

No. _____

In the Supreme Court of the United States

PETER WOODLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Byrd v. United States*, 138 S. Ct. 1518 (2018), the Court held 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.” *Id.* at 1524. Post-*Byrd*, the questions presented are:

1. Whether an unauthorized driver of a rental car maintains lawful possession and control of the car where there are modest violations of the rental car agreement, such as the agreement’s expiration; and
2. Whether a rental car agent exercising authority and control over a rental car because of a modest violation of the rental car agreement may provide consent to search an unauthorized driver’s personal belongings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Peter Woodley, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered in Case No. 16-4119 on September 26, 2019.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals is not officially reported but may be found at 2019 WL 4724479. Pet. App. 1-7a. The district court's opinion denying petitioner's motion to suppress is not officially reported but may be found at 2015 WL 5136173. Pet. App. 8a-34a. The district court's opinion denying petitioner's motion to vacate, modify, alter, or amend the court's opinion is not officially reported but may be found at 2016 WL 323676. Pet. App. 35a-43a.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The Third Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. The district court had jurisdiction pursuant to 18 U.S.C. § 3231.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

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.

INTRODUCTION

In *Byrd v. United States*, 138 S. Ct. 1518 (2018), the Court resolved a circuit split over the question whether a driver has a reasonable expectation of privacy in a rental car if the driver is not listed as an authorized driver on the rental agreement. The Court held 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.” *Id.* at 1524.

Byrd considered, but did not resolve, a critical question that divided the circuit courts pre-*Byrd*, and continues to do so post-*Byrd*: what constitutes lawful possession and control of a rental car?

The Court’s brief flirtation with the question arose in the context of theft and subterfuge, for the government in *Byrd* attempted to argue that an unauthorized driver in possession of a rental car through subterfuge is akin to a car thief. But what happens where, as here, the unauthorized driver is not a thief, but rather a person driving a rental car with an expired rental agreement? Or, perhaps, the unauthorized driver has a suspended or revoked driver’s license, a violation of the rental agreement that may be a traffic infraction, a misdemeanor resulting in a fine, or a felony depending on the state. Do these circumstances present an exception to *Byrd*, as the Third Circuit suggests? The answer to this question depends on the driver’s location, just as it did before the Court issued its decision in *Byrd*.

This case establishes the urgency of this answer, because *Byrd* left an elephant in the room: if an unauthorized driver is no longer in possession and control of a rental

car because of a modest violation of a rental agreement, can a rental car agent exercising authority and control of the rental car provide consent to search the driver's personal bags? The answer should be a resounding no.

Here, Petitioner Peter Woodley was parked along an on-ramp because he had run out of gas. A Pennsylvania state trooper saw Mr. Woodley's vehicle, pulled up behind him, and asked Mr. Woodley why he was there. Mr. Woodley, who was on the phone, told the trooper he had run out of gas and was waiting for his girlfriend.

The trooper asked for Mr. Woodley's identification because the officer believed he had the authority to do so. During the stop, the trooper discovered Mr. Woodley was driving a rental car, but he was not listed on the expired rental agreement. The trooper called a rental car representative to the scene. The lessee also arrived and told the trooper Mr. Woodley had permission to drive the rental car.

The trooper asked for, and received permission from the rental car representative to search the car, leading to the discovery of Mr. Woodley's duffel bag in the car's trunk. Although the trooper knew the bag did not belong to the rental car agent, he believed he had the agent's consent to search anything in the car because "it's her vehicle." The trooper never asked Mr. Woodley or the lessee for consent to search the bag. Troopers discovered a firearm in Mr. Woodley's duffel bag.

The Third Circuit affirmed the denial of Mr. Woodley's suppression motion despite its acknowledgment of *Byrd's* precedent. The court suggested exceptions to *Byrd's* general rule, but assumed Mr. Woodley had standing to challenge the search of the rental car and officers lacked probable cause to search it. The Third Circuit,

however, relied on the expired rental agreement to conclude that the rental car representative could provide consent to search Mr. Woodley's personal bag because the representative had authority over the car.

The Third Circuit's decision undermines this Court's precedent, and highlights the continuing fracture between the circuit courts over the concept of lawful possession and control, and the unauthorized driver's reasonable expectation of privacy in rental cars. The Court must provide guidance on these important questions of Fourth Amendment law.

The petition should be granted.

STATEMENT OF THE CASE

Pennsylvania state troopers lack a warrant or probable cause to conduct a stop of Peter Woodley and to search his rental car

On September 17, 2012, Pennsylvania State Trooper Eric Maurer saw a black Ford parked along an on-ramp, and pulled behind the car to “ascertain the well-being of the occupants” 3CA App. 323, 316.¹ Trooper Maurer asked Mr. Woodley, who was on the phone, “what he was doing there.” *Id.* Mr. Woodley told Trooper Maurer he was out of gas and waiting for his girlfriend. *Id.*

Trooper Maurer asked Mr. Woodley for his driver’s license and identification because he believed he had the authority to request the information and usually identified “everybody that I come in contact with.” 3CA App. 323-34, 327-28. Mr. Woodley did not provide identification, but gave a name later determined to be false, his date of birth, a rental car contract, and an insurance card for a car owned by Nicole Eakin. *Id.* Mr. Woodley was not listed on the rental car agreement, which had expired. Trooper Maurer held Mr. Woodley for being an unauthorized driver, and would have “probably detained” Mr. Woodley or tried to “ascertain his identity” if he refused to provide identification. 3CA App. 328, 335-36.

¹ The opinion of the United States Court of Appeals for the Third Circuit does not provide a factual summary of the circumstances surrounding the trooper’s stop of Mr. Woodley, the search of Mr. Woodley’s rental car, and the search of Mr. Woodley’s personal bag. Thus, Mr. Woodley must cite to the appendix submitted to the Third Circuit. Pet. App. refers to Mr. Woodley’s Petition Appendix. 3CA App. refers to the appendix Mr. Woodley submitted to the Third Circuit.

The troopers obtain permission to search Mr. Woodley's personal bag from a rental car representative who arrived at the scene of the stop

Trooper Maurer had a rental car representative come to the scene. 3CA App. 329. The representative gave Trooper Maurer permission to search the rental car. *Id.*

During this time, Ms. Eakin, the lessee, and two state troopers arrived at the scene. 3CA App. 329-30. Ms. Eakin told Trooper Maurer that she gave Mr. Woodley permission to drive the rental car. 3CA App. 336.

Trooper Maurer asked Mr. Woodley and Ms. Eakin "if there was anything in the vehicle that was theirs." 3CA App. 331. Ms. Eakin stated she had nothing; Mr. Woodley stated he had CDs inside the vehicle. 3CA 331-32. Trooper Maurer did not ask Ms. Eakin for permission to search the car because "she was not the owner of the vehicle. She was an overdue lease." 3CA App. 332.

Trooper Maurer found a duffel bag in the car's trunk, but he did not ask Mr. Woodley or Ms. Eakin for permission to search the bag. 3CA App. 333. The trooper believed he had consent to search the bag from the rental car representative, who never said the bag belonged to her, because "it's her vehicle" and he could search anything in the car. 3CA App. 333-34. A second trooper searched the duffel bag and found a firearm. 3CA App. 334-35.

The district court concludes Mr. Woodley did not have a reasonable expectation of privacy in the rental car or his duffel bag

A grand jury returned a three-count superseding indictment against Mr. Woodley, charging him with drug offenses related to a 2013 arrest, and being a felon

in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e), based on the September 2012 search. Mr. Woodley filed suppression motions challenging, in relevant part, the search of the rental car and his bag.

The district court relied on Third Circuit precedent to determine that Mr. Woodley did not have a reasonable expectation of privacy in the rental car and lacked standing to challenge the search because he was an unauthorized driver of the car. 3CA App. 16-17. The court also concluded that Mr. Woodley did not have a reasonable expectation of privacy in the duffel bag found in the rental car's trunk because he was an unauthorized driver, and did not assert any expectation of privacy in the bag. 3CA App. 17-18.

The Third Circuit assumes Mr. Woodley had a reasonable expectation of privacy in the rental car, and officers lacked probable cause to search it, but concludes the rental car representative had authority to consent to a search of the rental car and Mr. Woodley's personal bag

Byrd was decided while Mr. Woodley's case was pending before the Third Circuit. "Given that intervening precedent," the court stated, "we might need to consider in other circumstances whether the expiration of the rental car agreement or Woodley's provision of a false name would except him from *Byrd*'s general rule." Pet. App. 3a. The court, however, stated that even if Mr. Woodley had a reasonable expectation of privacy and the troopers lacked probable cause to search it, "the search of Woodley's bag was nonetheless authorized by the voluntary consent of the rental car agent who appeared on the scene." *Id.*

The court, citing *Illinois v. Rodriguez*, 497 U.S. 177 (1990), *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), and *Georgia v. Randolph*, 547 U.S. 103 (2006), stated “that a search based on voluntary consent of a person whom an officer reasonably believes is authorized to give it is constitutional,” and that consent “grants officers the right to search any place over which they reasonably believe the consenting person exercises authority” Pet. App. 3a. The Third Circuit found that the rental car representative had authority to search the car and voluntarily provided consent. Thus, it was reasonable for the officers to believe that possession of the car had reverted back to the rental car company because of the expired agreement, and the representative had authority over the car and could consent to a search. *Id.*

The search of Mr. Woodley’s bag, however, presented a “closer question.” Pet. App. 4a. The court acknowledged the trooper conceded he did not think the bag belonged to the rental car representative, but relied on the trooper’s statement that he believed the agent could provide consent to search the bag. The court found this belief to be reasonable under the circumstances. *Id.* “In short, because the rental agent had authority over the car, the bag was found inside the car, and no other party claimed the bag, the trooper reasonably concluded that the rental agent’s authority extended to the bag and the search was not constitutionally defective.” *Id.*

REASONS FOR GRANTING THE WRIT

“The Fourth Amendment protects ‘effects’ as well as people from unreasonable searches and seizures.” *United States v. Place*, 462 U.S. 696 (1983). *Katz v. United*

States, 389 U.S. 347, 351 (1967) (“For the Fourth Amendment protects people, not places.”). Thus, “in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable” *Minnesota v. Carter*, 525 U.S. 83, 88 (1998).

In *Byrd v. United States*, 138 S. Ct. 1518 (2018), the Court resolved a circuit split over the question whether a driver has a reasonable expectation of privacy in a rental car if the driver is not listed as an authorized driver on the rental agreement. The Court held 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.” *Id.* at 1524.

Post-*Byrd*, courts must grapple with two critical questions: whether an unauthorized driver of a rental car maintains lawful possession and control of the car where there are modest violations of the rental car agreement, such as the agreement’s expiration; and whether a rental car agent exercising authority and control over a rental car because of a modest violation of the rental car agreement may provide consent to search an unauthorized driver’s personal belongings contained in the car.

Modest violations of rental car agreements should not create an exception to *Byrd*’s general rule. The Third Circuit did not answer the question of lawful possession, for it assumed Mr. Woodley had a reasonable expectation of privacy as the unauthorized driver of his rental car, and the troopers did not have probable cause

to search it. The court, however, used this open question—here, an expired rental car agreement—to ignore this Court’s longstanding precedent regarding a third party’s authority to provide consent to search personal bags over which the third party exercises no control.

Byrd should not provide cover for the unconstitutional searches of personal belongings where the unauthorized driver may no longer have possession and control of a rental car because of a modest violation of the rental car agreement. This case is the vehicle to resolve important, recurring questions under the Fourth Amendment that continue to divide the federal courts.

I. This case presents the ideal vehicle to address the concept of lawful possession and control, the central inquiry under the *Byrd* rule.

Before the Court’s decision in *Byrd v. United States*, 138 S. Ct. at 1518, the federal circuits split over whether unauthorized drivers have a reasonable expectation of privacy in rental cars. The Fourth, Fifth, and Tenth Circuits held that unauthorized drivers did not have standing to challenge the search of a rental car. *United States v. Wellons*, 32 F.3d 117 (4th Cir. 1994); *United States v. Boruff*, 909 F.2d 111 (5th Cir. 1990); *United States v. Obregon*, 748 F.2d 1371 (10th Cir. 1984). The Eighth and Ninth Circuits held that unauthorized drivers may challenge the search of rental cars if they had permission from the authorized driver to use the car. *United States v. Thomas*, 447 F.3d 1191 (9th Cir. 2006); *United States v. Best*, 135 F.3d 1223 (8th Cir. 1998). The Third and Fourth Circuits determined that unauthorized drivers did not have standing to challenge searches, but left open the

possibility that some circumstances may create a legitimate expectation of privacy.

United States v. Kennedy, 638 F.3d 159 (3d Cir. 2011); *United States v. Smith*, 263 F.3d 571 (6th Cir. 2001).

Byrd resolved this split. In reaching its holding, the Court briefly addressed the “concept of lawful possession,” a central inquiry, in the context of a car thief because the government alleged *Byrd* had no greater expectation of privacy than a thief because he allegedly used a third party to mislead the rental company from the outset, to aid him in committing a crime. *Id.* at 1529-30. The Court called this an “important qualification,” because *Rakas v. Illinois*, 439 U.S. 128, 141 (1978) makes clear that “‘wrongful’ presence at the scene of a search would not enable a defendant to object to the legality of the search.” *Byrd*, 138 S. Ct. at 1529. Thus, “[n]o matter the degree of possession and control, the car thief would not have a reasonable expectation of privacy in a stolen car.” *Id.*

The Court noted:

It is unclear whether the Government’s allegations, if true, would constitute a criminal offense in the acquisition of the rental car under applicable law. And it may be that there is no reason that the law should distinguish between one who obtains a vehicle through subterfuge of the type the Government alleges occurred here and one who steals the car outright.

Id. at 1529-30. The Court did not consider the question because it was not raised in the lower courts, leaving open what constitutes lawful possession and control of a rental car.

The significance of this question is presented here, where the unauthorized driver is not a thief, but rather a person who arguably is no longer in lawful

possession and control of the rental car because the rental agreement expired and the rental car company representative appeared on the scene at an officer's request.²

Pre-*Byrd*, the Ninth and Eleventh Circuits held that a lessee has a reasonable expectation of privacy in a rental car even after the rental car agreement has expired. *United States v. Henderson*, 241 F.3d 638 (9th Cir. 2000); *United States v. Cooper*, 133 F.3d 1394 (11th Cir. 1998). In *Cooper*, the government argued the defendant lacked standing to challenge the search of his rental car because the lease agreement expired four days prior to the challenged search. The Eleventh Circuit concluded the defendant "retained a sufficient amount of control and possession over the rental car,"

² Although not presented here, circuit courts have addressed and split on a related issue of lawful possession: whether an unauthorized driver has standing to challenge the search of a rental car despite lacking a valid driver's license. Pre-*Byrd*, the Eighth and Ninth Circuits answered affirmatively. *United States v. Thomas*, 447 F.3d at 1191; *United States v. Best*, 135 F.3d at 1223. The Ninth Circuit disagreed, finding before and after *Byrd* that an unauthorized, unlicensed driver does not have a reasonable expectation of privacy in a rental car. *United States v. Lyle*, 919 F.3d 716 (2d Cir. 2019); *United States v. Lyle*, 856 F.3d 191 (2d Cir. 2017). The Seventh Circuit never weighed in on the circuit split involving the privacy rights of an unauthorized driver because it determined that an unauthorized driver who also lacked a valid license did not have a reasonable expectation of privacy. *United States v. Haywood*, 324 F.3d 514 (7th Cir. 2003). Cf. *United States v. Walton*, 763 F.3d 655, 665-66 (7th Cir. 2014) (concluding that an authorized driver's "lack of a valid driver's license did not categorically deprive him of either a subjective or objectively reasonable expectation of privacy in the rental car," and noting that a suspended driver's license is not as severe a lapse as a stolen car.). Mr. Woodley notes that the Court is currently considering a petition for writ of certiorari from the Second Circuit's decision in *Lyle*. See No. 19-5671.

especially where a “simple phone call could have extended the rental contract past the date of the warrantless search. Cooper’s failure . . . to extend the due date four days may have subjected him to civil liability, but it should not foreclose his ability to raise a Fourth Amendment challenge” *Id.* at 1402. The court noted the rental car company did not report the car stolen or attempt to repossess it, but stated, “If we were to accept the government’s position, a driver could not expect privacy in a rental car even one minute after the rental contract expired. In other words, the rental company’s dormant right of repossession would govern the scope of the driver’s Fourth Amendment protections.” *Id.* at 1401.

In *Henderson*, 241 F.3d at 638, the Ninth Circuit, finding *Cooper* persuasive, rejected the argument that the defendant lacked standing to challenge the search of his rental car because the lease agreement had expired. *Id.* at 647. The court found that the rental company had not attempted to repossess the car, but “[t]o the contrary, a representative of the company testified that it was not unusual for customers to keep their rental cars beyond the terms of their rental agreements.” *Id.* “[W]hen that happened, the company would simply charge the customer’s credit card for the late return.” *Id.* Thus, even “though the rental agreement had expired, the parties to the agreement understood that [the renter] would retain possession and control of the car and would, in effect, continue to rent it.” *Id.*

This analysis should have no less force when the circumstances involve the unauthorized driver of a rental car. An expired rental agreement is a far cry from a

stolen car. As the Ninth and Eleventh Circuits found, the renter can simply extend the rental period or pay late fees upon return.

What is striking about this case is that the state trooper held Mr. Woodley for being an unauthorized driver, which is not a criminal offense, immediately called the rental car company to come to the scene upon discovery that the rental agreement had expired, and lacked probable cause to search the rental car. If the Court does not provide guidance regarding the concept of lawful possession, particularly in cases involving modest or non-criminal violations of a rental car agreement, law enforcement officers may easily circumvent the Court's Fourth Amendment precedent rule by calling rental car company representatives to the scene of a stop to repossess the rental car and authorize searches that would be unconstitutional in any other context. This case readily displays the consequences of such circumvention.

II. The Court must resolve whether a rental car agent exercising authority and control over a rental car because of modest violations of a rental agreement may provide consent to search the unauthorized driver's personal belongings.

The Court has affirmed that people possess a privacy interest in the contents of personal luggage protected by the Fourth Amendment. *Place*, 462 U.S. at 707. The Court has ordinarily viewed "a seizure of personal property as *per se* unreasonable within the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized." *Id.* at 701. *Schneckloth v. Bustamonte*, 412 U.S. at 218, 219 (1973) ("It is well settled under the Fourth and Fourteenth Amendments that a search

conducted without a warrant issued upon probable cause is ‘per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions.”).

One of the established exceptions to the requirements of a warrant and probable cause to search is a search conducted pursuant to voluntary consent. *Id.* at 291. *Katz v. United States*, 389 U.S. 347, n.22 (1967) (“A search to which an individual consents meets Fourth Amendment requirements . . .”) (internal citation omitted). This consent is not “limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.” *United States v. Matlock*, 415 U.S. 164, 171 (1974). *Illinois v. Rodriguez*, 497 U.S. at 177.

In *Matlock*, the Court explained the meaning of “common authority:”

Common authority is, of course, not to be implied from the mere property interest a third party has in the property. The authority which justifies the third-party consent does not rest upon the law of property, with its attendant historical and legal refinements, see *Chapman v. United States*, 365 U.S. 610, 81 S.Ct. 776, 5 L.Ed.2d 828 (1961) (landlord could not validly consent to the search of a house he had rented to another), *Stoner v. California*, 376 U.S. 483, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964) (night hotel clerk could not validly consent to search of customer's room) but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.

Id. at 171, n.22. See also *Georgia v. Randolph*, 547 U.S. 103 (2006) (“The constant element in assessing Fourth Amendment reasonableness in the consent cases, then,

is the great significance given to widely shared social expectations, which are naturally enough influenced by the law of property, but not controlled by its rules.”).

The Third Circuit, citing *Illinois v. Rodriguez*, *Schneckloth*, and *Georgia v. Randolph*, 547 U.S. 103 (2006), found that it was reasonable for the officers to believe that possession of the rental car had reverted back to the rental car company because of the expired agreement. Although there is no question the trooper did not believe the bag belonged to the rental car agent, the Third Circuit found the trooper’s belief that the rental car agent could consent to search the bag reasonable because the agent had authority over the car and no other party claimed the bag.

Mr. Woodley’s status as an unauthorized driver does not change the error of this analysis—indeed, the Third Circuit assumed he had a reasonable expectation of privacy in the rental car and the troopers did not have probable cause to search it—as five circuit courts have concluded that third parties, including rental car representatives, cannot provide authority to search personal belongings in the absence of common authority. *See United States v. Munoz*, 590 F.3d 916 (8th Cir. 2010) (stating consent to search may be given by a suspect or some other person who has common authority or a sufficient relationship to the item to be searched, but authority to search a car did not include a backpack in the absence of common authority); *United States v. Eden*, 190 Fed. Appx. 416 (6th Cir. 2006) (noting the government did not challenge the district court’s ruling that a rental car company could not provide consent to search a suitcase, even if providing consent to search the car, and finding “that a defendant must do more than merely walk away from

something as private as a suitcase to support a finding of abandonment.”); *United States v. Jaras*, 86 F.3d 383 (5th Cir. 1996) (stating a finding of authority to consent to a search requires proof that the consenting party and the party challenging a search “mutually used the property searched and had joint access to and control of it for most purposes, so that it is reasonable to recognize that either user had the right to permit inspection of the property and that the complaining co-user had assumed the risk that the consenting co-user might permit the search.”); *United States v. Infante-Ruiz*, 13 F.3d 498 (1st Cir. 1994) (determining it was not “objectively reasonable” for officers to believe a driver’s consent to search a rental car extended to the passenger’s briefcase, which was located in the trunk); *United States v. Welch*, 4 F.3d 761 (9th Cir. 1993) (finding a boyfriend’s actual authority to consent to the search of a rental car did not extend to his girlfriend’s purse, which was located in the trunk).

The troopers’ actions in this case are not “objectively reasonable.” *See e.g., Florida v. Jimeno*, 500 U.S. 248, 249 (1991) (stating the “scope of a search is generally defined by its expressed object,” and the Fourth Amendment is satisfied when, under the circumstances, it is objectively reasonable for the officer to believe that the scope of the suspect’s consent permitted him to open a particular container within the automobile.”). The troopers held Mr. Woodley for being an unauthorized driver. They immediately called a rental car representative to the scene because of the expired rental agreement, and asked the representative for consent to search despite the lack of probable cause to do so. Although the troopers generally asked Mr. Woodley and

the lessee who arrived at the scene if there was anything belonging to them in the rental car, they did not ask for voluntary consent to search the personal bag found in car's trunk. The lead trooper made clear that he did not need to ask the lessee for permission to search the vehicle because she was an "overdue lease," and that he believed the rental car representative could consent to a search of the personal bag because "it's her vehicle" and he could search anything in the car.

There is no evidence that the troopers believed the vehicle or the subsequently discovered personal bag contained contraband. *See California v. Acevedo*, 500 U.S. 565, 579-80 (1982) (stating the police may search a vehicle and the containers within it if they have probable cause to believe contraband or evidence is contained). This blatant disregard for the Fourth Amendment must not stand solely because of Mr. Woodley's status as an unauthorized driver no longer in possession of a rental car based on a modest, non-criminal violation of a rental car agreement that was exploited by officers to conduct a search lacking in probable cause.

The Third Circuit's decision seriously undermines this Court's precedent and the Fourth Amendment's protections, and it is the ideal vehicle to resolve *Byrd*'s unanswered questions. The Court should grant the petition for certiorari to end the conflict between the circuit courts over the concept of lawful possession and control, and to decide an important question regarding the unauthorized driver's reasonable expectation of privacy in his or her personal belongings if a rental car agent or third party exercises control over the rental car.

CONCLUSION

The Court should grant the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered in this case on September 26, 2019.

Respectfully submitted,

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