonwealth v. Kurtz*, 2023 WL 3138750 (Pa. Super. Ct. Apr. 28, 2023); *People v. Seymour*, No. 23SA12, 2023 WL 6805809, --- P.3d --- (Colo. Oct. 16, 2023).
- *"E-scooter location tracking does not violate the Fourth Amendment,"* TBJ, June 2023, p. 386; *Sanchez v. Los Angeles Dep't. of Transp.*, 39 F.4th 548 (9th Cir. 2022).

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- *"Managing expectations: Personal cloud storage account warrantless search breached the Fourth Amendment,"* TBJ, July/Aug., p. 466; *State v. Bowers*, No. 2021AP1767-CR, 2022 WL 17984985, --- N.W.2d ---, at *1 (Wis. Ct. App. Dec. 29, 2022).
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- *"Negotiating a contract: a thumbs-up emoji can seal a deal,"* TBJ, Nov. 2023, p. 776; *South West Terminal Ltd. v Achter Land & Cattle Ltd.*, 2023 SKKB 116, 2023.
- Pierre Grosdidier, *A lawyer's genetic fingerprinting primer*, Circuits, June 2019, p. 81 (available at <https://sbot.org/circuits/page/2/>); Jayann Sepich, *Arrestee DNA solves crimes and saves lives*, Circuits, June 2019, p. 55.

Fourth Amendment

~~Unreasonable
searches and
seizures~~

- Probab
- Oath
- Particu
- Excepti



BE
REASONABLE

4

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



"Reasonable
subjective
expectation
of privacy."

4th A. protects
people

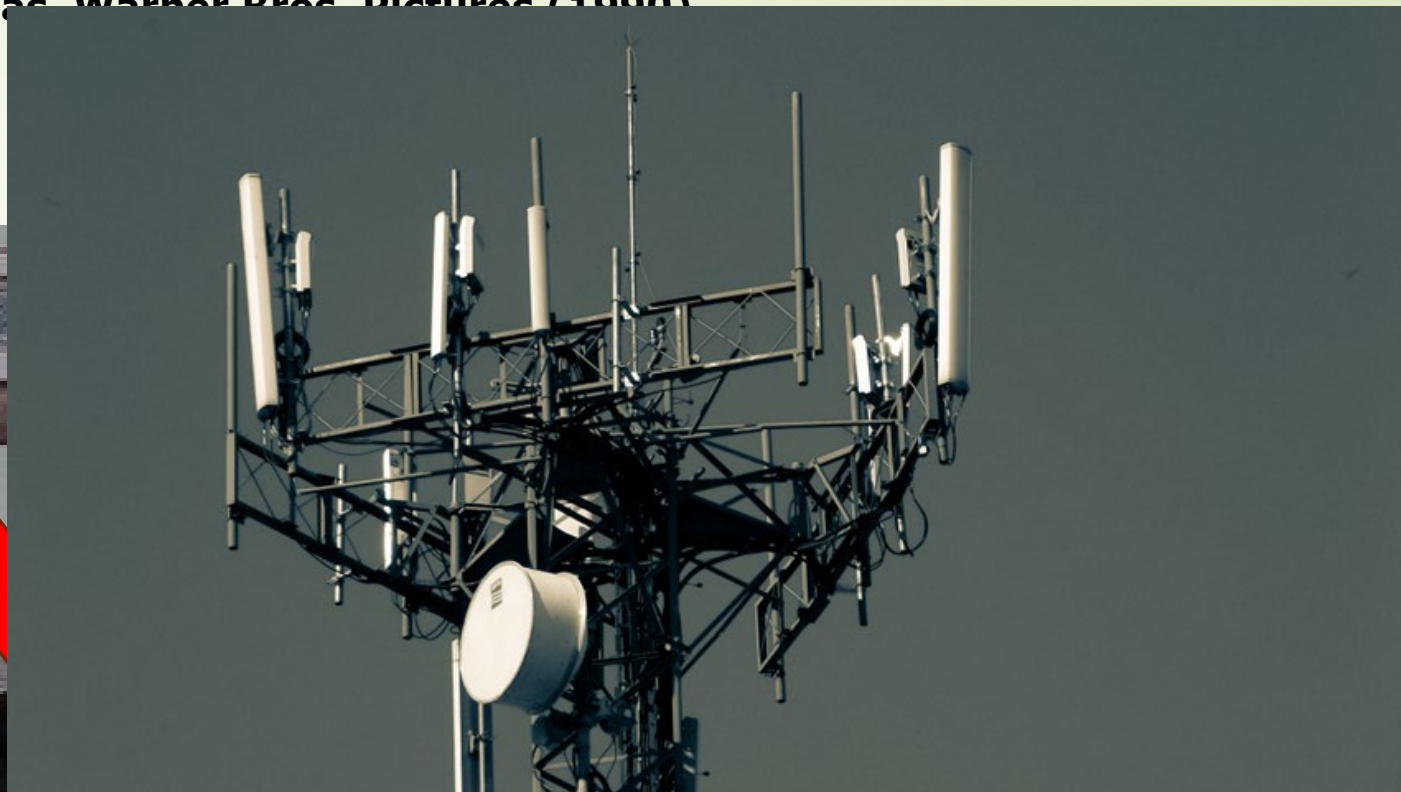
(Harlan, J.
concurring)

The facts of
each case, not
generalizations

5

Third-party

United States v.
425 U.S. 435



Exception: cell site location information
Carpenter v. United States (2018).

6

For whom does the Fourth Amendment bell tolls?

“The right of the people to be secure in their persons, houses, papers, and effects”



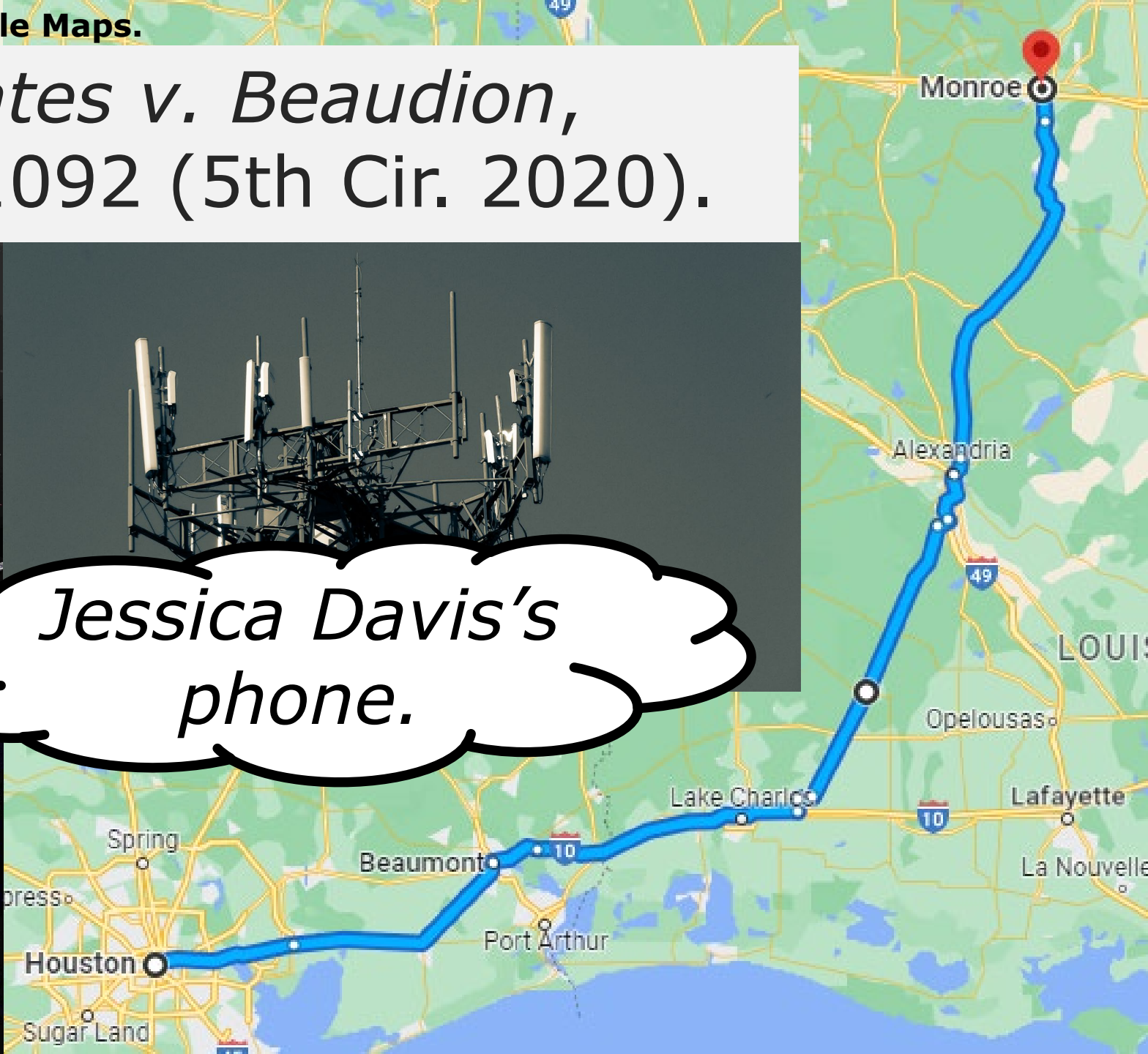
It tolls only for thee.

7

United States v. Beaudion,
979 F.3d 1092 (5th Cir. 2020).



*Jessica Davis's
phone.*





9

U.S. v. Gaulden, 73 F.4th 390 (5th Cir. 2023).



FELON





Reverse keyword search warrants



Internet pebble trail...

Reverse keyword search warrants

12

Go



Austin Saving & Loan 15th Lavaca

Recherche Google



13

Two-step process

- Google provides I.R.
- Registry of Internet
Internet service pro

Broad
dragnet;
narrow
warrants



Commonwealth v. Kurtz, 2023 WL
3138750 (Pa. Super. Ct. Apr. 28, 2023).



Suppression
motion denied

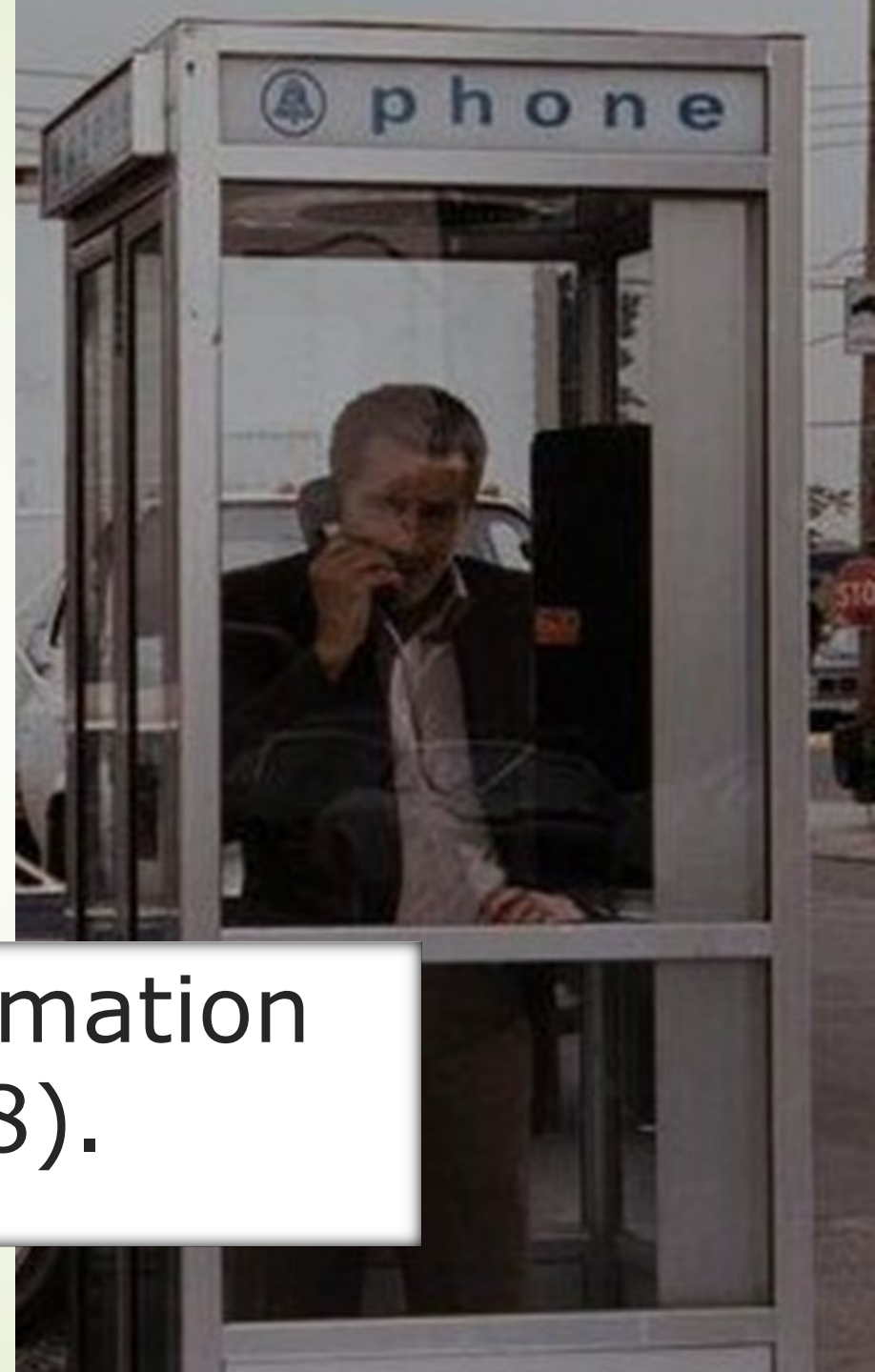
I.P. address

15

Reasonable expectation of privacy

Third-party
doctrine

~~Exception: cell site location information
Carpenter v. United States (2018).~~



"No probable cause"

Speculative warrant

Secluded nature of the
residence

Warrant must show facts to "show a 'fair probability'" that a reverse warrant would reveal evidence.

People v. Seymour, No. 23SA12, 2023 WL 6805809, --- P.3d --- (Colo. Oct. 16, 2023).

Address search
leads to three
suspects.



People v. Seymour, No. 23SA12, 2023 WL 6805809, --- P.3d --- (Colo. Oct. 16, 2023).

- Rejected third-party doctrine (search engine privacy settings).
- Privacy interest in search terms (religion; medical issues).
- Property right in search histories because of Google's licensing agreement terms (seizure).
- Upheld warrant on basis of the exclusionary rule.

Sanchez v. Los Angeles Dep't. of Transp., 39 F.4th 548 (9th Cir. 2022).



Deanononymization

Third-party doctrine
applies to location data

User Agreement:
*I consent to share
with authorities!*

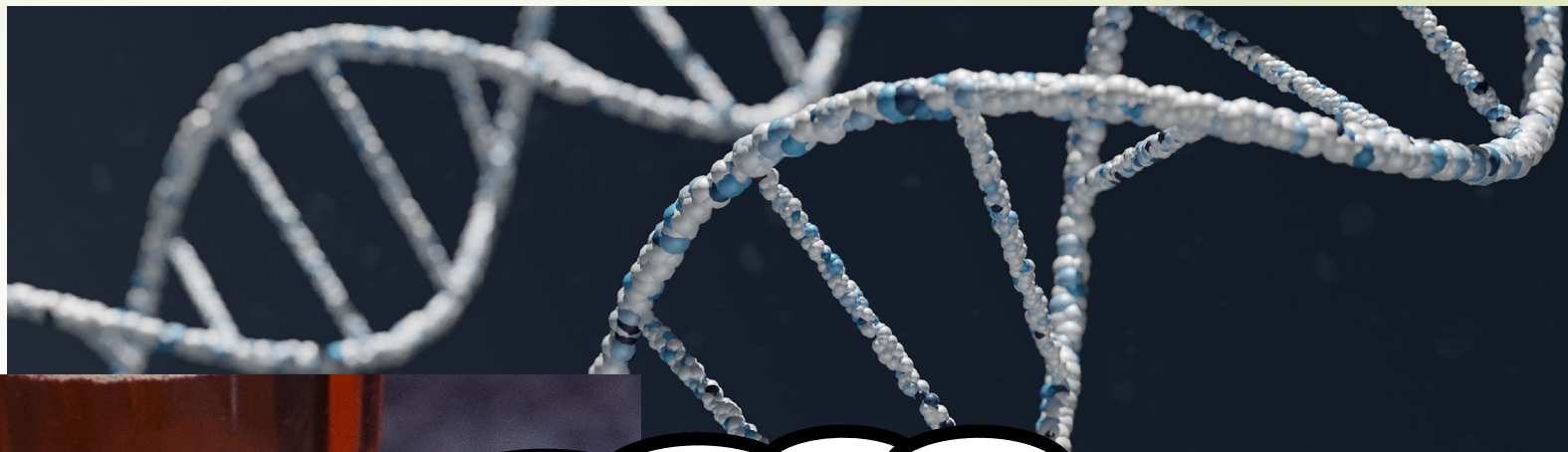
Carpenter v. United States (2018).



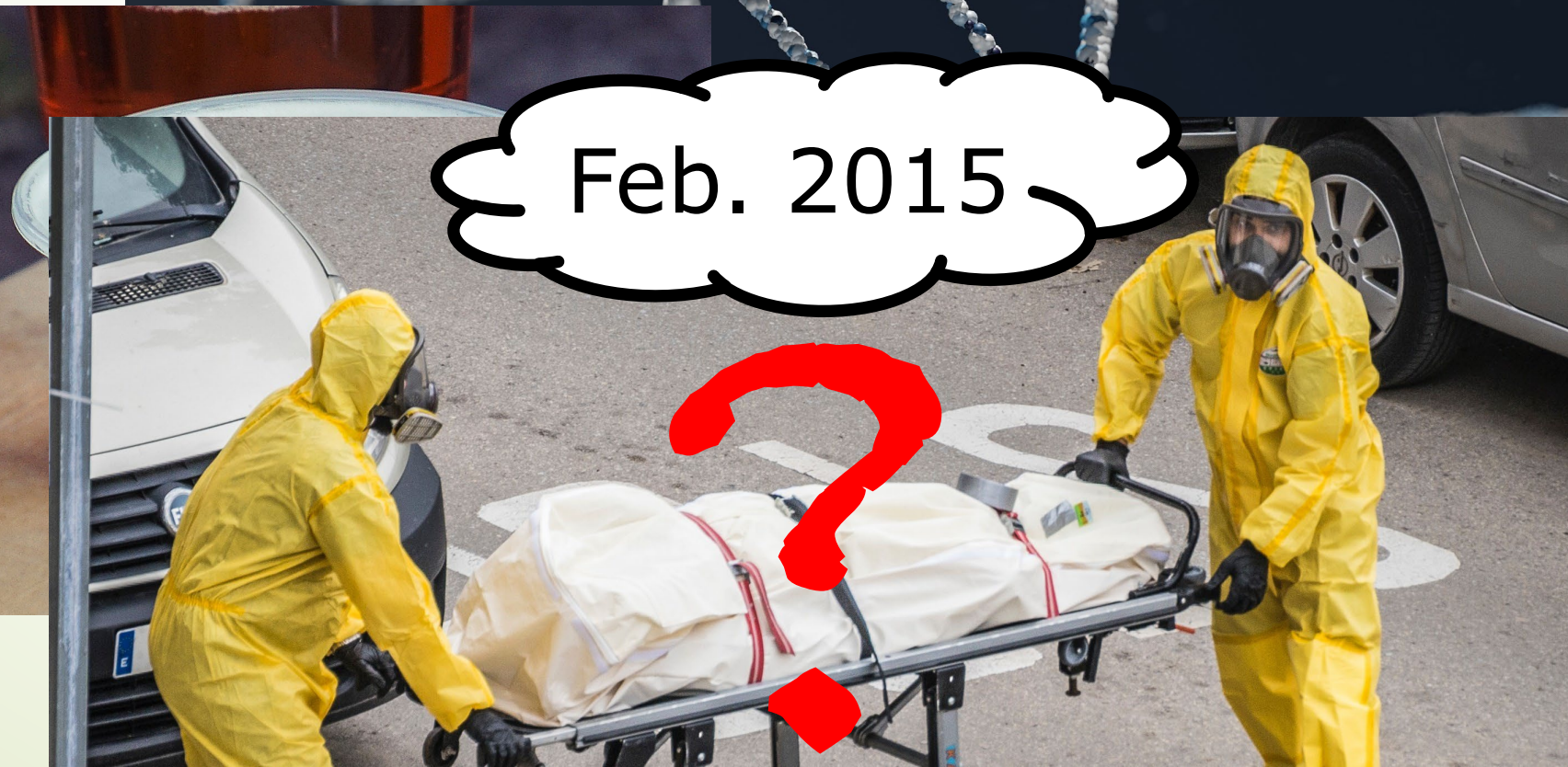
21

State v. Mitcham, 535 P.3d 948 (Ariz. App. 2023).

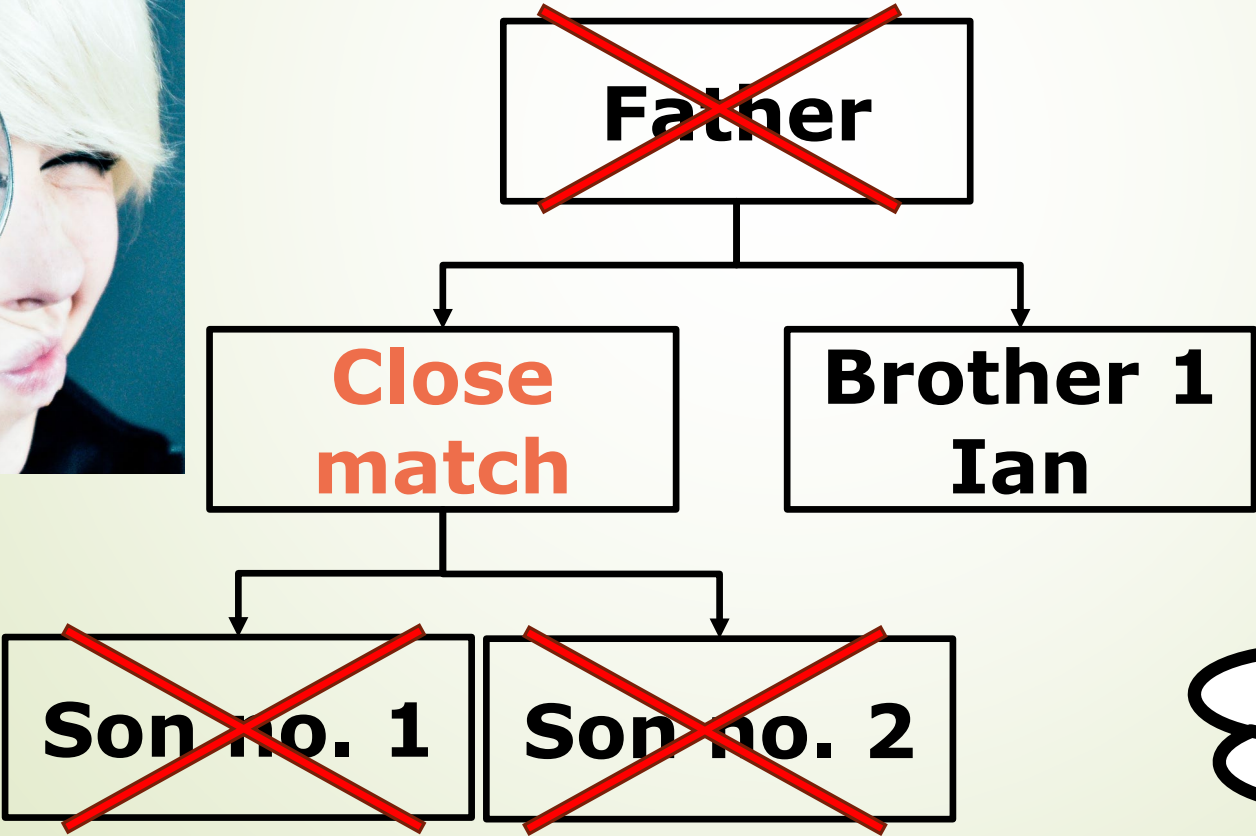
Jan. 2015



Feb. 2015



FF: 2018



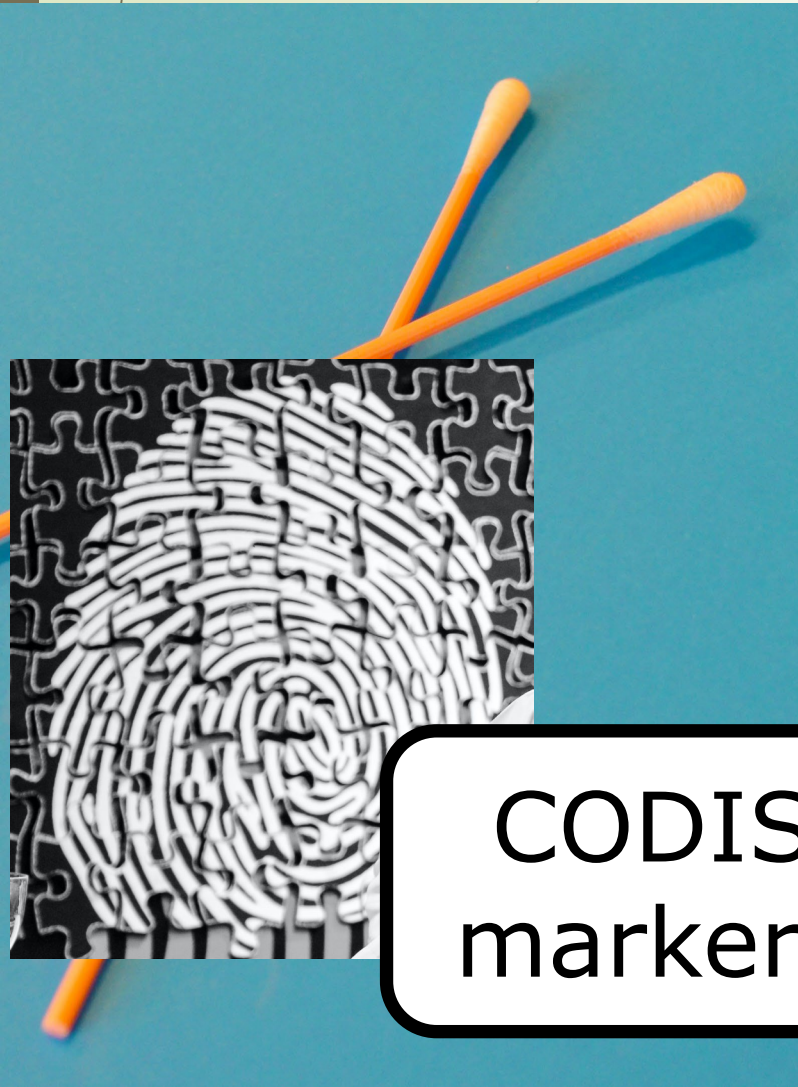
Familial DNA

CODIS
markers



2015
sample

Match!



CODIS
markers

- CODIS markers have no medical information
- Probable cause
- Reasonable suspicion
- ~~Warrant~~

25

2015
sample

2018
sample

CODIS
markers



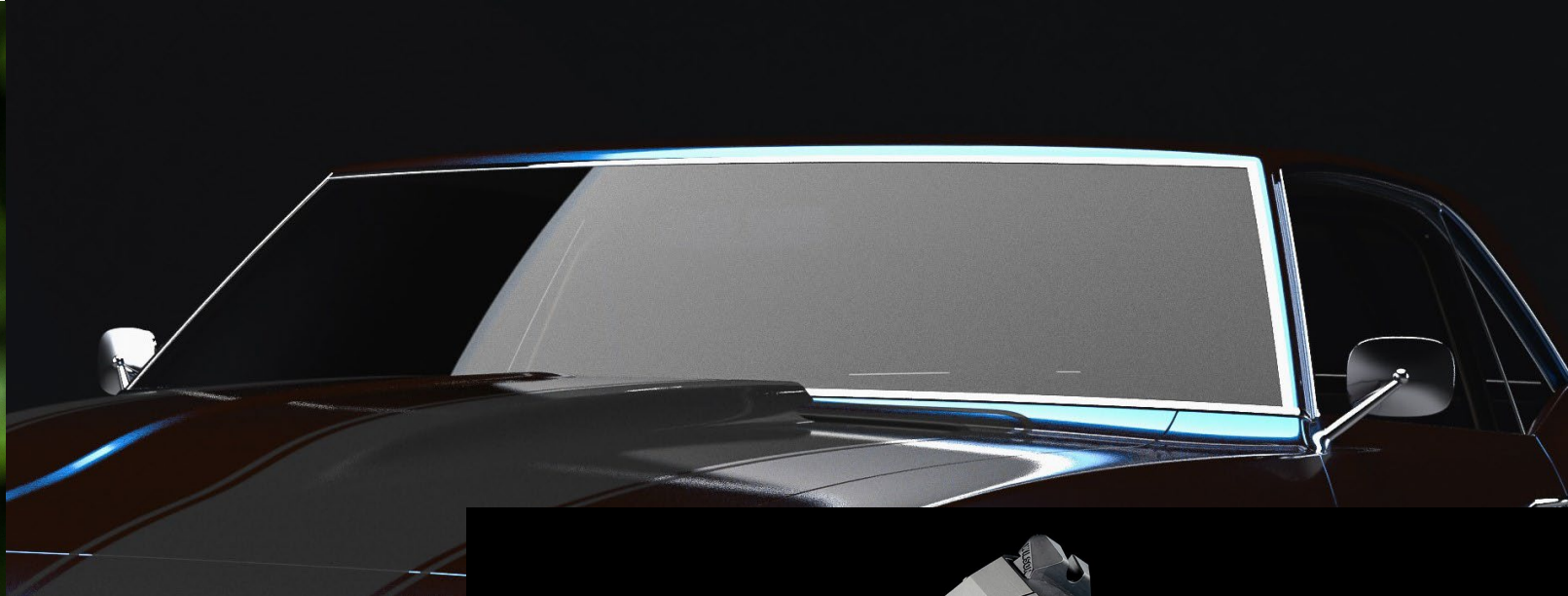
Doe v. City and County of San Francisco, No. 3:22-cv-05179-AGT, ECF # 40 (N.D. Cal. July 20, 2023).



Viable Fourth
Amendment claim



United States v. Poller, 2023 WL 4535338, (D. Conn. July 14, 2023).



Peeking allowed, even with a flashlight



Kyllo v. United States (2001).

Authorities used “a device that [wa]s not in general public use,” *i.e.*, the thermal imaging devices





State v. Bowers, No. 2021AP1767-CR,
2022 WL 17984985, --- N.W.2d ---, at *1
(Wis. Ct. App. Dec. 29, 2022).



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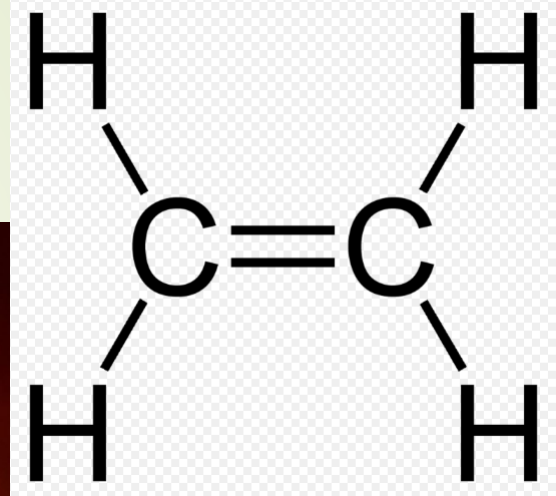
(1) Subjective expectation & (2) reasonable



- (1) whether the defendant had a property interest in the premises;
- (2) whether he [or she] was legitimately (lawfully) on the premises;
- (3) whether he [or she] had complete dominion and control and the right to exclude others;
- (4) whether he [or she] took precautions customarily taken by those seeking privacy;
- (5) whether he [or she] put the property to some private use; and
- (6) whether the claim of privacy is consistent with historical notions of privacy.

In re Kuraray America, Inc.,
656 S.W.3d 137 (Tex. 2022).

Scope of cell
phone discovery.





36

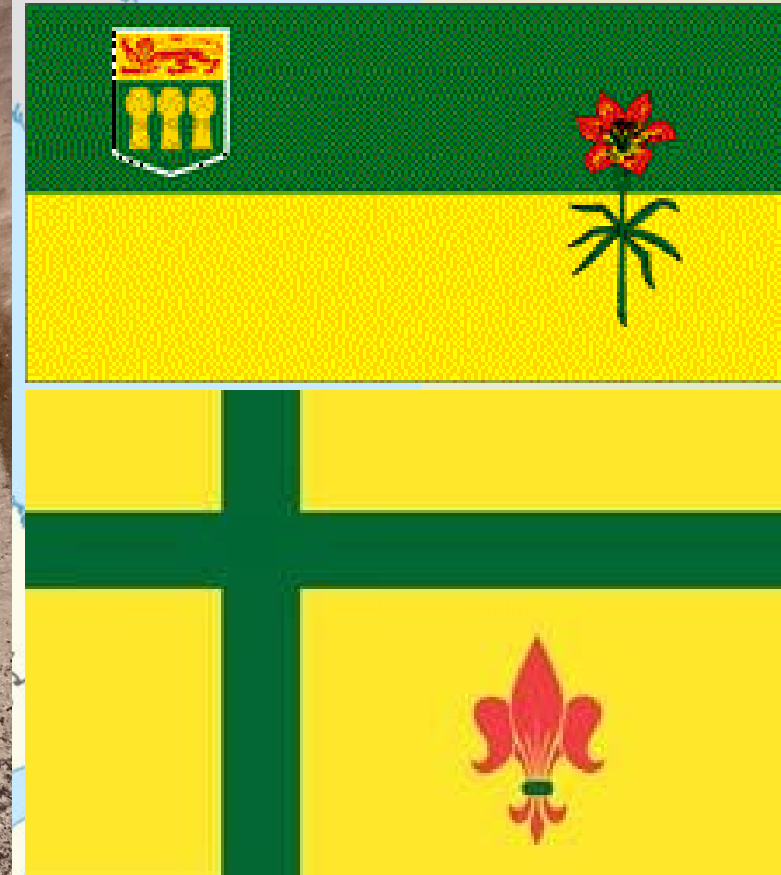
Discovery

- Three operators, four months
- Two supervisors, six weeks

Nexus !
(on an individual
basis)



Achter Land & , 2023.



South West Terminal Ltd. v Achter Land & Cattle Ltd., 2023 SKKB 116, 2023.

"Looks good"



"Ok"

"Yup"



March → November

“Deferred delivery contracts”
a/k/a “grain on hand” vs.
“Production contract”

ACT OF GOD CLAUSE



Electronic Information and Documents Act:

40
"Defer

a/k/a

"p

Acceptance of a contract "may be expressed . . . by an action in an electronic form, including . . . communicating electronically in a manner that is intended to express the offer, acceptance or other matter."



"expresses assent, approval or encouragement in digital communication"

Dictionary.com



Damages: C\$82,200.21
Sales of Goods Act § 50

Join the SBoT Computer & Technology Section!

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- ➡ Thank you!
- ➡ Merci !

