19-7392

No. 17-4782

ORIGINAL

In The

SUPREME COURT of the UNITED STATES

DEMETRIUS DARRELL DAVIS,
Petitioner

V.

UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a mere disclaimer of ownership in an effort to avoid making an incriminating statement in response to police questioning should not alone be deemed to constitute abandonment?

2. Whether a party disclaimer of ownership of an object in response to police questioning is the only factor that a court should weigh in its consideration of whether the party have a reasonable expectation of privacy in property?

RULE 14.1(b) STATEMENT

Demetrius Darrell Davis is the petitioner and the United States of America is the respondent in this petition for writ of certiorari. The case number from the United States Court of Appeals for the Fourth Circuit is 17-4782.

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Demetrius Darrell Davis, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The United States District Court for the District of Maryland filed its final judgment on December 14, 2017. Judg't, App. 94. A panel of the United States Court of Appeals for the Fourth Circuit affirmed the district court's judgment by an opinion filed on August 2, 2019. Op., App. 2. Davis timely filed a petition for rehearing en banc. But the Fourth Circuit denied the petition by an order filed on September 24, 2019. Order, App. 1.

JURISDICTION

A panel of the United States Court of Appeals for the Fourth Circuit affirmed the district court's judgment by an opinion filed on August 2, 2019. Op., App. 2. The opinion became final when the Fourth Circuit denied rehearing en banc on September 24, 2019. Order, App. 1. This Court has jurisdiction under 28 U.S.C. 1254(1) to review this decision on a writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED

The relevant constitutional provision is: U.S. Const. Amend. 1V.

INTRODUCTION

The primary question of exceptional importance is whether a party disclaimer of ownership of an object in response to police questioning is the only factor that a court should weigh in its consideration of whether the party have a reasonable expectation of privacy in the property. This became an issue over two or three decades ago when the United States Court of Appeals for the Fourth Circuit decided United states v. Williams, 538 F.2d 549 (4th cir. 1976) and United States v. Lehuk, 65 F.3d 1105 (4th Cir. 1995) and United states v. Han, 74 F.3d 540 (4th Cir. 1996). These cases adopted a rule regarding who lacks standing to challenge a search or seizure as being unreasonable. The Fourth Circuit rule is that a person who denies ownership of an object loses any reasonable expectation of privacy in the property and is consequently precluded from seeking to suppress evidence seized from the property. Under it's reasoning, a person's disclaimer of ownership constitutes abandonment.

This rule contradicts the controlling cases from this Court and at odds with well settled Fourth Amendment principles. Abel v. United States, 362 U.S. 217 (1960), which the Fourth Circuit rely does not support the Fourth Circuit rule.

STATEMENT OF CASE

Davis's prosecution arose from a joint federal-state investigation of a cocaine trafficing ring on Maryland's Eastern Shore. The investigation originally focused on Tarron Fletcher, Tyandre Johnson, and several of their associates. For several years, law enforcement agents used traditional investigative methods against those suspected trafficers, including controlled buys with confidental sources, pen registers, GPS trackers, pole cameras, trash pulls, and package searches at the Post Office. By 2016, they had gathered enough evidence to indict the known conspirators on drug charges. But the agents sought more evidence to take down "the organization as a whole." App. 4.

In pursuit of that goal, they applied for a wiretap of Johnson and Fletcher's phones. When the wiretap was approved, agents were not aware of Davis or his role in the conspiracy. But through the wiretap, they captured several phone and text conversations involving Davis. In two calls on the same day, Davis and Fletcher used what appear to be coded terms (e.g., "that girl Crystal") to discuss-as the agents interpreted it-the quality of certain kilograms of cocaine. In later text messages, Davis and Fletcher continued that discussion and arranged a meeting in which Davis would supply Fletcher with drugs. Using that information, agents followed Davis as he drove

to a meeting with Fletcher. Id. at 5. In another call, Johnson complained to Davis about receiving drugs at inopportune times and being forced to repay depts early. Soon after, Johnson sent a text message to Davis reading, "I'm gonna give your money cuz but don't come around me with drugs no more man...u bad buisness." Id.

Suspecting that Davis was supplying cocaine to Fletcher and Johnson, agents sought a Title 111 wiretap order for Davis's cellphone. A federal magistrate judge authorized the wiretap on Davis's phone, finding that there was probable cause that he was involved in the drug conspiracy and that a wiretap was necessary because other methods were unlikely to succeed. Id. at 6. Using information from that wiretap and from GPS tracking of Davis's Mercedes, agents observed what they believed to be Davis supplying drugs to his conspirators. They also took aerial and ground-based photos and video of Davis's property. With this new evidence, they obtained federal search warrants for Davis's house and for his Mercedes.Id.

A team of agents executed the search warrants early one morning. Several agents entered Davis's house, seperating Davis and his girlfriend for questioning. Id. at 7. Davis orally acknowledged that he had been advised of his Miranda rights, and he responded to questions without invoking his rights. A detective asked Davis about a white box truck parked in his driveway, which investigators had seen on the premises before.

Davis denied ownership (or even knowledge) of the truck. But after questioning Davis, the detective found the truck's keys in Davis's house.Id.

While some agents searched the house, a K-9 officer walked a drug-sniffing dog around the back of Davis's property and the vehicles parked there. After the detective found the keys, he asked the K-9 officer to bring the dog to the truck parked in the driveway. The dog alerted to the smell of narcotics, and the agents opened the truck. Inside, they found a small quantity of cocaine and $625 in cash. Id.

A federal grand jury indicted Davis, Johnson, and Fletcher on one count of conspiracy to distribute and possess with intent to distribute 500 or more grams of cocaine. Davis pleaded not guilty and filed two suppression motions. Id. The second motion alleged that the search of the truck on Davis's property violated the Fourth Amendment. The district court denied both suppression motions. Id. The district court addressed the search of the truck, concluding that there was no Fourth Amendment violation because Davis had no reasonable expectation of privacy in the truck after denying that he had any interest in it. Id at 8. As an alternative to that holding, the district court held that the warrant and the automobile exception to the warrant requirement each independently justified the search. Id.

A jury convicted Davis of conspiracy. The district court sentenced him to ten years in prison followed by five years

of supervised release. Id. Davis appealed, arguing, inter alia, that the search of the truck on his property violated his Fourth Amendment rights. Id. at 14. Agreeing with the district court, the Court of Appeals held that Davis's Fourth Amendment challenge fails because he lacked a reasonable expectation of privacy in the truck. Id. at 14-18.

REASONS FOR GRANTING THE WRIT

Professor Wayne R. LaFave states: "[A] mere disclaimer of ownership in an effort to avoid making an incriminating statement in response to police questioning should not alone be deemed to constitute abandonment." 4 Wayne R. LaFave, Search and Seizure § 11.3(f), at 343 (1987), quoted in United states v. Han, 74 F.3d 540, 544 (4th Cir. 1996). LaFave recognize that the circuits disagree on the subject, and his example of the opposing view is the decision in United States v. Williams, 538 F.2d 549 (4th Cir. 1976), which the panel in this case rely. See 4 LaFave, § 11.3(a) at 288 n.43 (citing Williams, 538 F.2d 549) Compare with United States v. Maxi, 886 F.3d 1318, 1326 (11th Cir. 2018)("While this Court recognize that a party can disclaim his privacy interest, such a disclaimer is only one factor that we weigh in our consideration of whether [defendant] had a reasonable expectation of privacy in the duplex."), United States v. Hoey, 982 F.2d 890 892 (8th Cir. 1992)("[A]ll the relevant circumstances at the time of the alleged abandonment should be considered.")(citing United States v. Colbert, 474 F.2d 174, 176 (5th Cir. 1973) and United States v. Perea, 986 F.2d 633 (2d Cir. 1992).

This Court should grant Davis petition for certiorari "to address the conflict among the Court of appeals." see Byrd v. United States, 200 L.ed. 2d 805, 813 (2018), United States v. Padilla, 508 U.S. 77 (1993) and United States v. Salvucci, 448 U.S. 83, 86 (1980). This Court should also grant certiorari in

light of the obvious importance of the issue raised to the administration of criminal justice. See Rakas v. Illinois, 439 U.S. 128, 130 (1978).

In this case, when a detective asked about a white box truck parked in his driveway, Davis expressly disclaimed ownership (or even knowledge) of the truck. App. 7, 16. The panel of the Court of Appeals determined that Davis's words mirror the language it found to constitute abandonment of privacy interest in an object. Id. at 16.

Davis had contended that the Fourth Circuit uses a multi-factor test to determine if a defendant had a reasonable expectation of privacy. Id. In his view, relevant factors include the location of the truck and the key found inside his house. Id. The panel of the Court note as a general principle, it do employ a multifactor test. Id. Relying on United States v. Han, 74 F.3d 540, 544-45 (4th Cir. 1996), United States v. Lehuk, 65 F.3d 1105 1110-11 (4th Cir. 1995) and United States v. Williams, 538 F.2d 549, 550 (4th Cir. 1976), the Court held, however, that Davis's disclaimer was dispositive. App. 16-17.

No principles exist to support the Fourth Circuit's conclusion that when a person disclaims ownership of property prior to a search by law enforcement, no circumstances other than the person's verbal disclaimer are relevant to abandonment analysis. As Floyd, J., concurring in the judgment stated; it seems that theFourth Circuit have not subjected the question to a thorough analysis or made it an explicit holding. Appx. 18.

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." U.S. CONST Amend, 1V. "The Amendment establishes a simple baseline, one that for much of our history formed the exclusive basis for its protections: When the Government obtains information by physically intruding on a persons, houses, or effects, a search within the origanal meaning of the Fourth Amendment has undoubtedly occurred." Florida v. Jardines, 569 U.S. 1, 5 (2013)(internal quotation marks and citation omitted). A Fourth Amendment violation also ocurrs when government officers violate a person's "reasonable expectation of privacy." Katz v. United States, 389 U.S. 347, 360 (1967)(Harlan, J, concurring).

A person's Fourth Amendment rights cannot be violated by a search unless the person has a legitimate expectation of privacy in the area or items searched. Rakas, 439 U.S. at 143 (the "capacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place, but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.")(citing United States v. Chadwick, 433 U.S. 1, 7 (1977); United States v. White, 401 U.S. 745, 752 (1971); Katz, 389 U.S. 347, 353 (1967)).

It is clear that Fourth Amendment rights are personal and "may not be vicariously asserted." Id. A person who is 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 (citing Alderman v. United States, 294 U.S. 165, 174 (1969)). Conversely, "suppression of the product of a Fourth Amendment violation can be successfully urged only by those who rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence." Alderman, 394 U.S. at 171-72.

One need not be the owner of the property for his privacy interest to be one that the Fourth Amendment protects, so long as he has the right to exclude others from dealing with the property. For example, one who, with permission of the owner , is in possession of and "has complete dominion and control over" a residence that is not his own home, "and can exclude others from it," Rakas, 439 U.S. at 149 (discussing Jones v. United States, 362 U.S. 257 (1960), overruled on other grounds, United States v. Salvucci, 448 U.S. 83, 85 (1980), "can have a legally sufficient interest... so that the Fourth Amendment protects him from unreasonable governmental intrusion into that place. Id. at 142.

Because ownership is not, by itself, dispositive of the right to claim the protection of the Fourth Amendment, it should follow that a disclaimer of ownership, is not necessarily the hallmark for deciding the substance of a Fourth Amendment claim. Instead, as this Court explained in Rakas, " the ultimate question...is whether one's claim to privacy from government intrusion is reasonable 'in light of all the surrounding circumstances.'" Id. at 152(Powell J., concurring). Indeed, "[i]n considering the reasonableness of asserted privacy expectations, [this] Court has recognized that no single factor invariably will be determinative." Id. "Thus, [this] Court has examined whether a person invoking the protection of the Fourth Amendment took normal precautions to maintain his privacy - that is, precautions customarily taken by those seeking privacy." Id. (citing e.g., Chadwick, 443 U.S. at 11("By placing personal effects inside a doublelocked footlocker, respondent manifested an expectation that the contents would remain free from public examination"); Katz, 389 U.S. at 352 ("One who occupies [a telephone booth], shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world").

Here, while executing a search warrant for "Davis's house", see App. 6, a k-9 alerted on the truck and the government agents then searched it, which as the district court found, was partly

on the driveway in the immediate area around the house. App. 86. The part of the driveway where the truck was parked and subsequently searched is curtilage. Curtilage - "the area 'immediately surrounding and associated with the home'" is "part of the home itself for Fourth Amendment purposes." Jardines, 569 U.S. at 6 (quoting Oliver v. United States, 466 U.S. 170, 180 (1984). This was alone enough to show that he had a legitimate expectation of privacy in the truck parked there, so as to be entitled to claim the protection of the Fourth Amendment. No less than one who place personal effects inside a doublelocked footlocker, Chadwick, 433 U.S. at 11, one who safeguards his truck in the manner in which Davis did is due the protection of the Fourth Amendment.

Even assuming the truck belonged not to Davis but some other person, Davis can have personal standing if, as to him, the search violated the "right of the people to be secure in their... houses...." See Mancusi v. DeForte, 392 U.S. 364, 367 and n. 4 (1984). "It is certainly true that a homeowner has a reasonable expectation of privacy in the contents of his home, including items owned by others." see United States v. Karo, 468 U.S. 705, 732 and n. 7 (1984)(citing Alderman, 394 U.S. at 176-77)("If the police make an unwarranted search of a house and seize tangible property belonging to third parties....the homeowner may object to its use against him, not because he had any interest in the seized object as 'effects' protected by the Fourth Amendment, but

because they were the fruits of an unauthorized search of his house, which is itself expressly protected by the Fourth Amendment.").

The Court of appeals holding is relevant to the question of standing only with the narrow consideration of Davis's "reasonable expectation." App. 14. But Davis did not argue that he had standing solely in terms of the Katz test noted above. In his opening brief, Davis stated that "the box truck was parked on [his] property" and that "[w]hat is clear from these circumstances, despite [his] statements denying knowledge of the box truck, is that [he] had an interest in and control over the area to be searched." App. 72. A person's "Fourth Amendment rights do not rise or fall with the Katz formulation." Jardines, 569 U.S. at 11 (quoting United States v. Jones, 565 U.S. 400, 406 (2012)). "[T]hough Katz may add to the baseline, it does not subtract anything from the Amendment's protection 'when the Government does engage in [a] physical intrusion of a constitutionally protected area.'" Id. at 5 (quoting United States v. Knotts, 460 U.S. 276, 286 (1983)(Brennan, J., concurring)); see also Jones, 132 S. Ct. at 952 ("[T]he Katz reasonable-expectation-of-privacy test has been added to, not substituted for, the common-law trespassory test." (emphasis added)).

The Fourth Circuit's disclaimer rule, which discounts altogether the constitutional relevance of the Government's

physical intrusion on Davis's curtilage, erodes that long-standing protection for privacy expectations inherent in a person's home. The disclaimer rule devoloped by the Fourth Circuit, therefore, is not only contrary to the holding of Rakas and Alderman, but at odds with the Fourth Amendment principles discussed above.

It is well established that the warrantless search or seizure of "abandoned" property does not constitute an unreasonable search and does not violate the Fourth Amendment. See Abel v. United States, 362 U.S. 217, 241 (1960). Under Fourth Circuit precedent, a person abandons any reasonable expectation of privacy in certain property for Fourth Amendment purposes when his words or actions can reasonably be understood to disclaim any privacy interest in that property. See United States v. Leshuk, 65 F.3d 1105, 111 (4th Cir. 1995). In Leshuk the Court stated that:

> a person who voluntarily abandons property loses any reasonable expectation of privacy in the property and is consequently precluded from seeking to suppress evidence seized from the property.

Id. The Leshuk defendants denied owning a bag when sheriff's deputies approached. Id. at 1107. Denial of ownership, the Court held, constitutes abandonment. Id. at 1110-11.

Similarly, in United States v. williams, 538 F.2d 549 (4th Cir. 1976), FBI agents entered the Williams's hotel room with his permission. He denied ownership of a briefcase and a typewriter case that were in the room, and allowed the agents to open them. They found tools used to alter and counterfeit securities. He argued on appeal that his consent was ineffective, but the Court disagreed:

> The record, however, shows that defendant voluntarily admitted the agents into his motel room, disclaimed ownership of a briefcase and a typewriter case in the room and stated that he had no objection to a search of the cases. His disclaimer is analogous to abandonment and made the cases subject to seizure.

Id. at 550-51.

The Fourth Circuit cites for authority Abel v. United States, 362 U.S. 217, 241 (1960). In Abel, upon which the Fourth Circuit rely on in Leshuk, 65 F.3d at 1111, an agent of the FBI, in searching petitioner's hotel room immediately after the petitioner had paid his bill and vacated the room, took articles in the room's wastepaper basket where petitioner had put them when packing his belongings and preparing to leave. This Court said that the search "was entirelylawful, although undertaken without a warrant. This is for the reason that at the time of the search petitioner had vacated the room. The hotel then had the exclusive right to its possession, and the hotel management freely gave its consent that the search be made. Nor was it

unlawful to seize the entire contents of the wastepaper basket, even though some of its contents had no connection with crime. So far as the record shows, petitioner had abandoned these articles. He had thrown them away. So far as he was concerned, they were bona vacantia. There can be nothing unlawful in the Government's appropiation of such abandoned property. See Hester v. United States, 265 U.S. 57, 58 [1924]." See Abel, 362 U.S. at 241. ... Unlike Abel, the decision in Leshuk and Williams, did not turn upon whether the defendants had a Fourth Amendment interest in the area[1] searched. What is even more is that Abel did not involve the disclaimer of interest in property and by no means

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1. In the Supreme Court abandonment line of cases, the person's Fourth Amendment interest in the area or lack thereof was determinative. See Abel, 362 U.S. at 241 (hotel room), Hester, 265 U.S. at 58 (open field), Rios v. United States, 364 U.S. 253, 262 n.6 (1960)(taxi cab), California v. Greenwood, 486 U.S. 35((1988)(outside curtilage of home) and Smith v. Ohio, 494 U.S. 541, 543-44 (1990)(hood of car). Property or objects located on the curtilage of a person's home cannot be considered "abandoned." Curtilage is not comparable to the open field in Hester, the vacated hotel room in Abel or outside the curtilage of the home in Greenwood.

established a rule that when a person disclaim ownership in an object, the disclaimer is dispositive. Accordingly, Abel provides no support for the Fourth Circuit's position.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Dated: 12-15-19

Respectfully submitted,

s/ Demetrius D. Davis

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