No. 19–5671

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

JAMES LYLE,

Petitioner,

– v. –

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF OF PETITIONER TO BRIEF OF THE UNITED STATES IN OPPOSITION

Daniel S. Nooter, Esq.
1380 Monroe Street, N.W., # 427
Washington, DC 20010
DanNooterEsq@gmail.com
Tel. (202) 215-0512

Thomas H. Nooter, Esq.
FREEMAN NOOTER & GINSBERG
75 Maiden Lane
New York, NY 10038
NooterEsq@gmail.com
Tel. (212) 608-0808

No. 19–5671

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

JAMES LYLE,

Petitioner,

– v. –

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF OF PETITIONER TO BRIEF OF THE UNITED STATES IN OPPOSITION

On August 19, 2019, petitioner James Lyle, through undersigned counsel, filed a petition for a writ of certiorari to the U.S. Court of Appeals for the Second Circuit, as well as a motion to proceed *in forma pauperis*. Respondent United States filed a brief in opposition to Mr. Lyle's certiorari petition on November 22, 2019. Mr. Lyle submits this reply brief pursuant to U.S. Sup. Ct. R. 15(6), to address new points raised in the government's brief.

ARGUMENT

I. Contrary to the government's presentation of the issues in its opposition brief, there is no basis to dispute that Mr. Lyle received authorization to use and possess the rental vehicle from the vehicle's lawful lessee.

In the present posture, the government cannot properly dispute that at the time police seized the rental vehicle, Mr. Lyle had received lawful possession and control of the vehicle — including its trunk compartment — from his girlfriend, the vehicle's lawful lessee. Indeed, as a brief review of the procedural history demonstrates, the government affirmatively waived any such objection to the sufficiency of proof on this matter, and should thus be estopped from attempting to assert such an objection now at the certiorari stage.

In a motion dated July 9, 2014, Mr. Lyle moved to suppress evidence obtained as the fruit of the warrantless seizure of a rental vehicle in his possession on the date of his arrest. (Dist. Ct. DN 16.[1]) In support of his motion, Mr. Lyle filed a sworn declaration stating that his girlfriend had rented the vehicle and given Mr. Lyle "her complete permission and authority" to use it. (A 16.) Mr. Lyle filed a supplemental declaration on August 15, 2014, again explaining that he had received authorization from his girlfriend, the vehicle's lawful lessee, to use and

[1] References to record materials included in the appellate Appendix filed in the Second Circuit on July 20, 2015, are designated "A" and the page number of the cited reference. Reference to additional documents filed in the district court are designated "Dist. Ct. DN," followed by the document number of the district court docket entry and, if necessary, the relevant page number within that document.

possess the vehicle. (A 21.) Mr. Lyle also filed, through counsel, a supplemental memorandum of law in which he explicitly sought an evidentiary hearing on the factual issues related to the police's unlawful seizure of the vehicle:

> The issues of the defendant's standing to challenge the search of the trunk of the car and the reasons for the police impounding the car . . . cannot be resolved without a hearing on the facts of the stop, search, and arrest of Mr. Lyle.

(Dist. Ct. DN 33, at 13.)

The government filed a memorandum of law of its own, in which it urged the district court to deny Mr. Lyle's Fourth Amendment claim "without an evidentiary hearing." (Dist. Ct. DN 30, at 1.) The government asserted that Mr. Lyle lacked Fourth Amendment standing because he had not received the rental company's authorization to use the vehicle, a fact the government asserted was dispositive of the issue as a matter of law. (*Id.* at 23–24.) The district court adopted the government's argument and as a result, in an order dated August 21, 2014, ordered an evidentiary hearing limited only to the facts of a separate claim raised under *Miranda v. Arizona*, 384 U.S. 436 (1966); otherwise, the district court denied Mr. Lyle's request for a hearing on the Fourth Amendment issue. (A 29.) During the course of the *Miranda* hearing, Mr. Lyle's counsel made several attempts to elicit testimony germane to the Fourth Amendment claim, and each time the government successfully objected that facts concerning the Fourth

Amendment claim were "beyond the scope of the hearing, which is only on the post-arrest statements." (A 44–46.)

Ultimately, the district court issued an order on October 1, 2014, denying Mr. Lyle's suppression motion and agreeing with the government that the fact Mr. Lyle was not listed as an authorized driver on the rental agreement meant that he lacked Fourth Amendment standing. (A 57–58.) "This is true," the district court ruled, "even if the defendant receives permission from the lessee to drive the rental car." (A 57–58.)

On May 14, 2018, this Court decided *Byrd v. United States*, 584 U.S. ____; 138 S. Ct. 1518, 1531 (2018), holding unanimously 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." Thus, on June 22, 2018, this Court granted Mr. Lyle's first petition for certiorari (in case number 17–5992), summarily vacating the Second Circuit's judgment and remanding the matter for further consideration in light of *Byrd*. *See Lyle v. United States*, No. 17–5992, 138 S. Ct. 2024 (2018).

Following remand and additional briefing, the Second Circuit issued a revised opinion on April 1, 2019, once again holding — for reasons addressed in the original certiorari petition — that Mr. Lyle lacked Fourth Amendment standing to challenge the warrantless search. (Appendix A at 17–19, 22–27.) Saliently, the

Second Circuit did not remand the matter to the district court for an evidentiary hearing, and thus the district court has never had the opportunity to make findings of fact that properly apply this Court's holding in *Byrd*. Indeed, as a result of the government's successful efforts to deny Mr. Lyle an evidentiary hearing, the only evidence allowed to be put on the record concerning Mr. Lyle's reasonable expectation of privacy in the vehicle's trunk compartment or the police's determination to seize the vehicle without a warrant or probable cause are the facts alleged in Mr. Lyle's sworn declarations.

In its opposition brief, however, the government now wrongly suggests that the district court made adverse evidentiary findings against Mr. Lyle:

> The court noted petitioner's assertion that "his girlfriend, who had rented the car, had given him permission to drive it." But the court found that assertion -- which was "unsupported by evidence from the car rental company or [his] girlfriend" -– "insufficient to establish [his] expectation of privacy in the rental car."

Gov't. Opp. at 5 (internal citations omitted).

Yet the government, having successfully persuaded the district court that an evidentiary hearing was unnecessary, cannot now assert that Mr. Lyle failed to satisfy an evidentiary burden of presenting corroborating testimony. To the extent the government may now believe that the evidentiary record is factually "insufficient," the proper recourse would not be to deny certiorari (as the government urges), but to *grant* certiorari, summarily reverse the Second Circuit's

judgment, and remand for an evidentiary hearing to determine the additional facts relevant under *Byrd*. Indeed, that is essentially what this Court already ordered in granting Mr. Lyle's certiorari petition in case number 17–5992.

II. The questions necessarily raised by the government's application of *Byrd* underscore the need to provide adequate guidance not only to the lower courts but to all those who possess property that they reasonably expect to be private.

The government cannot and does not dispute that possessing and controlling a vehicle's separate trunk compartment, even without a valid drivers' license, is not an offense under New York law; rather, only "operating" the vehicle is prohibited. *See* Gov't Opp. at 11 (citing N.Y. Veh. & Traf. Law § 511). And as this Court recognized in *Byrd*, "an individual who has exclusive control of an automobile *or of its locked compartments*" generally has a legitimate expectation of privacy by virtue of their right to exclude others. *See Byrd*, 138 S. Ct. at 1528 (quoting *Rakas v. Illinois*, 439 U.S. 128, 154 (1978) (Powell, J., concurring); emphasis added). By framing the issue in the disjunctive, *Byrd* recognized that an individual may lawfully exercise a right to exclude others from an automobile's locked compartments, even if that individual does not necessarily possess that right with respect to the automobile as a whole. For the government to prevail, it must demonstrate not only that Mr. Lyle's driving the automobile with a suspended license violated New York law — which Mr. Lyle does not dispute — but that it

also rendered unlawful Mr. Lyle's use of the locked trunk compartment to exclude others. This it cannot do.

The government attempts to draw the connection by asserting that Mr. Lyle's "only connection to the trunk was his status as the car's driver — the very thing state law rendered illegal and illegitimate." *See* Gov't Opp. at 12. But this is clearly false: Mr. Lyle's direct connection to the trunk was his status as the lawful possessor of *the keys to the trunk*; a status wholly independent of one's ability to operate the vehicle as a driver. Indeed, neither the government nor the Second Circuit suggests that Mr. Lyle could never have obtained a reasonable expectation of privacy in the vehicle's trunk, even if he had never operated the vehicle, merely by dint of having a suspended license. Rather, when Mr. Lyle's girlfriend voluntarily transferred possession of the keys to the automobile to Mr. Lyle, Mr. Lyle reasonably understood that his possession of the keys enabled him to lawfully exclude others from the locked trunk compartment.

Indeed, the only precedent the government cites in support of its assertion that Mr. Lyle's "only connection to the trunk was his status as the car's driver" is a line of dicta from *New York v. Class*, 475 U.S. 106, 112–113 (1986) to the effect that "a car's 'function is transportation and it seldom serves as one's residence or

as the repository of personal effects.'" *See* Gov. Opp. at 12.[2] The government fails to quote the following two sentences from *Class*, however, which function to undermine the government's argument. Following the line quoted by the government, the *Class* opinion continues, "A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants *and its contents are in plain view*." *See id.* at 113 (quoting *Cardwell v. Lewis*, 417 U. S. 583, 590 (1974); emphasis added). *Class* involved a firearm discovered by police in a car's passenger compartment. *See id*. at 108. As distinct from its passenger compartment, however, objects secreted in a vehicle's locked trunk compartment are not "in plain view" to the public, rather — as recognized in *Byrd* —an individual can enjoy a reasonable expectation of privacy in a vehicle "or . . .its locked compartments" based on the ability to exclude others. *See Byrd*, 138 S. Ct. at 1528.

The questions raised by the government's opposition brief, however, only underscore why granting certiorari is crucial to instruct both lower courts and the public at large regarding the proper application of *Byrd*'s limited "car thief" exception. *See id.* For example, it is undisputed that the vehicle in this case was

[2] Indeed, in *United States v. Stitt*, No. 17–765, 586 U.S. ___ (2018), decided just last term, this Court unanimously held that the definition of "burglary" under 18 U.S.C. § 924(e) can include "burglary . . . of a vehicle that has been adapted or is customarily used for overnight accommodation." Vehicles are not *only* used for driving.

lawfully parked at the time Mr. Lyle was originally approached by the police, and that he was not operating the vehicle at the time of the initial stop. If the government's application of *Byrd*'s "car thief" exception is correct, however, neither the courts nor the public at large have guidance about how proximate the unlawful operation of the vehicle must be to overcome an individual's reasonable expectation of privacy in the trunk. Is it an hour? A day? If an individual unlawfully operated a vehicle one week ago, do they still lack an expectation of privacy today? At what point, if any, does the "taint" dissipate? And does that "taint" attach to the individual, or to the specific vehicle? That is, if an unlicensed individual unlawfully drives a red car, and stores possessions in the trunk of a blue car that he lawfully has the keys to, but never unlawfully drives, has the individual lost an expectation of privacy in the trunks of all cars everywhere, including the blue car, or does he only lack an expectation of privacy in the particular red car he operated? The government can rely on nothing in *Byrd* to resolve these questions.

Moreover, how close a nexus must there be between a specific traffic violation and an individual's Fourth Amendment interests? In the *Byrd* case itself, the defendant was pulled over for violating a Pennsylvania law prohibiting driving too long in the left-hand lane. Presumably, this infraction was not sufficient to defeat Mr. Byrd's expectation of privacy in the rental vehicle, assuming the expectation was otherwise reasonable. But what if the individual were speeding?

What if the individual's license required her to use corrective lenses, but she was operating the vehicle without lenses? Should the traffic laws of each individual State determine an individual's Fourth Amendment expectations in the privacy of a locked trunk compartment and, if so, must an ordinary individual seeking an expectation of privacy in the trunk compartment of a rental car first research each State's application of the Fourth Amendment to its traffic code before deigning to travel? Presumably the answer to some or all of these questions must be "no"; and yet the government's theory presents no rule of general applicability that courts or individuals can safely apply to protect their property and privacy interests.

This Court should thus grant certiorari to clarify that *Byrd*'s limited "car thief" exception applies only where the individual acquires possession or control over the area searched by illegal means analogous to theft or trespass. *Accord United States v. Schram*, 901 F.3d 1042, 1046 (9th Cir. 2018) (one who trespasses in the acquisition of property cannot reasonably seek to exclude others from that property).

III. The government cannot reasonably deny that eight U.S. Courts of Appeals have split over whether application of the "community caretaking" exception under *Colorado v. Bertine*, 479 U.S. 367 (1987), requires adherence to standardized criteria.

As explained in Mr. Lyle's initial petition for certiorari, this Court should grant certiorari pursuant to U.S. Sup. Ct. R. 10(a) to resolve a split over the

application of *Bertine*'s "community caretaking" exception that presently divides eight U.S. Courts of Appeals. *See* Cert. Pet. at 15–18. Even the Second Circuit, in the opinion below, acknowledged that the Circuits have divided on this issue. *See* Appendix A at 20–21.

The government contends that the opinions of three of the four Circuits that apply *Bertine* differently from the Second Circuit should be disregarded because those opinions preceded this Court's opinion in *Virginia v. Moore*, 553 U.S. 164 (2008). *See* Gov't Opp. at 20–21. Yet the salient fact of *Moore* was that the police had probable cause to make an arrest, even if state law would ordinarily have authorized only a citation. *See Moore*, 553 U.S. at 171. Here, in contrast, and in the other cases interpreting *Bertine*'s "community caretaking" exception, the point is that the police *do not* have probable cause to seize the vehicle. Moreover, the government concedes that the Tenth Circuit, in a case decided well after *Moore*, held that the seizure "is constitutional only if justified by both a standardized policy and a reasonable, non-pretextual community-caretaking rationale," unless there is an "imminent threat to public safety." *See* Govt. Opp. at 25 (discussing *United States v. Sanders*, 796 F.3d 1241, 1248 (2015).

The government cannot contend, however, nor did the Second Circuit find, that the vehicle lawfully-parked in Midtown Manhattan in this case presented an imminent threat (or indeed, any threat) to public safety. Rather, as discussed in

section I, above, the lower courts did not make *any* findings of fact concerning the officers' justifications for the seizure, because the government successfully prevented Mr. Lyle from eliciting evidence on that issue. Accordingly, even were this Court to resolve the Circuit split by determining that *Bertine* requires only that the seizure be "reasonable" in light of all the facts and circumstances, as the Second Circuit held, it would nevertheless be necessary to remand the matter to the district court to determine, in the first instance, what those facts and circumstances are in the present case.

IV. This case presents an appropriate vehicle for resolving the questions presented.

Finally, the government is incorrect to suggest that this case "is a poor vehicle for further review of either question presented." *See* Govt Opp. at 24. The government asserts as such because it believes Mr. Lyle would have to prevail on both questions presented to obtain relief. *See id.* Yet the first question presented involves a threshold question of Fourth Amendment standing; and this Court has frequently granted certiorari in cases despite the Court first having to resolve a threshold question relating to standing or jurisdiction. Indeed, in the *Class* case upon which the government principally relies in its discussion of the *Byrd* issue, this Court first had to resolve the threshold question of whether it had jurisdiction

to resolve the question, before preceding to the substantive merits of the Fourth Amendment question. *See Class*, 475 U.S. at 109–10. This case is no different.

And further, because there has never been an evidentiary hearing or any judicial findings of fact concerning the police's basis for seizing the vehicle, remand to the district court would be necessary in this case even if this Court were to agree with the government's and the Second Circuit's interpretation of *Bertine*. Accordingly, if Mr. Lyle prevails on the threshold standing issue, he should be entitled to one or another form of relief regardless of how this Court ultimately resolves the second, *Bertine* matter. Thus, this case represents a proper vehicle for granting certiorari.

CONCLUSION

For the foregoing reasons, Mr. Lyle respectfully prays that this Court grant a writ of certiorari to the Second Circuit regarding both of the questions presented.

Respectfully submitted,

__/s/ Daniel Nooter_____

Date: December 6, 2019

Daniel S. Nooter, Esq.
1380 Monroe Street, N.W., # 427
Washington, DC 20010
DanNooterEsq@gmail.com
Tel. (202) 215-0512

Thomas H. Nooter, Esq.
75 Maiden Lane
New York, NY 10038
NooterEsq@gmail.com
Tel. (212) 608-0808

CERTIFICATE OF COMPLIANCE WITH RULE 33(G)

Undersigned counsel hereby certifies that this petition for certiorari complies with the word-limitation provision of Supreme Court Rule 33(g)(iii), as it contains 2, 993 words, including footnotes.

__/s/ Daniel Nooter_____
Daniel S. Nooter, Esq.