**No.**

**IN THE SUPREME COURT OF THE UNITED STATES**

**ROBERT CASH SCHEUERMAN, Petitioner**

**v.**

**STATE OF KANSAS, Respondent**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE KANSAS SUPREME COURT**

# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether passengers are categorically unable to challenge the search of a car in which they are the riding unless they can show an ownership or possessory interest in the car, even when they are present with the permission of the owner and have significant noncommercial connections to the vehicle.

## LIST OF PARTIES

The parties to this case are as stated in the caption, Robert Cash Scheuerman, petitioner, and the State of Kansas, respondent. In the courts below, the petitioner was referred to as appellant-defendant and the respondent was referred to as appellee-plaintiff.

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## OPINIONS BELOW

The Kansas Court of Appeals held that Mr. Scheuerman did not have "standing"[1] to challenge the search of his car that led to the discovery of evidence used in his prosecution. *State v. Scheuerman*, 60 Kan. App. 2d 48, 486 P.3d 676 (2021). The Kansas Supreme Court granted review and upheld that determination. *State v. Scheuerman,* 314 Kan. 583, 594, 502 P.3d 502, 510 (2022).

## STATEMENT OF JURISDICTION

The Kansas Supreme Court is the court of last resort in Kansas. The Kansas Supreme Court rejected Mr. Scheuerman's claim that he could challenge the search of the car in which he was a passenger pursuant to the Fourth Amendment. This Court has jurisdiction under 28 U.S.C. § 1257(a).

The question presented in each case is whether passengers are categorically unable to challenge the search of a car in which they are the riding unless they can show an ownership or possessory interest in the car, even when they are present with the permission of the owner and have significant noncommercial connections to the vehicle.

[1] This Court has clarified that "standing" for purposes of Fourth Amendment analysis is different than "standing" for justiciability analysis. *Byrd v. United States*, 584 U.S. ___, 138 S. Ct. 1518, 1530 (2018). But, as noted in *Byrd*, this is a familiar and useful shorthand and so Mr. Scheuerman will use "standing" as a shorthand for "Fourth Amendment standing" throughout this petition.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution states the following:

> 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.

## STATEMENT OF THE CASE

In this case, Mr. Scheuerman was the passenger in a car that was searched by police, resulting in the discovery of evidence that was later used in his prosecution for possession of methamphetamine with intent to distribute. Prior to trial, Mr. Scheuerman moved to suppress the evidence discovered in the car as the fruit of a search that violated the Fourth Amendment. The state trial court denied the motion on the merits, and Mr. Scheuerman was convicted by the state trial court after a bench trial on stipulated facts, and the state trial court imposed a 73-month prison sentence.

On direct appeal, Mr. Scheuerman asserted that the state trial court erred by denying his motion to suppress. In response, the state asserted that Mr. Scheuerman did not have "standing" because he was merely a passenger in the car, citing *Rakas v. Illinois*, 439 U.S. 128 (1978). Despite acknowledging significant connections between Mr. Scheuerman and the car in question, the Kansas Court of Appeals accepted the state's argument and held that Mr. Scheuerman did not have "standing" to make a Fourth Amendment challenge in this case.[2]

Mr. Scheuerman sought review in the Kansas Supreme Court, and specifically cited this Court's decisions in *Minnesota v. Carter*, 525 U.S. 83 (1998)

[2] The Kansas Court of Appeals reversed Mr. Schueuerman's conviction on other grounds, but that decision was in turn reversed by the Kansas Supreme Court, resulting in affirmance of Mr. Scheuerman's conviction. This petition only addresses the Fourth Amendment claim rejected by both the Kansas Court of Appeals and the Kansas Supreme Court.

and *Minnesota v. Olson*, 495 U.S. 91 (1990) for the proposition that persons can have "standing" to raise a Fourth Amendment claim, even if they do not own or control some property, so long as they are present with the permission of the owner and have sufficient noncommercial connections to the property.

The Kansas Supreme Court granted review in this case and agreed with the state's argument that passengers categorically do not have "standing" to make a Fourth Amendment challenge unless they own or have a possessory interest in the car:

> A passenger's Fourth Amendment rights "are implicated when the vehicle he or she is occupying is stopped, and this enables the passenger to challenge the constitutionality of that stop," but such rights "are not implicated during the search of an automobile he or she neither owns nor claims a possessory interest in, even if the evidence obtained during the search is used against the defendant later."

*State v. Scheuerman*, 314 Kan. 583, 594, 502 P.3d 502, 510 (2022)(citing *State v. Gilbert*, 292 Kan. 428, 435, 254 P.3d 1271 (2011)).

In the instant case, the Kansas Supreme Court applied this categorical approach to hold that Mr. Scheuerman did not have "standing":

> Scheuerman's arguments demonstrate neither a right of lawful possession nor control of the vehicle. While the evidence showed he paid for the car, the car nevertheless belonged to his girlfriend, Finnigan. Finnigan, not Scheuerman, was driving the car at the time of the stop, and Scheuerman presented no evidence that he had any right to control the car or to exclude others from it at any time. And while some of Paden's testimony could support an inference that

> Scheuerman had used the vehicle in the past—at least enough to be associated with it by law enforcement—that alone does not support a finding that Scheuerman had a reasonable expectation of privacy in the car.

314 Kan. at 595, 502 P.3d at 511. As a result, the Kansas Supreme Court concluded that Mr. Scheuermann could not challenge the search of the car that resulted in his prosecution, conviction, and 73-month prison sentence.

## REASONS FOR GRANTING THE WRIT

1. **This Court should grant this petition to clarify that passengers are not categorically excluded from claiming a Fourth Amendment violation related to a search of a car absent a showing of ownership or a possessory interest. This Court should clarify that such a categorical approach is not consistent with this Court's pronouncements regarding "standing" in other cases, and conflates the doctrines related to the automobile exception with the concept of whether a passenger has sufficient noncommercial connections in a car to be able to establish that it is their "effect."**

*Introduction*

In *Rakas v. Illinois*, 439 U.S. 128 (1978), and *United States v. Salvucci*, 448 U.S. 83 (1980), this Court rejected previous cases that categorically allowed persons who were being prosecuted using evidence found during a search to challenge that search under the Fourth Amendment. As a result, *Rakas* is frequently cited for the proposition that Fourth Amendment rights are personal and that, as a result, persons cannot seek exclusion of evidence based on a Fourth Amendment violation suffered by someone else. *See, e.g., State v. Epperson*, 237 Kan. 707, 717-18, 703 P.2d 761 (1985). This is sometimes described as "standing," although this Court has clarified that it is not "standing" in a sense of justiciability, but is simply part of the analysis of a reasonable expectation of privacy. *Byrd v. United States*, 584 U.S. ___, 138 S. Ct. 1518, 1530 (2018).

But in *Minnesota v. Olson*, 495 U.S. 91 (1990) and *Minnesota v. Carter*, 525 U.S. 83 (1998), decided twelve and twenty years after *Rakas* respectively, this

Court also rejected the converse categorical approach to Fourth Amendment "standing" that would prohibit anyone from making a Fourth Amendment challenge unless it was their own property that was being searched. This Court recognized that all overnight guests and most social guests could raise a Fourth Amendment challenge to the search of their hosts' property. These cases show that some people can make Fourth Amendment challenges, even though they do not have complete dominion or control over their hosts' house.

As recently as 2018, this Court reiterated that there is no rule that c*ategorically excludes passengers* from making Fourth Amendment challenges of the vehicle in which they were riding. *Byrd,* 138 S. Ct. at 1530. But, as demonstrated in this case, the Kansas Supreme Court and other courts around the country continue to reflexively hold categorically that passengers cannot make Fourth Amendment claims regarding a search of the vehicle, regardless of the nature of relationship between the passenger and the car, unless they show an ownership or possessory interest in the car. This Court should grant a writ of certiorari and clarify that the categorical approach used by the Kansas Supreme Court is not correct under this Court's precedents in *Carter*, *Olson*, and *Byrd.*

***No categorical rule for "targets" or "legitimate presence"***

In *Jones v. United States,* 362 U.S. 257, 264-65 (1960), this Court held that a person who was legitimately on some property could challenge the search of that property as violating the Fourth Amendment. In 1978, this Court rejected proposed "target" theories for purposes of "standing" analysis. *Rakas*, 439 U.S. at 148 (where defendant did not assert "a property nor a possessory interest in the automobile," passenger could not challenge search of the automobile). And in 1980, this Court explicitly overruled the "legitimately present" test for Fourth Amendment "standing." *Salvucci*, 448 U.S. at 84-85 (overruling *Jones*). This Court clarified that a criminal defendant can only challenge a search of a property in which he or she has a "legitimate expectation of privacy." *Rawlings v. Kentucky*, 448 U.S. 98, 106 (1980).

Based on *Rakas,* the Kansas Supreme Court and other courts have articulated categorical rules that prohibit passengers from making Fourth Amendment challenges related to searches of vehicles unless they can prove ownership or possessory interest in the car. *See, e.g., State v. Epperson*, 237 Kan. 707, 717-18, 703 P.2d 761 (1985)(citing *Rakas*)(where defendant did not assert "a property nor a possessory interest in the automobile," passenger could not challenge search of the automobile).

***"Standing" for guests***

Even *Rakas* itself, however, acknowledged the "unremarkable proposition that a person can have a legally sufficient interest in a place other than his own home so that the Fourth Amendment protects him from unreasonable governmental intrusion into that place." 439 U.S. at 142. The *Rakas* Court suggested that "arcane distinctions developed in property and tort law between guests, licensees, invitees, and the like, ought not to control." 439 U.S. at 143. *But see Byrd,* 138 S. Ct. at 1531 (Thomas, J., concurring)(suggesting the need for property analysis in lieu of expectation of privacy analysis). Regardless, later cases from this Court made it clear that *some* persons who do not own houses still get Fourth Amendment protection with regard to searches in those houses.

For example, the "status as an overnight guest is alone enough to show that [the guest] had an expectation of privacy in the home that society is prepared to recognize as reasonable." *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990). In *Minnesota v. Carter*, 525 U.S. 83, 90-91 (1998), this Court considered whether a person who was in an apartment for purely commercial purposes could challenge the search of that apartment. The *Carter* majority held that the respondents in that case "were essentially present for a business transaction and were only in the home a matter of hours." 525 U.S. at 88-89. Because there was no showing of "a degree of acceptance into the household," the *Carter* majority held

that the respondents did not have a legitimate expectation of privacy. Justice Kennedy concurred, but clarifyed that "almost all social guests have a legitimate expectation of privacy, and hence protection against unreasonable searches, in their hosts' home." 525 U.S. at 99 (Kennedy, J., concurring).

Importantly, neither overnight guests nor social guests have ownership or a possessory interest over the subject residence sufficient to exclude others, but still have been recognized by this Court to be able to have a sufficient interest to challenge a search of a home under the Fourth Amendment.

***"Standing" for nonowner drivers***

In *Byrd*, this Court considered whether a person driving a rental car whose name was not on the rental agreement could challenge the search of the rental car. The government argued that "only authorized drivers of rental cars have expectations of privacy in those vehicles." The *Byrd* Court held that such an argument "is a misreading of *Rakas*." 138 S. Ct. at 1528. "The Court in *Rakas* did not hold that passengers cannot have an expectation of privacy in automobiles." 138 S. Ct. at 1528. Although "legitimate presence" *alone* may not suffice to prove that a passenger has a sufficient connection to make a Fourth Amendment challenge, *Byrd* clarified that *Rakas* does not stand for the converse proposition—that no passenger can make such a showing unless they show they own or have a possessory interest in the vehicle.

In *Carter*, this Court described a continuum that was useful in determining whether a guest had a sufficient interest in the home of another to be able to challenge a search of that home:

> If we regard the overnight guest in *Minnesota v. Olson* as typifying those who may claim the protection of the Fourth Amendment in the home of another, and one merely "legitimately on the premises" as typifying those who may not do so, the present case is obviously somewhere in between. But the purely commercial nature of the transaction engaged in here, the relatively short period of time on the premises, and the lack of any previous connection between respondents and the householder, all lead us to conclude that respondents' situation is closer to that of one simply permitted on the premises. We therefore hold that any search which may have occurred did not violate their Fourth Amendment rights.
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*Minnesota v. Carter*, 525 U.S. 83, 91 (1998).

Justice Kennedy, concurring in the opinion of the Court, similarly relied on the fleeting connections to the house in question to conclude that Mr. Carter did not have an expectation of privacy:

> If respondents here had been visiting 20 homes, each for a minute or two, to drop off a bag of cocaine and were apprehended by a policeman wrongfully present in the 19th home; or if they had left the goods at a home where they were not staying and the police had seized the goods in their absence, we would have said that *Rakas* compels rejection of any privacy interest respondents might assert. So it does here, given that respondents have established no meaningful tie or connection to the owner, the owner's home, or the owner's expectation of privacy.

*Minnesota v. Carter*, 525 U.S. 83, 102 (1998)(Kennedy, J., concurring). But Justice Kennedy clarified that almost all social guests would fall on the other side of this

continuum. 525 U.S. at 99 (Kennedy, J., concurring).

Synthesizing *Olson*, *Carter*, and *Byrd,* most persons who are the equivalent of social guests in a car—at least those with significant, noncommercial connections to the car—would have the same expectation of privacy, and hence protection against unreasonable searches, as the car's owner. In the language articulated in Justice Thomas' concurring opinion in *Bryd*, such a passenger can effectively claim the car as "their" effect. *Byrd v. United States*, 138 S. Ct. at 1531 (Thomas, J., concurring)(citing C*arter*, 525 U.S. at 92 (1998) (Scalia, J., concurring)).

The Kansas Supreme Court recognized that there were significant noncommercial connections between Mr. Scheuerman and the car in question:

> While the evidence showed he paid for the car, the car nevertheless belonged to his girlfriend, Finnigan. Finnigan, not Scheuerman, was driving the car at the time of the stop, and Scheuerman presented no evidence that he had any right to control the car or to exclude others from it at any time. And while some of [an officer's] testimony could support an inference that Scheuerman had used the vehicle in the past—at least enough to be associated with it by law enforcement—that alone does not support a finding that Scheuerman had a reasonable expectation of privacy in the car.

*Scheuerman*, 314 Kan. at 595, 502 P.3d at 511.

Applying *Carter*, it becomes clear that Mr. Scheuerman's situation is more like *Olson* than the distant and fleeting relationship described in *Carter*. Just as Mr. Olson could effectively claim that his host's home was his "home," the car in

which Mr. Scheuerman was a passenger should be recognized as "his" effect for purposes of the Fourth Amendment.

**Conflation of automobile exception and "standing"**

In its decision, the Kansas Supreme Court suggested that Mr. Scheuerman's argument citing *Carter* and *Olson* missed the mark because "more weight is given to an individual's expectation of privacy in their home than in their car." 314 Kan. at 594, 502 P.3d at 510-11. The Kansas Supreme Court suggested that this "disparity forms the core problem with Scheuerman's argument." *Id.*. On the contrary, the Kansas Supreme Court has conflated these Fourth Amendment concepts.

It is true that this Court has held that that even a vehicles' *owner* has a lesser expectation of privacy than a homeowner. *See, e.g., California v. Carney*, 471 U.S. 386, 391 (1985). That is, in part, why there is an automobile exception allowing for some warrantless searches of cars. *Id.* But every person who can claim a car as an effect has *some* protection under the Fourth Amendment, even if less than that provided for a house. *See Byrd,* 138 S. Ct. at 1527.

Mr. Scheuerman acknowledges that, even if he has a sufficient interest to challenge the search of the car in question, he has a lesser expectation of privacy than persons who would be challenging the search of a house. But that is a different question than whether Mr. Scheuerman has a *sufficient interest in the car*

in the first place to be able to name it as his "effect." *See Byrd,* 138 S. Ct. at 1527.

In *Carter* and *Olson*, this Court held that overnight guests and almost all social guests effectively can claim their hosts' home as "their" home. Of course, they would also be subject to applicable exceptions permitting warrantless searches of a home, like exigent circumstances. Mr. Scheuerman asserts that, because he has substantial, noncommercial connections with the car searched in this case, it is his effect for Fourth Amendment purposes. Every person with an interest in a car as an "effect" has a lower expectation of privacy than a homeowner. *But it is still an interest*. And under *Carter* and *Olson*, it is a sufficient interest for a passenger like Mr. Scheuerman to challenge the search.

**Need to grant certiorari**

In the instant case, as conceded by the Kansas Court of Appeals and Kansas Supreme Court, Mr. Scheuerman had at least helped pay for the car that was searched and had substantial previous connections with the car. There is certainly no evidence that he was simply a passenger getting a one-time ride from an Uber driver. In this case, on the continuum between an overnight guest and a person merely present for commercial purposes, the record establishes that Mr. Scheuerman was at least the equivalent of a social guest in the car. As a result, the lower court erred by finding that he did not have a sufficient interest to make a Fourth Amendment challenge.

The instant case provides a good vehicle (pun intended) to address this important question that likely affects thousands of cases around the country every year. Commentators note that while some courts around the country had read *Rakas* to broadly prohibit passengers from even challenging *the stop* of a car, this Court repudiated that position in *Brendlin v. California*, 551 U.S. 249 (2007). *See* LaFave, 6 Search & Seizure § 11.3(e) (6th ed.). In *Brendlin*, this Court unanimously observed that not recognizing "standing" for passengers with regard to the validity of the stop

> would invite police officers to stop cars with passengers regardless of probable cause or reasonable suspicion of anything illegal. The fact that evidence uncovered as a result of an arbitrary traffic stop would still be admissible against any passengers would be a powerful incentive to run the kind of "roving patrols" that would still violate the driver's Fourth Amendment right. [551 U.S. at 263 (footnotes omitted)].

Similarly, the categorical rule applied by the Kansas Supreme Court in the instant case and by courts in other jurisdictions incentivizes police officers *to search* cars with passengers regardless of probable cause or other justification to search under the Fourth Amendment.

In *Chapa v. State*, 729 S.W.2d 723 (Tex. Crim. App. 1987), the Court of Criminal Appeals of Texas held that a taxi cab passenger had standing to challenge the search of the taxi cab:

> While it is true that "the pervasive schemes of regulation" of motor vehicles "necessarily lead to reduced expectations of privacy," *California v. Carney*, 471 U.S. at 392, 105 S.Ct. [at] 2070, 85 L.Ed.2d [at] 414, that regulation does not dispel such expectations altogether. "The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." *Coolidge v. New Hampshire*, 403 U.S. 443, 461, 91 S.Ct. 2022, 2035, 29 L.Ed.2d 564, 580 (1971). Probable cause is still required to justify the search of an automobile, even if a warrant is not. *California v. Carney*, supra, and its progenitors are inapposite to resolution of the issue at hand.

*Chapa v. State*, 729 S.W.2d 723, 727 (Tex. Crim. App. 1987). The Texas court noted that Chapa "'asserted neither a property nor a possessory interest in the automobile' he was riding in. But this fact is not alone determinative, for appellant nevertheless exercised a significant degree of control over the taxicab." 729 S.W. 2d at 729. *See also Bates v. State*, 494 A.2d 976, 979-80 (Md. App. 1985)("Although the Fourth Amendment expectations of the passenger might (we do not decide) have been defeasible at the hands of the taxicab driver, they were not compromised vis-à-vis the police."). Although these cases were decided based on the specific connections of a taxi cab passenger to the vehicle in which they ride, these cases stand for the proposition that, while existence of a property or possessory interest in a car might be a sufficient condition for "standing," it is not categorically required.

The Texas court rejected the very rule applied by the Kansas Supreme Court in the instant case that *no* passenger can have "standing" unless and until they assert a property or possessory interest in the car they are riding in. This Court should grant a writ of certiorari and affirm that the categorical rule applied by the Kansas Supreme Court is inapposite.

Furthermore, the Kansas Supreme Court's decision (and other decisions like it around the country) create substantial absurdities in practice. For example, the Kansas Supreme Court seems to acknowledge that, if Mr. Scheuerman had been driving his girlfriend's car at the time of the stop, he would have had "standing" to challenge the search of the car. presumably because he would "control" it. 314 Kan. at 511, 502 P.3d at 595. But that is a very artificial distinction. On any particular car trip, Mr. Scheuerman might drive for a period of time, resulting in him having "standing" even according to the Kansas Supreme Court. But then, when during *the same car trip*, if Mr. Scheuerman's girlfriend took over driving, he would suddenly lose "standing." His connection with the car would not have changed; the results related to "standing" should not change either.

## CONCLUSION

In the instant case, the Kansas Supreme Court applied a categorial approach holding that no passenger can have "standing" to challenge a search of the car in which they were riding unless they show an ownership or possessory interest in the car. This conclusion is belied by this Court's precedents, even as recently as 2018.

Instead, this Court has held that persons who do not have a ownership or possessory interest in a home may be able to claim that place as "their" home for purposes of Fourth Amendment "standing," so long as they can show substantial noncommercial connections to the property, like being an overnight guest or even almost all social guests. Applying the same rationale to passengers, passengers that show substantial noncommercial connections to a car should be able to claim that car as "their" effect for purposes of Fourth Amendment "standing." This Court should grant this petition for a writ of certiorari and clarify that the Kansas Supreme Court's categorical limitation of Fourth Amendment "standing" to persons who have an ownership or possessory interest in a car is in error.

Respectfully submitted,

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