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IN THE  
SUPREME COURT OF THE UNITED STATES

MARCH 2009

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NO. 09-9100

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TIM RIGGINS,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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

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BRIEF FOR PETITIONER

KELLIE PLAYER  
COUNSEL FOR PETITIONER

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## **QUESTIONS PRESENTED**

- I. To determine whether a defendant has standing to challenge a rental vehicle search, does the Court consider the totality of the circumstances?
- II. Did the defendant have standing to challenge the reasonableness of the government's actions?

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OPINIONS BELOW

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The opinions of the District and Appeals Courts  
have not been reported. The opinions appear in the record.

## STATEMENT OF JURISDICTION

The court of appeals entered judgment on November 12, 2008. (R. at 25.) Petitioner filed his petition for writ of certiorari on December 14, 2008. (R. at 26.) This Court granted the petition on March 7, 2009. (R. at 27.) This Court's jurisdiction rests on 28 U.S.C. § 1254(1) (2000).

A district court's fact findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusions are reviewed *de novo*.

## STATEMENT OF FACTS

In June 2008, the car Tim Riggins and Lyla Riggins shared broke down, so they decided to rent a vehicle. (R. at 5.) Tim Riggins asked Lyla Riggins to pick up the rental car. *Id.* Lyla Riggins rented the vehicle for both Tim Riggins and her to drive. *Id.* Lyla Riggins was a stay-at-home mother and earned no income of her own; accordingly, she made purchases, including renting the car, with a credit card. *Id.* The credit card was held in a joint account for which Tim Riggins paid the bill and was the primary cardholder. *Id.* Even knowing that Tim Riggins would be driving and paying for the car, Lyla Riggins did not think it was necessary to list him on the rental agreement. *Id.*

During the two weeks they had the car, both Tim Riggins and Lyla Riggins used it at will, but Tim Riggins used it the majority of the time. *Id.* In fact, Tim Riggins kept the key to the car and the car's glove box on his keychain. (R. at 4.)

On July 3rd, 2008, while driving the rental car, Tim Riggins was pulled over for speeding. (R. at 3.) Tim Riggins showed his valid driver's license and the rental agreement in his wife's name. *Id.* Officer Womack asked Tim Riggins for permission to search the vehicle. (R. at 4.) Tim Riggins did not consent to a vehicle search. *Id.* Officer Womack told Tim

Riggins to get out of the car and conducted a search without Tim Riggins's permission on the grounds that he did not need consent because Tim Riggins was not listed as an authorized driver. *Id.* The search of the glove box revealed a brown paper sack sealed with tape. (R. at 8.) Inside were a plastic sandwich bag that contained 500 grams of cocaine and a plastic grocery bag containing small quantities of chemicals used to make crystal meth. *Id.* Other items were found in the car: a gym bag with men's sportswear, men's tennis shoes, an iPod, and a business suit that was hung up in the back. *Id.* Officer Womack arrested Tim after finding the drugs. *Id.* Based on the items found in the search, Tim Riggins was charged with intent to manufacture and distribute illegal drugs. (R. at 2.)

Tim Riggins brought a motion to suppress evidence in the District Court for the District of Dillon, claiming the search of the rental car violated his Fourth Amendment right to be free from an unreasonable governmental search and seizure. (R. at 7,19.) The District Court denied Tim Riggins's motion on the grounds that he lacked standing, under the Fourth Amendment, to challenge Officer Womack's search of the car. (R. at 22.) On appeal, the United States Court of Appeals for the Fifteenth Circuit affirmed the District Court decision to deny the motion to suppress evidence. (R. at 25.) The Supreme Court granted certiorari to decide what test should be used in determining whether a defendant has standing to challenge a search of a rental car and, specifically, whether Tim Riggins has standing to challenge the search of his rental vehicle. (R. at 27.)

## **SUMMARY OF THE ARGUMENTS**

### **I.**

To determine whether a defendant has standing to challenge a search of a rental vehicle, the Court should apply the modified bright line approach, which recognizes standing for a driver

of a rental vehicle who is not listed on the contract, so long as the driver has permission from the renter. The *Rakas* Court recognized that a defendant has a Fourth Amendment standing to object to a search by showing a legitimate expectation of privacy in the vehicle. The modified bright line approach takes into account a person's legitimate expectation of privacy in a car they have permission to drive. The current trend in car rentals is to automatically allow authorization to people, specifically spouses and employers or co-workers of the renter, who would have a legitimate reason to share a rental car. Accordingly, it is reasonable for society to find a legitimate expectation of privacy when a driver has the permission of the authorized driver, particularly if that person is a spouse or co-worker. The modified bright line approach is consistent with previously decided cases in which standing is found for family members sharing a privacy interest in a house and for non-owner drivers with joint authority of a borrowed car. These findings suggest that it would be reasonable for an unauthorized driver to have an expectation of privacy in a rental car he had permission to drive, particularly if a family member gave him permission.

Protecting an individual's rights must be balanced with the government's interest in providing a clear guideline for law enforcement to follow in searching vehicles. The modified bright line approach allows for a clear guide for police officers to use in the field that is not overly restrictive on their ability to obtain evidence for prosecution, while also remaining true to the Fourth Amendment in preventing the incrimination of those whose rights have been violated. Alternatively, the totality of circumstances test, which looks at all the facts of a case to show the legitimate expectation of privacy, protects Fourth Amendment rights, and deters abuses from law enforcement. Either of these tests offers better protection for individual rights than the

bright line test, which limits Fourth Amendment rights and is mainly concerned with being easy for law enforcement to use.

## II.

Tim Riggins has standing to challenge the reasonableness of the search of the rental car. Under both the modified bright line approach and the totality of circumstances approach, Tim Riggins has a legitimate expectation of privacy that would be recognized by society as set forth in *Rakas*. Tim Riggins's wife rented the vehicle with a joint credit card and gave him permission to drive it. He treated the car as his own by keeping the keys on his key ring and keeping his belongings in the car. The modified bright line test would give Tim Riggins standing because he can show permission from the authorized renter. The totality of circumstances test would also give Tim Riggins standing because the facts as a whole show Tim Riggins had permission to use the car, was licensed to drive, and had a relationship with the renter and the rental company. Under either of these tests, Tim Riggins shows that he has both a subjective and an objective expectation of privacy.

## ARGUMENT

I. AN UNAUTHORIZED DRIVER'S STANDING TO OBJECT TO A SEARCH OF A RENTAL VEHICLE BY LAW ENFORCEMENT IS SHOWN BY A LEGITIMATE EXPECTATION OF PRIVACY THAT SOCIETY IS PREPARED TO RECOGNIZE AS DEFINED IN *RAKAS V. ILLINOIS*. IT MUST BE DETERMINED USING THE MODIFIED BRIGHT LINE OR TOTALITY OF CIRCUMSTANCES APPROACH IN ORDER TO PROTECT THE INDIVIDUAL'S FOURTH AMENDMENT RIGHTS AND THE GOVERNMENT'S INTEREST IN SEARCHES.

*A. Rakas v. Illinois recognized a legitimate expectation of privacy as the grounds for standing under the Fourth Amendment.*

The Fourth Amendment protects citizens from unreasonable searches of "their persons, houses, papers and effects." U.S. Const. amend. IV. The standing to challenge a search based on a legitimate expectation of privacy in the property searched is true to the Fourth Amendment.

*Rakas v. Illinois*, 439 U.S. 128, 133 (1978). The Supreme Court in *Rakas v. Illinois* recognized that Fourth Amendment rights are personal which is shown by a subjective expectation of privacy. *Id.* at 137. In order to show that the expectation is legitimate it has to be one that society is prepared to recognize. *Id.* at 143.

*1. Rakas recognized that Fourth Amendment rights are personal*

*Rakas* asserts that only those whose rights have been infringed may object to a search. *Id.* at 134, 35. Fourth Amendment rights are personal and cannot be asserted on behalf of another. *Id.* at 137. The main considerations in determining standing are whether there has been an injury and whether the individual, himself, has a protected right that was violated. *Id.* at 139. The Court held that the way to determine whether defendants had a protected right was to look to whether their expectation of privacy was legitimate. *Id.* at 143. An expectation of privacy would be found legitimate based on interests in real or personal property, or to what society would permit and recognize as legitimate for the individual claiming the right. *Id.*

*2. The test for a legitimate expectation of privacy is both subjective and objective.*

A legitimate expectation of privacy is the measure for giving standing to object to a search because it allows for a personal right even if there is no property right. *Id.* at 143. A legitimate expectation of privacy has a clear subjective component, which can be asserted by the individual's contention that he had a personal expectation of privacy in the property or premises searched. *Id.* However, to be legitimate, the expectation of privacy must also meet an objective standard. *Id.* This objective requirement can be found by looking to concepts of property law or what society would view and permit as reasonable. *Id.* A key principle in property law that gives one a legitimate expectation of privacy is the right to exclude others from property that one owns or lawfully possesses. *Id.*

3. *Using a legitimate expectation of privacy for standing is true to the Fourth Amendment.*

Allowing individuals to challenge governmental searches protects them from the abuse of power that might ensue if the government were allowed to search unchecked. *Id.* at 134. This deterrent value has long been considered by the court to be of sufficient weight in balancing an individual's interest against governmental interests in the use of probative evidence. *Id.* at 137. While the government has a valid interest in using evidence in prosecuting crimes, this interest is not to override the Fourth Amendment protections of being secure in one's person, house, papers, and effects. *Id.* Accordingly, a test to determine whether the unauthorized driver of a rental car has standing to object to a search must determine whether the driver had a subjective expectation of privacy in the vehicle which society recognizes as reasonable.

B. *The modified bright line test meets the interests of the individual and the government.*

The modified bright line approach employed in the Eighth and Ninth Circuits, meets both the individual's interest and government's interest. *United States v. Thomas*, 447 F.3d 1191, 1197 (9th Cir. 2006). The modified bright line test confers standing when the unauthorized driver has the permission of the authorized driver to use the rental car. *Id.* Courts that have adopted this test find that the unauthorized driver has consensual possession in the rental car equating the unauthorized driver who has permission with a driver with standing who has borrowed a car from an owner. *Id.*

1. *The objective expectation of privacy can be found, in part, in concepts of property law, previous Supreme Court decisions that suggest society would favor the modified bright line test, and current trends.*

The legitimate expectation of privacy can be found if one has a property or possessory interest in the property searched. *Id.* at 1197. The Supreme Court has held that such an interest

does not have to be narrowly defined. *Id.* Accordingly, a person without an ownership interest can still have a legitimate expectation of privacy when they have control over the property searched. *Id.* at 1198. The Ninth Circuit recognized that an unauthorized driver who has permission to use a rental car has a property interest indicated by the fact that he has permission to use the car and by his right to exclude others. *Id.* at 1199.

Courts that use the modified bright line approach appreciate the similarity between one who borrows from an owner and one who borrows from an authorized renter. *Id.* at 1191. The Ninth Circuit has held that an individual who borrows a car has standing to object to a search. *United States v. Portillo*, 633 F.2d 1313, 1317 (9th Cir. 1980). *See also United States v. Valdez Hocker*, 333 F.3d 1206, 1209 (10th Cir. 2003) (finding defendant would have standing by showing that he had permission to use the car). The Ninth Circuit held that having possession of the car and having the owner's permission gave the defendant standing to object to the search. *Portillo*, 633 F.3d at 1317. The facts showed that the defendant had the keys to the car and his friend's permission to use it, which was enough to show a legitimate expectation of privacy because he was able to exclude all but the owner. *Id.* Correspondingly, a driver of a rental car, who has the keys to the car and the renter's permission, would have a legitimate expectation of privacy. Further evidence that the modified bright line approach should be used is found in cases that confer standing to persons who are non-owners of the place searched. *Cf. United States v. Baker*, 221 F.3d 438 (3rd Cir. 2000) (finding defendant had standing to challenge a search of a car he did not own but had borrowed from a friend and over which he had substantial control); *Minnesota v. Olson*, 495 U.S. 91, 99 (1990) (finding that an overnight guest, with some measure of control over the host's premises, had a legitimate expectation of privacy). Moreover, family members share an expectation of privacy in the residence they share. WAYNE R. LAFAVE,

SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT 214 (4th ed. 2004). While the Court has held that the privacy interest in a home is greater than that in a car, family members can still have a shared privacy interest in the car. *Id.* These objective factors suggest that society would recognize a legitimate expectation of privacy in the rental car of an authorized driver who has the renter's permission.

Some rental car companies show a trend in rental agreements that support the modified bright line approach. Both Hertz and Avis rental companies automatically consider the employer or fellow employees of the renter, and the spouse or domestic partner of renter to be an authorized driver without being listed on the rental agreement. <http://www.avis.com> (type "authorized" in search box); <https://www.hertz.com/rentacar/byr/index.jsp?targetPage=rentalQualificationsView.jsp?KEYWORD=OPERATORS>. This shows that society is recognizing that drivers do not have to be listed on the rental agreement to have rights in the car.

*2. The government's interest in securing evidence is protected by the modified bright line test.*

The government has some interest in having a workable rule for obtaining and using evidence in prosecuting criminal behavior. *Rakas*, 439 U.S. at 144. The modified bright line approach gives the government a clear rule to follow in conducting searches. *Thomas*, 447 F.3d at 1191. As long as the driver can show permission from the authorized driver, police officers will know that consent or some overriding consideration is necessary for a legal search. The government also has an interest in having evidence available to prosecute crime. *Rakas*, 439 U.S. at 137. However, in an effort to have a strong case against a defendant, the government must not restrict who has standing to such a degree that it incriminates those whose rights have been violated. *Id.* The government's interest in probative evidence is protected under the modified bright line approach because it protects those whose rights have been violated without

extending standing too far: it does not extend standing to any unauthorized driver, but only those who have the renter's permission. *Thomas*, 447 F.3d at 1199.

*C. The totality of circumstances test would also meet the interests of the individual and the government.*

The modified bright line test is not the only approach that can be used to remain true to the Fourth Amendment in determining an authorized driver's standing to object to a search. *Thomas*, 447 F.3d at 1197. In *United States v. Smith*, the Sixth Circuit adopted the totality of circumstances test. 263 F.3d 571, 586 (6th Cir. 2001). The court, in following the principle in *Rakas* that no single factor is determinative, considered many factors in determining whether the defendant had standing to challenge the search of a rental car. *Id.* Courts have found that factors such as being a licensed driver, having the rental agreement, and having a relationship to the authorized driver show a legitimate expectation of privacy. *Id.* at 586-87; *United States v. Eden*, 190 Fed. App'x 416, 420 (6th Cir. 2006).

*1. The objective expectation of privacy can be found by following the principle of Rakas that standing should be considered in light of surrounding circumstances as applied in the totality of circumstances test.*

The Sixth Circuit objects to the rigidity of the bright line test because it does not follow the principle in *Rakas* of considering all the surrounding circumstances. *Smith*, 263 F.3d at 586 (citing *Rakas*, 439 U.S. at 152.) The *Smith* court considers factors such as whether the unauthorized driver was a licensed driver; whether he had sufficient knowledge about the vehicle, which is represented in possession of the rental agreement; whether he had a relationship with the person who gave him permission; and whether he had a business relationship with the rental company. *Id.* These factors show that it was not illegal for the unauthorized driver to be driving. *Id.* His relationships and the fact that he had permission to drive the car show that he has a legitimate expectation of privacy in the car that society is prepared to recognize. *Id.* at 587.

The factors in the Sixth Circuit cases are not always the same indicating that the factors are weighted according to the other factors and circumstances in the case. *Compare Eden*, 190 Fed. App'x at 420 *with Smith*, 263 F.3d at 586.

2. *The totality of circumstances test also serves the government's interest.*

The Sixth Circuit holds that the bright line test does not serve the government's interest of protecting Fourth Amendment rights because it does not consider all the circumstances. *Smith*, 263 F.3d at 586. A consideration of the facts in a case may give light to recognized expectations of privacy in spaces used with permission and by persons with a relationship to the owner or renter and, therefore, are relevant to Fourth Amendment rights. *Id.* at 586-87. Accordingly, the totality of circumstances test does serve the government's interest in protecting Fourth Amendment rights by considering the facts of the case. This approach also has the benefit of being a workable rule for law enforcement. As *Smith* illustrates, the factors considered were ones that a police officer could obtain by verifying the information on the driver's license and the rental agreement, the same documents used in the bright line test. *Id.*

D. *The bright line test does not further principles in Rakas.*

Although some courts have adopted a bright line test in response to *Rakas*, the language of those cases suggest that even those courts may consider the bright line approach too narrow. *United States v. Boruff*, 909 F.2d 111,117 (5th Cir. 1990); *United States v. Obregon*, 748 F.2d 1371, 1374 (10th Cir. 1984); *United States v. Riazco*, 91 F.3d 752, 754 (5th Cir. 1996). The bright line test looks to only one factor, whether the driver is listed as an authorized driver on the rental agreement, to determine standing to object to government search. *Thomas*, 447 F.3d at 1196. The Tenth and Fifth Circuit cases that appear to support a bright line approach listed the name on the rental agreement as one way to show standing, but they also referenced other ways

to achieve standing that were not present in those cases. *Boruff*, 909 F.2d at 117 (mentioning knowledge of rental policy); *Obregon*, 748 F.2d at 1374 (mentioning lack of relationship with rental agency); *Riazco*, 91 F.3d at 755 (mentioning lack of permission). This language suggests that if there had been more support, those courts could have found a legitimate expectation of privacy in another way.

*1. Language in Rakas suggests that the bright line approach is too strict*

The Supreme Court in *Rakas* stated that while property rights are not solely determinative, individuals who own or lawfully possess or control property usually have a recognized expectation of privacy therein due to their right to exclude others. *Rakas*, 439 U.S. at 143. The District Court in *Riazco* stated that it is not unlawful to allow an unauthorized driver to use a rental car; it simply is a premise on which a rental agreement could be cancelled. *Riazco*, 91 F.3d at 754. *See also United States v. Cooper*, 133 F.3d 1394 (11th Cir. 1998) (finding driver of rental car could challenge a search even after his the rental expired). Thus, a person driving a rental car is not in unlawful possession of the car simply because his name is not listed as an authorized driver on the rental agreement. *Thomas*, 447 F.3d at 1198. Accordingly, his lawful possession or control of the car would show he has a legitimate expectation of privacy in the car.

In *Thomas*, the Ninth Circuit followed the intent of *Rakas* in holding that prior Supreme Court cases invalidate the bright line approach of only giving authorized drivers listed on the rental agreement standing because it may not adequately represent the nature of the unauthorized driver's use of the car and does not take into account joint authority over the car. *Thomas*, 447 F.3d at 1198-99. The court went on to say that the right to exclude others and possession are more telling than a name on the rental agreement and are sufficient for standing. *Id.* at 1199.

The Sixth Circuit in *Smith* finds the bright line test is too rigid and inappropriate in determining standing in light of all the surrounding circumstances. *Smith*, 263 F.3d at 586. The Supreme Court does not usually consider one single factor to be determinative. *Id.* The language in these cases suggests that the one factor bright line test does not follow the principles set forth under *Rakas*.

2. *Language used in the cases employing the bright line approach suggests that more than one factor is considered in determining whether a defendant has a legitimate expectation of privacy.*

The Sixth Circuit finds the bright line test to be too rigid under *Rakas* for failing to consider standing in light of all the surrounding circumstances. *Smith*, 263 F.3d at 586. In *Boruff*, the court states that in addition to not being on the rental agreement, Boruff did not have standing because he was aware of the restrictions imposed by the rental company, which implies that if he had not known of the policy, he might have standing. *Boruff*, 909 F.2d at 117. The Tenth Circuit in *Obregon* also referenced more than one factor in showing why the defendant lacked standing: Obregon was not on the rental agreement and he showed no relationship with the rental company. *Obregon*, 748 F.2d at 1374. This suggests that if there had been a closer relationship, it would have found standing based on a totality of the circumstances. The Fifth Circuit supported its decision of finding that Riazco did not have standing on, not one, but two facts: Riazco did not have permission and was not an authorized driver. *Id.* at 755. The *Riazco* court further indicates a willingness to consider that permission from the authorized driver is a consideration in showing that Riazco had no legitimate expectation of privacy because he had permission from a passenger, who was not “even” authorized by the rental company. *Riazco*, 91 F.3d at 755. These cases illustrate that even the courts purporting to follow the bright line

approach are not applying the bright line test's single factor in considering whether a defendant has standing to object to a search.

## ARGUMENT

II. TIM RIGGINS HAS STANDING TO CHALLENGE THE REASONABLENESS OF THE SEARCH. THE MODIFIED BRIGHT LINE APPROACH SHOWS THAT HE HAS A LEGITIMATE EXPECTATION OF PRIVACY AND GIVES THE GOVERNMENT A USABLE TEST FOR LAW ENFORCEMENT IN THE FIELD. ALTERNATIVELY, THE TOTALITY OF CIRCUMSTANCES TEST ALSO SHOWS THAT TIM RIGGINS HAS STANDING TO OBJECT TO THE SEARCH.

The Fourth Amendment protects individuals from unreasonable searches by the government. U.S. Const. amend. IV. Police officers may not search property without consent from the one who has a legitimate expectation of privacy in the property to be searched. *Rakas*, 439 U.S. at 165. Tim Riggins was asked, but did not consent to a search of the rental car by Officer Womack. (R. at 4.)

A. *Tim Riggins has standing under the modified bright line test because he had the authorized driver's permission.*

Under the modified bright line approach, one who is given permission from the authorized driver does have standing. *United States v. Best*, 135 F.3d 1223 (8th Cir. 1998); *United States v. Muhammad*, 58 F.3d 353 (8th Cir. 1995); *United States v. Thomas*, 447 F.3d 1191 (9th Cir. 2006). In *Best*, the Eighth Circuit held that if Best had been given permission from the authorized driver, he would have a valid privacy interest in the car. *Best*, 135 F.3d at 1225. Unlike Best, Tim Riggins has a valid privacy interest because he is able to show that the authorized driver, his wife, gave him permission and knew and expected that he was driving the vehicle. R. at 5.

The Eighth Circuit, in *Muhammad*, explains that standing is present when the defendant establishes a legitimate expectation of privacy by demonstrating a subjective expectation of

privacy and that this subjective expectation be objectively apparent as one that society recognizes as legitimate. *Muhammad*, 58 F.3d at 355. The court finds that an objective expectation of privacy exists when the defendant shows at least some evidence that the lawful renter gave him permission to drive the rental car. *Id.* In light of this case, Tim Riggins meets the requirements. He showed a subjective expectation by denying consent to search when asked by the officer and by using the car as his own. R. at 4. He showed the requisite objective expectation by the testimony of the authorized driver, his wife, that he had permission, which completes the requirements under *Rakas* for standing to object to the search. *Rakas*, 439 U.S. at 143; R. at 5.

The Ninth Circuit rejects the bright line approach because it does not consider the nature of the use by the unauthorized driver. *Thomas*, 447 F.3d at 1198-99. The *Thomas* court holds that if the unauthorized driver has the authorized driver's permission to use the car, he has a joint authority, which gives him standing to object to the search. *Id.* at 1199. Under this reasoning, because Tim Riggins had his wife's permission to use the rental car, he had joint authority over the car while he was using it, which gives him a recognized and legitimate expectation of privacy in the car.

*B. Tim Riggins has standing under the totality of circumstances approach.*

Further support for Tim Riggins's legitimate expectation of privacy in the rental car can be found considering his situation in light of the totality of circumstances test. The Sixth Circuit in *Smith* finds the bright line test is too rigid and inappropriate to determine standing in light of all the surrounding circumstances of the case. *Smith*, 263 F.3d at 586. *Smith* recognizes that the Supreme Court does not usually consider one single factor to be determinative. *Id.*

*1. Tim Riggins had a legitimate expectation of privacy based on the totality of circumstances under United States v. Smith.*

In *Smith*, the defendant was a licensed driver, was able to present the rental agreement, was given permission by his wife, who was the authorized driver, and had a business relationship with the rental company, making him the *de facto* renter of the vehicle and giving him standing. *Id.* at 586-87. Tim Riggins's circumstances are almost identical to Smith's. Tim Riggins was a licensed driver so it was lawful for him to be driving. R. at 4. Tim Riggins was able to present the rental agreement to Officer Womack. R. at 4. Most significantly, his wife, who was the authorized driver of the rental car, gave him permission to drive it. R. at 5. Tim Riggins showed his subjective expectation of privacy in that he had his belongings in the car, he had the keys on the key ring, including the key to the glove box, and he had been using the car for two weeks. R. at 4, 5, 9. Tim Riggins had a business relationship with the rental company stemming from the use of a joint credit card, of which he was the primary cardholder and the one who paid the bill. R. at 5. While this business relationship may not be as strong as the one in *Smith*, it is just one factor and must be viewed in light of all the circumstances and weighed accordingly. In considering the totality of the circumstances, Tim Riggins has shown a legitimate expectation of privacy.

2. *Tim Riggins had a legitimate expectation of privacy under United States v. Eden.*

In *Eden*, the court found the following factors to be determinative in showing standing: a valid driver's license; the rental agreement; Eden's father, who was the authorized driver, gave Eden permission to drive; and Eden had a business relationship with the rental company. *Eden*, 190 Fed. App'x at 420. These factors gave Eden a legitimate expectation of privacy. *Id.* at 420, 423. Tim Riggins's circumstances are similar to Eden's. Like Eden, he had a valid driver's license, the rental agreement, permission from a close family member, and business relationship

with the rental company. R. at 5. These factors suggest that Tim Riggins has standing to object to a search of his rental car.

## **CONCLUSION**

*Rakas* held that a subjective and objective expectation of privacy that society is prepared to recognize as reasonable would give standing to object to a government search. It also held that Fourth Amendment rights are personal and cannot be vicariously asserted. The modified bright line test and the totality of circumstances test are true to *Rakas* and the Fourth Amendment. These approaches show that the unauthorized driver, himself, has both a legitimate subjective and objective expectation of privacy in the rental car. Current trends in rental agreements show that society is prepared to recognize a spouse as an authorized driver of the rental car even when not named on the agreement. Prior Supreme Court cases also show that it is reasonable for family members to each have privacy interests in shared spaces and for non-owners to have a legitimate privacy interest in property over which they have a joint authority. These factors suggest that the modified bright line test or the totality of circumstances test better protect individual rights than the bright line test. The government's interest in protecting Fourth Amendment rights supersedes its interest in having evidence available for prosecution. Even so, the modified bright line test and the totality of circumstances test meet the government's need of having an easy to use test without expanding standing so far as to interfere with prosecution of criminal activity. Under either a modified bright line or a totality of circumstances test, Tim Riggins meets the factors necessary to show standing to object to the search of his vehicle.

**PRAYER**

For these reasons, Petitioner prays this Court reverse the decisions of the courts below and remand to the District Court for further proceedings.

Kellie Player  
Counsel for the Petitioner

**CERTIFICATE OF SERVICE**

Counsel for Petitioner certifies that this brief has been prepared and served on all opposing counsel in compliance with the Rules of the Freshman Moot Court Competition.

Kellie Player  
Counsel for the Petitioner

## **APPENDIX**

### **U.S. Const. amend IV**

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.