

No. 17-5992

IN THE SUPREME COURT OF THE UNITED STATES

JAMES LYLE, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

JOHN P. CRONAN
Acting Assistant Attorney General

JOHN-ALEX ROMANO
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether petitioner is entitled to claim that a search of the rental car he was driving violated his individual Fourth Amendment rights, when he was both an unauthorized driver under the rental agreement and an unlicensed driver in violation of criminal law.

2. Whether the district court abused its discretion in determining that the parties' proffer agreement permitted the government to use statements petitioner made during a proffer session to rebut a statement made by petitioner's counsel in his opening statement.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A43) is reported at 856 F.3d 191. The opinion of the district court (Pet. App. B1-B15) is not published in the Federal Supplement but is available at 2014 WL 4954162.

JURISDICTION

The judgment of the court of appeals was entered on May 9, 2017. A petition for rehearing was denied on June 14, 2017 (Pet. App. C1). The petition for a writ of certiorari was filed on September 12, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of conspiracy to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A) and 846, and distribution of 50 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B). Judgment 1; 9/30/14 Superseding Indictment 1-3. He was sentenced to 120 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A43.

1. On December 11, 2013, police officers observed petitioner park and exit a car in midtown Manhattan. Pet. App. A6. The officers noticed a knife clipped to petitioner's pants pocket in public view. Id. at B2. They approached petitioner as he was closing the trunk of the car and, upon further investigation, determined that the knife he was carrying was a "gravity knife." Id. at A6, B2-B3; see N.Y. Penal Law § 265.00(5) (McKinney Supp. 2013) (defining "[g]ravity knife" as "any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device"). Possession of a gravity knife is illegal in New York. N.Y. Penal Law § 265.01(1) (McKinney Supp. 2013).

The officers asked petitioner whether he had been driving the car. Pet. App. B3. Petitioner initially stated that he had not, but when the officers told him that they had seen him driving it, he admitted to having done so. Id. at A7. The officers asked for identification, and petitioner produced a state identification card with the expiration date scratched off. Ibid. The officers determined that petitioner had been driving with a suspended license, ibid., which is a crime under New York law, see N.Y. Veh. & Traf. Law § 511 (McKinney Supp. 2013). They also determined that the car he had been driving was a rental car and that he was not an authorized driver under the rental agreement. Pet. App. A7. Petitioner claimed that his girlfriend had rented the car and had given him permission to drive it. Ibid.

The officers arrested petitioner for possessing a gravity knife and driving with a suspended license. Pet. App. A7. They also impounded the rental car. Ibid. During a subsequent inventory search conducted at the precinct, police found more than one pound of methamphetamine and approximately \$39,000 in cash in the trunk of the car. Ibid.

After he was read his Miranda rights, petitioner discussed the methamphetamine in the trunk with law enforcement. Pet. App. A7-A8. He stated that his friend Michael Van Praagh, a known distributor of large quantities of methamphetamine in the New York area, had "asked him to hold something for him." Id. at A8 & n.1

(citation omitted); see id. at A3. Petitioner presumed that the drugs in the trunk had been placed there by his friend. Id. at A8.

About a month later, officers received an anonymous tip that people were using methamphetamine in a hotel room in East Windsor, New Jersey. Pet. App. A8. When officers arrived, petitioner opened the door. Ibid. The officers obtained consent to search the room and found approximately 14 grams of methamphetamine, \$3270 in cash, a digital scale, and plastic baggies. Id. at A9. The officers arrested petitioner and his girlfriend, who was in the room with him. Ibid.

2. After petitioner and Van Praagh were charged with conspiracy to distribute methamphetamine, Indictment 1-2, petitioner agreed to participate in a proffer session with the government, Pet. App. A10. Before the session, petitioner and the government executed a proffer agreement prohibiting the government from using any of petitioner's statements at the proffer against him, except, inter alia, "to rebut any evidence or arguments offered by or on behalf of [petitioner] * * * at any stage of the criminal prosecution." C.A. App. A36. During the proffer session, petitioner admitted that he had occasionally delivered packages to Van Praagh's clients; that he had accompanied Van Praagh to deliver methamphetamine 30 to 50 times; and that he had

once accompanied Van Praagh to pick up methamphetamine from a New York City library. Pet. App. A10-A11.

3. a. A federal grand jury in the Southern District of New York subsequently returned a superseding indictment charging petitioner with one count of conspiracy to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A) and 846, and one count of distribution and possession with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B). 9/30/14 Superseding Indictment 1-3. The superseding indictment charged Van Praagh with similar offenses. Ibid.

b. Petitioner moved to suppress the evidence found during the search of the car. D. Ct. Doc. 16 (July 9, 2014). In an affidavit filed in support of his motion, petitioner acknowledged that he had driven the car to Manhattan, that his license was suspended at the time, and that he was carrying a gravity knife on that day. D. Ct. Doc. 18, at 1-3 (July 9, 2014); see Pet. App. A11-A12.

The district court denied petitioner's motion to suppress. Pet. App. B12-B15. The court determined that petitioner "lacked a legitimate expectation of privacy in the rental car." Id. at B12. The court explained that petitioner "ha[d] not established that the car was rented in his name, nor that he was an authorized driver under the rental contract." Id. at B13. The court noted

petitioner's assertion that "his girlfriend, who had rented the car, had given him permission to drive it." Ibid. 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." Ibid. "Indeed," the court reasoned, petitioner "knew that he could not have been an authorized driver of the car because he did not even have a valid license at the time." Ibid. The court thus concluded that petitioner could "not challenge the search of the car" under the Fourth Amendment. Ibid.

The district court additionally determined that "[e]ven if [petitioner] had established a legitimate privacy interest in the car, the evidence [recovered from it] would still be admissible because it was found pursuant to a valid inventory search." Pet. App. B13. The court explained that following his arrest -- which was supported by probable cause, id. at B12 -- petitioner "was unable for an extended period of time to move the car" and "could not have moved the car in any event because he did not have a valid driver's license," id. at B13. The court found that under those circumstances, "the officers were justified in taking custody of the car to protect it from theft and vandalism" and in making an inventory of its contents. Ibid.; see id. at B6.

c. Petitioner and Van Praagh proceeded to a joint trial before a jury. Pet. App. A12. During his opening statement,

petitioner's counsel stated that petitioner "obtained, bought, borrowed, [and] was given methamphetamine for his own use. Where we dispute is the idea that he was a dealer." Id. at A13 (citation omitted). The government argued that, under the proffer agreement, counsel's statement opened the door to petitioner's proffer statements about his distributing drugs with Van Praagh. Ibid. The district court allowed the government to introduce those proffer statements to rebut counsel's statement. Id. at A14.

The jury found petitioner and Van Praagh guilty on all counts. Pet. App. A15. The district court sentenced petitioner to 120 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3.

4. The court of appeals affirmed. Pet. App. A1-A43.

The court of appeals stated that the circuits are divided on the question "whether an unauthorized driver of a rental car has a reasonable expectation of privacy in the car." Pet. App. A17; see id. at A17-A20. But the court determined that it did "not need to reach the question of whether an unauthorized driver of a rental car ever has a reasonable expectation of privacy in the car, because [petitioner] was not just an unauthorized driver, but an unlicensed one." Id. at A20. "Accordingly," the court explained, "[petitioner's] use of the rental car was both unauthorized and unlawful." Ibid. (citing N.Y. Veh. & Traf. Law § 511). The court reasoned that petitioner "should not have been

driving any car because his license was suspended, and a rental company with knowledge of the relevant facts certainly would not have given him permission to drive its car nor allowed a renter to do so." Id. at A20-A21. "Under these circumstances," the court concluded, "[petitioner] did not have a reasonable expectation of privacy in the rental car" and thus could not challenge the search of the car under the Fourth Amendment. Id. at A21; see id. at A17. Because petitioner's motion to suppress was "properly denied" on that basis alone, the court did not address the district court's alternative holding regarding the "legality of the inventory search." Id. at A16-A17.

The court of appeals also determined that "the district court did not abuse its discretion in admitting [petitioner's] proffer statements." Pet. App. A26. The court of appeals observed that under Federal Rule of Evidence 410, statements made during plea discussions are ordinarily "not admissible against the defendant" who made them. Pet. App. A23. But the court noted that petitioner's proffer agreement "contained a waiver that allowed his statements to come in 'to rebut any evidence or arguments offered by or on behalf of'" petitioner. Id. at A24 (citation omitted). The court found that petitioner's counsel triggered that waiver when he stated at trial that "we dispute * * * the idea that [petitioner] was a dealer." Ibid. (citation omitted). The court reasoned that by making that statement, petitioner's

counsel “did more than challenge the sufficiency of the government’s proof”; he “disputed the very idea that [petitioner] was a dealer.” Id. at A25; see also ibid. (construing counsel’s statement as the “functional equivalent” of stating “that [petitioner], in fact, did not deal methamphetamine”). And because petitioner’s proffer statements “fairly rebut[ted] his counsel’s opening argument that [he] was not a dealer,” the court upheld the district court’s determination that those statements were admissible. Id. at A25-A26.

ARGUMENT

Petitioner contends (Pet. 10-18) that he had a legitimate expectation of privacy in the rental car and that the statements he made during the proffer session should not have been admitted at trial. Those contentions do not warrant further review. The court of appeals correctly determined that because petitioner was an unauthorized and unlicensed driver of the rental car, he lacked any legitimate expectation of privacy in it. The issue of whether an unauthorized driver has a legitimate expectation of privacy in a rental car is currently before this Court in Byrd v. United States, No. 16-1371 (argued Jan. 9, 2018). But because petitioner’s operation of the car in this case was not just unauthorized but illegal, it is far from clear that the result in Byrd would affect the outcome. The Court may, however, wish nevertheless to hold the petition for a writ of certiorari pending

its disposition of Byrd. The court of appeals' decision upholding the admission of petitioner's proffer statements is correct, and it does not conflict with any decision of this Court or another court of appeals. The petition for a writ of certiorari should be denied, or in the alternative, should be held pending the decision in Byrd and then disposed of as appropriate in light of that decision.

1. a. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches." U.S. Const. Amend. IV. As the constitutional text makes clear, "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." Rakas v. Illinois, 439 U.S. 128, 133-134 (1978) (citation omitted). It has therefore "long been the rule that a defendant can urge the suppression of evidence obtained in violation of the Fourth Amendment only if that defendant demonstrates that his Fourth Amendment rights were violated by the challenged search." United States v. Padilla, 508 U.S. 77, 81 (1993) (per curiam).

Absent the existence of recognized property rights capable of invasion through "physical intrusion," Florida v. Jardines, 569 U.S. 1, 5 (2013) (citation omitted); United States v. Jones, 565 U.S. 400, 404 (2012), the touchstone of such a demonstration is an affirmative showing that the defendant had a "legitimate

expectation of privacy in the invaded place," Minnesota v. Olson, 495 U.S. 91, 95 (1990) (quoting Rakas, 439 U.S. at 143); see Rawlings v. Kentucky, 448 U.S. 98, 104 (1980) (recognizing that a defendant "bears the burden of proving * * * that he had a legitimate expectation of privacy"). For a "subjective expectation of privacy" to be "legitimate," it must be "one that society is prepared to recognize as reasonable." Olson, 495 U.S. at 95-96 (citations and internal quotation marks omitted); see Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

Applying that framework, this Court made clear in Rakas that a necessary, though not sufficient, condition for asserting Fourth Amendment rights is a legitimate connection to the place that was searched. See 439 U.S. at 140-149. The Court in Rakas emphasized its prior recognition in Jones v. United States, 362 U.S. 257 (1960), that "one wrongfully on the premises could not move to suppress evidence obtained as a result of searching them." Rakas, 439 U.S. at 141 (citing Jones, 362 U.S. at 267). "The Court in Jones," Rakas explained, "was quite careful to note that 'wrongful' presence at the scene of a search would not enable a defendant to object to the legality of the search." Id. at 141 n.9 (quoting Jones, 362 U.S. at 267). That is because "by virtue of [his] wrongful presence," the defendant "cannot invoke the privacy of the premises searched." Ibid. (quoting Jones, 362 U.S. at 267)

(emphasis omitted). The Court additionally explained that, in light of its previous “clear statement” of that principle, it would be “inexplicabl[e]” to think that “a person present in a stolen automobile at the time of a search may object to the lawfulness of the search of the automobile.” Ibid.

Petitioner cannot satisfy the legitimate-presence prerequisite for challenging the search of the rental car. Petitioner did not have a valid driver’s license on the day that he drove the car to midtown Manhattan; as petitioner acknowledges (Pet. 4), his license was suspended at the time. See Pet. App. A7, A11-A12; D. Ct. Doc. 18, at 1-3. Under New York law, operating a car without a valid license is a crime. N.Y. Veh. & Traf. Law § 511 (McKinney Supp. 2013). Thus, petitioner’s operation of the rental car was not only “unauthorized” under the rental agreement, but also “unlawful.” Pet. App. A20. And because it was illegal for petitioner to drive the car, petitioner cannot identify any legitimate connection to the car to support his Fourth Amendment claim.

Petitioner contends (Pet. 12-14) that regardless of whether he could lawfully drive the car, he could still claim a legitimate expectation of privacy in the trunk, where the contraband in this case was found. That contention cannot be squared with Rakas. Under Rakas, even an authorized passenger, who is neither the owner nor the renter of a car, has no Fourth Amendment interest in its

trunk. See 439 U.S. at 148-149. Petitioner's claim to rights greater than those of an authorized passenger thus necessarily hinges on the assertion of some more significant connection to the car. But given that someone present in a car is either a passenger or a driver, see New York v. Class, 475 U.S. 106, 112-113 (1986) (explaining that a car's "function is transportation and it seldom serves as one's residence or as the repository of personal effects") (citation omitted), any such connection would have to be based on petitioner's presence as the driver -- the very thing state law rendered illegal and illegitimate. Because petitioner had no legitimate expectation of privacy in the car (or its trunk), the court of appeals correctly upheld the denial of his motion to suppress.

b. Petitioner identifies (Pet. 11-12) a conflict in the lower courts on whether an unauthorized driver of a rental car under a rental agreement has a legitimate expectation of privacy in the rental car. This Court has granted review in Byrd to decide that question.

Although petitioner was an unauthorized driver of the rental car under the rental agreement in this case, Pet. App. A7, A20, the court of appeals did not "reach the question of whether an unauthorized driver of a rental car ever has a reasonable expectation of privacy in the car," id. at A20. Instead, the court observed that petitioner was "not just an unauthorized driver, but

an unlicensed one.” Ibid. And it determined that petitioner “did not have a reasonable expectation of privacy in the rental car” because his “use of the rental car was both unauthorized and unlawful.” Id. at A20-A21 (citing N.Y. Veh. & Traf. Law § 511).

Because Byrd involves a defendant who was “just an unauthorized driver,” Pet. App. A20, the Court’s decision in Byrd may not affect the outcome of this case. It is uncontested in Byrd that “a person cannot claim a right to privacy where his only connection to the place is his criminal act.” Pet. Merits Reply Br. at 8-9, Byrd, supra (No. 16-1371) (Dec. 28, 2017); see id. at 3 (“A person has a reasonable expectation of privacy in a place or effect -- like the locked trunk of a car -- that he possesses and controls, provided that he does not come into possession by violating criminal law.”). Here, petitioner’s only possible basis for a Fourth Amendment interest in the car was the act of his driving it -- a criminal act. Nevertheless, the Court may wish to hold this petition and dispose of it as appropriate in light of the decision in Byrd.*

2. Petitioner’s contention (Pet. 15-18) that the district court abused its discretion in admitting at trial statements he

* The court of appeals did not address the district court’s alternative determination that the police conducted a valid inventory search of the rental car, see Pet. App. A16-A17, but that determination provides an independent ground for upholding the search, see id. at B13.

made during an earlier proffer session does not warrant further review.

Federal Rule of Evidence 410 provides that when "plea discussions with an attorney for the prosecuting authority" do "not result in a guilty plea," "a statement made during [such] discussions" is "not admissible against the defendant who * * * participated in [them]." Fed. R. Evid. 410(a)(4). The defendant, however, may waive the protections of Rule 410, provided that the waiver is knowing and voluntary. United States v. Mezzanatto, 513 U.S. 196, 210 (1995).

In this case, petitioner knowingly and voluntarily entered into a proffer agreement that included a waiver expressly permitting the government to use his statements during the proffer session "to rebut" any argument made on his behalf at trial. C.A. App. A36. The court of appeals correctly determined that by telling the jury that petitioner "dispute[d] * * * the idea that he was a dealer," Pet. App. A13 (citation omitted), petitioner's counsel made "the functional equivalent of an affirmative statement that [petitioner], in fact, did not deal methamphetamine," id. at A25. Because that "assertion was belied by [petitioner's] proffer admissions" -- which included statements that he "repeatedly distributed 'small packages' of methamphetamine" and "accompanied another person to obtain and deliver methamphetamine" -- the district court did not abuse its

discretion in permitting the government to use those statements at trial to rebut counsel's assertion. Id. at A25-A26.

Petitioner contends (Pet. 15-16) that counsel's assertion was merely the functional equivalent of "deny[ing] the charges against him and put[ting] the government to its proof." But the court of appeals recognized the distinction between "argu[ing] that the government would not adduce credible evidence that [petitioner] was a drug dealer," on the one hand, and arguing that petitioner, "in fact, did not deal methamphetamine," on the other. Pet. App. A25. And the court reasonably determined that counsel's assertion was the "functional equivalent" of the latter, thus "trigger[ing] the waiver provision in the proffer agreement." Ibid. The court's fact-bound determination that counsel "did more than challenge the sufficiency of the government's proof," ibid., does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied, or in the alternative, should be held pending the decision in Byrd v. United States, No. 16-1371, and then disposed of as appropriate in light of that decision.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

JOHN P. CRONAN
Acting Assistant Attorney General

JOHN-ALEX ROMANO
Attorney

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