

No. 17-6520

IN THE SUPREME COURT OF THE UNITED STATES

TERRELL JAMAR HOUSTON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

JOHN P. CRONAN
Acting Assistant Attorney General

THOMAS E. BOOTH
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 the renter was forbidden from allowing him to drive it.

2. Whether petitioner is entitled to claim that a search of a bag in the rental car he was driving violated his individual Fourth Amendment rights, when the renter was forbidden from allowing him to drive the car and petitioner failed to establish that the bag was his.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is not published in the Federal Reporter but is reprinted at 689 Fed. Appx. 170.

JURISDICTION

The judgment of the court of appeals was entered on May 11, 2017. A petition for rehearing was denied on June 12, 2017 (Pet. App. 9a-10a). On August 8, 2017, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including October 26, 2017, and the petition was filed on

October 18, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional guilty plea in the United States District Court for the Western District of North Carolina, petitioner was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 37 months of imprisonment, to be followed by two years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-7a.

1. On June 11, 2015, petitioner drove a rental car to a state probation office in Charlotte, North Carolina, for a scheduled meeting with his probation officer. D. Ct. Doc. 17, at 1 (Jan. 11, 2016); Pet. App. 75a-76a. Petitioner's cousin had rented the car from Enterprise Rent-a-Car and allowed petitioner to drive it to his meeting. Pet. App. 65a-68a; C.A. App. 28-31. Petitioner, however, was not an authorized driver of the rental car under the rental agreement, which expressly stated that the "[v]ehicle shall not be driven by any person other than [the] Renter or [Additional Authorized Drivers] without [Enterprise's] prior written consent." C.A. App. 29.

While waiting for his meeting in the probation office, petitioner behaved disrespectfully toward the supervising officer. D. Ct. Doc. 17, at 1. Based on petitioner's conduct, the probation officers exercised their statutory authority to require petitioner

to submit to a two-day confinement period and placed him under arrest. Id. at 1-2; see Gov't C.A. Br. 4-5.

Upon searching petitioner's person, a probation officer found \$2200 in cash and keys to the rental car. D. Ct. Doc. 17, at 2. The probation office contacted a Charlotte-Mecklenburg police officer, who in turn called Enterprise. Pet. App. 34a-36a. An Enterprise employee informed the officer that petitioner was not an authorized driver under the rental agreement and that Enterprise "wanted [the] vehicle back." Id. at 36a; see D. Ct. Doc. 17, at 2. The employee also gave the police permission to search the vehicle before returning it to Enterprise. Pet. App. 36a, 38a; C.A. App. 137.

Police officers located the rental car, which petitioner had parked near the probation office. Pet. App. 38a, 53a-55a, 75a-76a. One of the officers unlocked the car and began conducting a search. Id. at 55a. The officer found a brown leather backpack-style bag on the floor behind the front passenger seat. D. Ct. Doc. 17, at 2; C.A. App. 139. Inside the bag, the officer recovered, inter alia, a pair of men's shorts, a pair of slippers, a brush, a receipt for petitioner for a bail bond payment, a loaded .45 caliber pistol, and a magazine containing about 20 rounds of ammunition. D. Ct. Doc. 17, at 2. After completing the search, the police returned the rental car to Enterprise. Pet. App. 59a.

2. A federal grand jury in the Western District of North Carolina indicted petitioner on one count of possession of a

firearm by a felon, in violation of 18 U.S.C. 922(g)(1).
Indictment 1.

Petitioner moved to suppress the evidence obtained from the rental car on Fourth Amendment grounds. Pet. App. 11a-18a. After conducting an evidentiary hearing, id. at 23a-93a, the district court denied the motion, id. at 94a-102a. The court explained that it was petitioner's "burden to show" that he had a reasonable expectation of privacy in the place searched. Id. at 100a. Relying on circuit precedent, the court determined that petitioner could not make that showing because he was "not the authorized driver" of the rental car. Ibid.; see id. at 95a (citing United States v. Wellons, 32 F.3d 117 (4th Cir. 1994), cert. denied, 513 U.S. 1157 (1995)). The court also found "no evidence" that petitioner "owned the bag that was in the car." Id. at 100a. The court reasoned that although the bag contained a receipt that "might be" petitioner's, id. at 101a, the bag nevertheless "might have been" his cousin's, id. at 94a, particularly given the lack of any testimony that the bag belonged to petitioner, id. at 98a. With "no idea whether that's his bag or not," the court declined to allow petitioner to challenge the search of the bag. Id. at 94a; see id. at 101a. The court additionally found that the police had "permission to search the bag from the owner of the car" -- namely, Enterprise. Id. at 94a. The court determined that it was therefore "proper" for the police to search the car before returning it. Id. at 95a.

Petitioner entered a conditional guilty plea, reserving his right to appeal the denial of his suppression motion. D. Ct. Doc. 40, at 7, 10 (July 1, 2016). The district court sentenced petitioner to 37 months of imprisonment, to be followed by two years of supervised release. Judgment 2-3.

3. In an unpublished opinion, the court of appeals affirmed. Pet. App. 1a-7a. The court explained that under its precedent in United States v. Wellons, supra, "an unauthorized driver of a rental car" has "'no legitimate privacy interest in the car'" or "'in a bag found in that automobile.'" Pet. App. 3a (quoting Wellons, 32 F.3d at 119). The court thus determined that petitioner could not challenge the search of the car or the bag on Fourth Amendment grounds. Ibid. The court noted, however, that "it is perhaps time to consider whether Wellons -- and in particular its holding that an unauthorized driver of a rental car lacks a legitimate privacy interest in any container within that car -- still accurately represents society's expectations of privacy." Id. at 4a n.2.

Judge Traxler concurred in the result. Pet. App. 6a-7a. He stated that "even assuming that Wellons should be revisited by the en banc court," this would not be "the right case" for doing so, because "the search here was conducted at the express request of the undisputed owner of the car and as part of the process of returning the car to the owner." Id. at 7a.

4. The court of appeals denied rehearing en banc. Pet. App. 9a. Judge Davis filed a statement respecting that denial, noting the filing of a petition for a writ of certiorari in “a similar case.” Id. at 10a (citing Byrd v. United States, No. 16-1371 (argued Jan. 9, 2018)).

ARGUMENT

Petitioner contends (Pet. 2) that he had a legitimate expectation of privacy in a rental car even though he was not authorized to drive it. The issue of whether an unauthorized driver may challenge the search of a rental car is currently before this Court in Byrd v. United States, No. 16-1371 (argued Jan. 9, 2018). It is uncontested in this case, however, that the rental-car company itself consented to the search of the rental car. The Court’s disposition of Byrd therefore will not affect the determination whether the search of the car violated petitioner’s Fourth Amendment rights, and petitioner does not suggest that the issue independently warrants this Court’s review.

Petitioner further contends (Pet. 7-8, 13-19) that even if he lacks a basis to challenge the search of the rental car, he had a legitimate expectation of privacy that would allow him to challenge the search of the bag found inside. Petitioner, however, failed to establish that the bag was his. The court of appeals thus correctly affirmed the district court’s determination that petitioner lacked a basis to challenge the search of the bag, albeit on the incorrect premise that an unauthorized driver of a

car necessarily lacks any legitimate expectation of privacy in containers located within it. Although some disagreement exists in the lower courts on the Fourth Amendment rights of unauthorized drivers with respect to containers found in cars, that disagreement is not implicated here. In any event, this case would be an unsuitable vehicle for further review because, even if petitioner could challenge the search of the bag on Fourth Amendment grounds, the outcome of this case would be the same.

1. Petitioner contends (Pet. 2) that the court of appeals erred in determining that an unauthorized driver of a rental car lacks a legitimate expectation of privacy in the car. This Court granted review in Byrd to decide that issue. Unlike in Byrd, however, the rental-car company in this case consented to the search of the rental car, as petitioner acknowledges. See Pet. 4 (acknowledging that the officers “obtained the consent of an Enterprise agent to search the vehicle”); see also Pet. App. 36a, 38a, 98a; C.A. App. 137. Thus, regardless of the result in Byrd, the search of the car in this case did not violate the Fourth Amendment. See Florida v. Jimeno, 500 U.S. 248, 250-251 (1991). Nevertheless, if the Court believes that its forthcoming decision in Byrd may bear on the proper analysis of either question presented in this case, it may wish to hold this petition and dispose of it as appropriate in light of the decision in Byrd.

2. Petitioner also contends (Pet. 7-8) that this Court should grant review to decide whether petitioner had a legitimate

expectation of privacy in the bag found in the rental car in this case. But whether or not petitioner had a legitimate expectation of privacy in the rental car, he lacked a legitimate expectation of privacy in the bag, because he has not shown a possessory interest in it. The decision below thus implicates no disagreement in the lower courts, and further review of the second question presented is not warranted.

a. The court of appeals correctly affirmed the district court's determination that petitioner lacked a legitimate expectation of privacy in the bag, although the court of appeals' articulated rationale for that disposition was incorrect.

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. This Court has held that "[a] traveler's personal luggage is clearly an 'effect' protected by the Amendment." Bond v. United States, 529 U.S. 334, 336 (2000). A person who has a legitimate expectation of privacy in such effects does not necessarily lose that expectation when he places his effects in someone else's car. Cf. Wyoming v. Houghton, 526 U.S. 295, 297-307 (1999) (considering, but rejecting, a car passenger's challenge to the search of her purse).

The court of appeals was therefore incorrect in its view that if an unauthorized driver lacks a legitimate expectation of privacy in a rental car, he necessarily lacks a legitimate expectation of privacy in a container found inside. Pet. App. 3a (citing United

States v. Wellons, 32 F.3d 117, 119 (4th Cir. 1994), cert. denied, 513 U.S. 1157 (1995)). Whether an unauthorized driver may assert a legitimate expectation of privacy in such a bag or other container depends instead on the particular circumstances of each case. See, e.g., United States v. Edwards, 632 F.3d 633, 642 (10th Cir. 2001) (considering whether the bags were “closed,” whether they were “stored in the trunk,” and whether they contained the defendant’s “personal belongings,” such as “clothing and toiletries,” “in addition to the contraband seized by the police”); People v. Sotelo, 336 P.3d 188, 195-196 (Colo. 2014) (considering whether the car was stolen, whether the defendant “continually asserted that the packages were hers,” and whether the packages were “cover[ed] and seal[ed]”); State v. Bruski, 727 N.W.2d 503, 513 (Wis. 2007) (considering whether the case was “locked” and whether it had “identifying information on its exterior”).

Nevertheless, the court of appeals’ decision affirming the district court’s determination that petitioner lacked a legitimate expectation of privacy in the bag was correct. It was petitioner’s burden to establish that he had a legitimate expectation of privacy in that bag. See Rawlings v. Kentucky, 448 U.S. 98, 104 (1980); Pet. App. 100a. Although his counsel argued that the bag belonged to petitioner, e.g., Pet. App. 13a, 28a, the district court found that the evidence failed to establish such a connection, id. at 100a. As the court explained, “there’s nothing on it that says it’s his bag.” Id. at 94a. And while petitioner may have placed

some of his items in the bag -- including the firearm that police eventually recovered -- that fact alone is not dispositive. See Rawlings, 448 U.S. at 104-106 (finding that a defendant lacked a legitimate expectation of privacy in another person's purse even though he had placed his drugs inside the purse). Petitioner's cousin had rented the car, Pet. App. 65a, and she and petitioner had taken turns driving it, id. at 76a. Thus, the court reasoned, "[i]t might have been her bag," not petitioner's, id. at 94a, and when petitioner's cousin took the stand, she did not testify otherwise, see id. at 98a (court stating, "I've heard nothing today, anyone taking the stand to claim ownership"). The district court did not clearly err in finding that petitioner had failed to establish that the bag was his, id. at 100a, and the court of appeals thus reached the correct disposition when it affirmed the district court's determination that he had no legitimate expectation of privacy in the bag.

b. Petitioner asserts (Pet. 8-10) that the lower courts are in conflict about whether an unauthorized driver of a rental car may challenge the search of a container inside the car on Fourth Amendment grounds. Although some disagreement exists on the issue, that disagreement is not implicated here.

The Fourth Circuit has determined that an unauthorized driver of a rental car "cannot reasonably assert an expectation of privacy" in a container found in the car. Wellons, 32 F.3d at 119 (citation omitted). Several circuits and state courts of last

resort, however, have instead considered the circumstances of the particular case in determining whether an unauthorized driver may assert a legitimate expectation of privacy in such a container. See Edwards, 632 F.3d at 642; United States v. Buchner, 7 F.3d 1149, 1154 (5th Cir. 1993), cert. denied, 510 U.S. 1207 (1994); Sotelo, 336 P.3d at 195; Bruski, 727 N.W.2d at 510-511.

That disagreement is not implicated in this case. As explained above, see pp. 9-10, supra, petitioner failed to establish that he owned, or had any possessory interest in, the bag at issue. Petitioner does not identify any court that would allow a defendant in his position to claim a legitimate expectation of privacy in a bag without establishing an ownership or possessory interest in it. See Edwards, 632 F.3d at 641 (noting that the bags at issue "belonged to" the defendant); Buchner, 7 F.3d at 1154 (noting that the defendant was "the owner of the shoulder bag" at issue); Sotelo, 336 P.3d at 196 (noting that the defendant "continually asserted that the packages were hers"); Bruski, 727 N.W.2d at 513 (noting the defendant's "ownership of the travel case" at issue).

c. In any event, this case would be a poor vehicle for further review of whether petitioner had a legitimate expectation of privacy in the bag found in the rental car. That is because even if petitioner could challenge the search of that bag, the outcome of this case would be the same.

As Judge Traxler noted and as the district court found, “the search here was conducted at the express request of the undisputed owner of the car and as part of the process of returning the car to the owner.” Pet. App. 7a; see id. at 94a-95a. Petitioner contends (Pet. 12) that Enterprise’s consent to search the car did not extend to the bag inside. But Enterprise “did not place any explicit limitation on the scope of the search.” Jimeno, 500 U.S. at 251; see Pet. App. 36a, 38a; C.A. App. 137. And given that Enterprise had effectively terminated the rental agreement and asked for the car to be returned, Pet. App. 36a, 71a, 73a, it was “objectively reasonable” for the officers to believe that Enterprise’s consent permitted them to conduct an inventory of any items found within the car, Jimeno, 500 U.S. at 249; see Pet. App. 95a (district court explaining that it was “proper” for the police “before turning [the car] over to go through and see what items were in there, which would include in this case a search of the bag”). Because “it is no doubt reasonable for the police to conduct a search once they have been permitted to do so,” Jimeno, 500 U.S. at 250-251, the search of the bag did not violate the Fourth Amendment.

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 (argued Jan. 9, 2018), 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

THOMAS E. BOOTH
Attorney

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