
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2009

No. 09-9100

TIM RIGGINS,

Petitioner,

v.

UNITES STATES OF AMERICA,

Respondent.

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

BRIEF 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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STANDARD OF REVIEW

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 JURISDICTION

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

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OPINIONS BELOW

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

STATEMENT OF THE CASE

A. Statement of Facts

Petitioner, Tim Riggins, and his wife, Lyla Riggins, found themselves in need of a rental car when their own car broke down. R. 5. The Rigginses shared their car since Lyla did not work and was a stay-at-home mother. R. 5. At Tim's request, Lyla rented a Chevy Malibu. R.5, 19. To pay for the rental, Lyla used a credit card issued in her name from the Rigginses' joint account; Tim was the primary card holder of the account and paid the credit card bills. R. 5. When she completed the rental agreement, Lyla did not list Tim as an additional authorized driver, even though she knew he would be driving the car. R. 5. At the time it did not occur to her that she needed to do so. R. 5. Both Tim and Lyla drove the Malibu during the two weeks they rented it, but Tim drove it more often than Lyla. R. 5. Lyla knew when Tim used the rental car and he did so with her permission. R. 5. Tim kept the keys to the Malibu's ignition and glove compartment on his key ring. R. 4.

During the afternoon of July 3, 2008, Tim drove the Malibu to visit a friend. R. 7. Shortly after leaving his friend's house, Tim was pulled over for speeding by Officer Womack of the Dillon County Police Department. R. 3, 7. Tim provided Officer Womack with his valid driver's license and the rental agreement for the Malibu. R. 3-4. Upon seeing that Tim was not listed as an authorized driver on the rental contract, Officer Womack asked Tim if he could search the car. R. 3-4. Tim declined to give his consent to a search because he was in a hurry. R. 4. Based on Tim's status as an unauthorized driver of the rental car, Officer Womack believed he did not need consent or probable cause to search the car. R. 4, 20. Accordingly, he asked Tim to step out of the Malibu and proceeded to search the car. R. 4. During the search, Officer Womack found a quantity of drugs in the glove compartment, as well as Tim's personal effects throughout the car;

these included an iPod, a gym bag containing men's clothing, a business suit, and tennis shoes. R. 4, 20. After completing his search of the Malibu, Officer Womack placed Tim under arrest. R. 20.

B. Course of Proceedings

Tim Riggins was indicted by a grand jury for possession with intent to manufacture, distribute, and dispense 500 grams of cocaine in violation of 21 U.S.C. § 841(a). R. 2. While his case was pending in the United States District Court, Riggins filed a motion to suppress the evidence obtained during the search of the rented Malibu by Officer Womack. R. 7. After the court denied the motion, Riggins entered a conditional plea of guilty and appealed the denial of his motion to suppress. R. 23, 25. The Fifteenth Court of Appeals affirmed the District Court's order. R. 25. Riggins now appeals to this Court.

SUMMARY OF THE ARGUMENT

I.

In determining standing to challenge a rental vehicle search, the Court should consider the totality of the circumstances. Reasonableness is the touchstone of the Fourth Amendment, and it is measured objectively by looking at the totality of the circumstances surrounding a particular case. Standing to challenge a search on Fourth Amendment grounds arises when a person has a legitimate expectation of privacy in the area searched. To be legitimate, the expectation must be one that society is prepared to recognize as reasonable. Because legitimacy hinges on reasonableness, the Court must look at the totality of the circumstances surrounding it.

Bright-line rules do not fairly measure reasonableness. For that reason, the Court has consistently applied a totality of the circumstances analysis in all its Fourth Amendment cases. Because the protections provided by the Fourth Amendment are so important, efficiency and

ease of application do not justify the use of bright-line rules. Further, the Court has held that no one factor may determine standing. The Fifteenth Circuit's bright-line rule misinterprets this Court's holding in *Rakas*, not only because it bases standing on one factor, but also because that factor is a property interest in the area search. The Fourth Amendment protects people, not places and, therefore, a property interest is not required to have standing to challenge a search. Accordingly, the Fifteenth Circuit Court's bright-line rule is contrary not only to this Court's Fourth Amendment jurisprudence, but to the Fourth Amendment itself.

II.

Tim Riggins had a legitimate expectation of privacy in the rental car and, therefore, has standing to challenge the search. While not controlling, a property interest is a factor to be considered in determining standing. At the time of the search, Tim Riggins was in lawful possession and control of the rental car because he had permission from the renter, his wife, to use it. While his unauthorized use of the rental car was a breach of the rental agreement, it was not unlawful.

Society would recognize Tim Riggins' expectation of privacy in the rental car as reasonable. Tim Riggins' use of the rental car arose out of his marriage and family life. The Rigginses rented the car because their personal car was not running. Accordingly, he used the car as he would have used their own. Tim requested that his wife rent the car and the rental was paid for using their joint credit card account. Tim's wife, Lyla rented the car with the intention that Tim would be driving it and she gave him permission to do so. She did not list Tim on the rental agreement because she did not think it was necessary to do so. The circumstances surrounding Tim Riggins' use of the rental car gave him an expectation of privacy while he drove it. Based on these circumstances, society would recognize Tim Riggins' expectation of privacy as

reasonable. Therefore, Tim Riggins had a legitimate expectation of privacy in the rental car and has standing to challenge the search.

ARGUMENT

I. IN DETERMINING STANDING TO CHALLENGE A RENTAL VEHICLE SEARCH, THE COURT SHOULD CONSIDER THE TOTALITY OF THE CIRCUMSTANCES IN ORDER TO FAIRLY BALANCE PRIVACY RIGHTS AGAINST PUBLIC SAFETY NEEDS, THEREBY CONFORMING TO THE HISTORY AND PURPOSE OF THE FOURTH AMENDMENT.

A. Reasonableness is the touchstone of the Fourth Amendment.

Reasonableness is the touchstone of the Fourth Amendment. *Ohio v. Robinette*, 519 U.S. 33, 39 (1996). Reasonableness is measured objectively by looking at the totality of the circumstances, not by bright-line rules. *Id.*; *Georgia v. Randolph*, 547 U.S. 103, 125 (2006); *Oliver v. United States*, 466 U.S. 170, 177 (1984). Standing to challenge a search on Fourth Amendment grounds arises when a person has a legitimate expectation of privacy in the area searched. *Minnesota v. Olson*, 495 U.S. 91, 95 (1990). To be legitimate, his expectation of privacy cannot be merely subjective; it must be one society is prepared to recognize as reasonable. *Id.*; *Rakas v. Illinois*, 439 U.S.128, 143, n. 12. (1978). Because standing for Fourth Amendment protection hinges on the reasonableness of a person's expectation of privacy, the court must look at the totality of the circumstances surrounding that expectation to determine if it is reasonable. *Robinette*, 519 U.S. at 39.

The Fourth Amendment protects people from unreasonable searches and seizures by the government. *Jones v. United States*, 362 U.S. 257, 261 (1960). The exclusion of evidence obtained by the government in violation of the Fourth Amendment is a means for effecting that protection. *Id.* Fourth Amendment rights are personal in nature and may not be asserted vicariously through the rights of others. *Rakas*, 439 U.S. at133. However, a person may have a

legitimate expectation of privacy in a place that is not his own, as the Fourth Amendment protects people, not places. *Id.* at 143; *Katz v. United States*, 389 U.S. 347, 351 (1967). The Court has described the Fourth Amendment as providing sanctuary wherever a person may have a legitimate expectation of privacy. *Olson*, 495 U.S. at 97, n. 5. Because an expectation of privacy can arise in a vast number of places and under any number of circumstances, the Court should favor a broad analysis that is faithful to the Fourth Amendment. *Rakas*, 439 U.S. at 155-156 (Powell, J., concurring). An expectation of privacy is legitimate when it is reasonable. *Robinette*, 519 U.S. at 39. In its Fourth Amendment jurisprudence, the Court has emphasized that reasonableness is measured by examining the totality of the circumstances. *Id.*; *Randolph*, 547 U.S. at 125. Reasonableness is determined by the particular facts of a case. *United States v. Banks*, 540 U.S. 31, 36 (2003). Because each case involves different facts, the soundest results are produced using a totality of the circumstances analysis, which does not give “short shrift” to important details or inflate “marginal” ones. *Id.*

In its opinion below, the Fifteenth Circuit incorrectly presumed that this Court did not envision a totality of the circumstances approach for determining standing. R. 21, 25. In fact, the Court has held that it must examine all the facts and circumstances in all Fourth Amendment cases. *South Dakota v. Opperman*, 428 U.S. 364, 375 (1976). Further, the standing inquiry has been described as whether a person’s expectation of privacy is reasonable in light of all the surrounding circumstances. *Rakas*, 439 U.S. at 152 (Powell, J. concurring). The Court has noted that there is no clear dividing line for reasonableness, but rather there is a point where one shade of gray is separated from another. *Id.* at 146. It has also pointed out that Fourth Amendment cases involve drawing fine lines that are not amenable to bright line rules. *Id.* at 147. Because no single factor can determine standing, a totality of the circumstances approach is more in line with

the Court's intention and its Fourth Amendment jurisprudence than a bright-line rule would be. *Id.* at 152-53 (Powell, J., concurring); *Oliver*, 466 U.S. at 177-78; *Opperman*, 428 U.S. at 375.

B. Efficiency and ease of application do not justify a bright-line rule that disregards the Fourth Amendment.

The Fifteenth Circuit has adopted a bright-line rule that denies the unauthorized driver of a rental vehicle challenge a search. R. 21, 25. In doing so, it reasoned that such a rule is best-suited for determining standing because it is thoroughly workable, easily administered, and provides for a clearer application of Fourth Amendment principles. R. 21, 25. However, as discussed above, standing arises when a person has a reasonable expectation of privacy, and reasonableness cannot be appropriately measured using bright-line rules. *Robinette*, 519 U.S. at 39; *Randolph*, 547 U.S. at 125; *Oliver*, 466 U.S. at 177; *Olson*, 495 U.S. at 95. Further, bright-line rules serve neither Fourth Amendment protections, nor the criminal justice system; instead they are merely “facile solutions”. *Rakas*, 439 U.S. at 156 (Powell, J., concurring).

The Court has held that making law enforcement more efficient is not a justification for disregarding the Fourth Amendment. *Arizona v. Gant*, 129 S. Ct. 1710, 1723 (2009) (citing *Mincey v. Arizona*, 437 U.S. 385, 393 (1978)). In *Gant*, the Court found its own bright-line rule allowing vehicle searches incident to any arrest unconstitutional, finding it served no purpose except to provide the police with an entitlement to make a warrantless search. *Id.* at 1721. It also criticized the state for undervaluing the privacy interests at stake. *Id.* at 1720. While it recognized that a person has less of an expectation of privacy in a vehicle than a home, the court held that the expectation is important and deserving of constitutional protection. *Id.* at 1720. Accordingly, the entitlement created by the bright-line rule was deemed an “anathema” to the Fourth Amendment. *Id.* at 1721. The Fifteenth Circuit's bright-line rule denying standing to unauthorized drivers of rental vehicles has the effect of entitling the police to search a vehicle

merely because the driver is not listed on the rental contract. R. 22, 25. That is precisely what occurred in the instant case: because Riggins was not listed as an authorized driver on the rental agreement, Officer Womack believed he could search the rented Malibu without consent or probable cause. R. 3-4, R. 20. In fact, Officer Womack initially decided to search the car because Riggins was not listed as an authorized driver. R. 3-4. If a rule that allows a search of a vehicle incident to an arrest of its occupant does not comport with the Fourth Amendment, then a rule that allows a search of a rental vehicle merely because the driver is not authorized per the rental agreement surely does not either.

C. By basing standing on the sole factor of an ownership or possessory interest in the vehicle, the Fifteenth Circuit’s bright-line rule misinterprets *Rakas* and disregards the Court’s Fourth Amendment jurisprudence.

The Fifteenth Circuit has misinterpreted *Rakas* by holding that an ownership or possessory interest in a vehicle is required for standing. R. 21, 25. It holds that an unauthorized driver is not in lawful possession or control of the rental vehicle and, therefore, cannot have standing. R. 21, 25. First, no single factor can determine standing. *Rakas*, 439 U.S. at 152-53 (Powell, J., concurring); *Oliver*, 466 U.S. at 177-78. Yet, the Fifteenth Circuit’s bright-line rule does just that; it determines standing based only on the existence of a property interest in the vehicle. R. 21, 25. More importantly, the Court in *Rakas* expressly held that legitimate expectations of privacy need not be based on a common-law interest in real or personal property or on the invasion of such an interest. *Rakas*, 439 U.S. at 143, n. 12. Further, the Court took “great pains” to stress that “arcane distinctions” between guests, licensees, invitees and others found in property and tort law are not controlling factors for determining standing. *Id.* at 143, 149, n. 17. In denying standing to the petitioners in *Rakas*, the Court focused on their lack of a possessory interest only because they had argued they were legitimately on the premises as

passengers in the vehicle that was searched; they did not assert that they had a legitimate expectation of privacy in the vehicle. *Id.* at 149, n. 17. However, the Court held that because a property interest is a factor to be considered, lawful possession and control of property will usually give rise to standing. *Id.* at 143, n. 12.

More recently, the Court has held that the test for determining the legitimacy of a person's expectation of privacy is whether society is prepared to recognize the expectation as reasonable; it made no reference to a property interest. *Olson*, 495 U.S. at 92. In holding that it was reasonable for an overnight guest to have an expectation of privacy in the host's home, the Court noted that the guest was there with permission from the host, and that the power of the guest to admit or exclude was not essential to receive Fourth Amendment protection. *Id.* at 99-100. In its analysis, the Court did not address whether the host owned or rented his home, and if he did rent, whether the lease had a no guest clause. *Id.* at 94-100. This is consistent with the Court's prior holding that standing is not based on property interests and that the "arcane distinctions" found in property and tort law are not controlling factors. *Rakas*, 439 U.S. at 143, n. 12, 149, n. 17.

II. TIM RIGGINS HAD A LEGITIMATE EXPECTATION OF PRIVACY IN THE RENTAL CAR AND, THEREFORE, HAS STANDING TO CHALLENGE THE REASONABLENESS OF THE SEARCH.

In order to have standing to challenge a search on Fourth Amendment grounds, Tim Riggins must show that he had a legitimate expectation of privacy in the rental car when it was searched. *Olson*, 495 U.S. at 95. He had a subjective expectation of privacy in the rental car, as evidenced by his refusal to consent to the search. R. 3-4. However, he must also show that society will recognize his subjective expectation as reasonable. *Id.*; *Rakas v. Illinois*, 439 U.S. at 143, n. 12. No one factor can determine the reasonableness of Tim Riggins' expectation. *Rakas*,

439 U.S. at 152-53 (Powell, J., concurring); *Oliver*, 466 U.S. at 177-78. Accordingly, the Court must examine all the facts and circumstances surrounding Tim Riggins' expectation of privacy in the rental car. *Opperman*, 428 U.S. at 375; *Robinette*, 519 U.S. at 39.

A. Tim Riggins was in lawful possession and control of the rental car at the time of the search.

Because the Fourth Amendment protects people, not places, a person may have a legitimate expectation of privacy in a place that is not his own. *Rakas*, 439 U.S. at 143; *Katz v. United States*, 389 U.S. 347, 351 (1967). It provides sanctuary wherever a person may have a legitimate expectation of privacy. *Olson*, 495 U.S. at 97, n. 5 (emphasis added). Accordingly, a legitimate expectation of privacy does not need to be based on a property interest in the area searched. *Rakas*, 439 U.S. at 143, n. 12. However, it is a factor that may be considered in determining standing. *Id.*

When a property interest is a factor considered, lawful possession and control of property will usually give rise to standing. *Id.* In the context of a vehicle, exclusive control of it may be sufficient. *Id.* at 155-56 (Powell, J., concurring). A showing of an absolute power to admit or exclude is not required to gain Fourth Amendment protection. *Olson*, 495 U.S. at 99-100. As the driver, Riggins was in lawful possession of the rental car at the time of the search. He had permission from the authorized driver to use the car. R. 5. He also possessed the rental agreement. R. 19. He was in possession of the keys to the car, which gave him exclusive control of it at the time of the search. R. 4. Further, he had a valid driver's license and, therefore, was not operating the car unlawfully. R. 19.

The Fifteenth Circuit held that permission from the renter does not create a legitimate expectation of privacy. R. 21, 25. Because it considers the rental agreement to be controlling, the renter does not have authority to give anyone else permission to drive the rental car. R. 21, 25.

However, this Court has stressed that “arcane distinctions” between guests, licensees, invitees and others found in property and tort law are not controlling factors for determining standing. *Rakas*, 439 U.S. at 143, 149, n. 17. Despite this, the Fifteenth Circuit’s reliance on the terms of the rental agreement to define the status of the driver makes such a distinction. Further, its emphasis on this point is misguided since a property interest alone does not determine standing. *Id.* at 143, n. 12. It merely makes the Fifteenth Circuit’s bright-line rule brighter by giving “short shrift” to important details while inflating “marginal” ones. *Banks*, 540 U.S. at 36. Further, Tim Riggins’ unauthorized use of the rental car was not unlawful, but rather a breach of the rental agreement. *See United States v. Thomas*, 447 F.3d 1191, 1998 (9th Cir. 2006); *See also United States v. Henderson*, 241 F.3d 638, 646-47 (9th Cir. 2000)(granting standing to a car renter even though the rental contract had expired); *United States v. Cooper*, 133 F.3d 1394, 1402 (11th Cir. 1998) (granting standing to a car renter even though the rental contract had expired). Therefore, while Tim Riggins’ unauthorized use of the rental car may have violated the rental agreement, he was still in lawful possession and control of it at the time of the search.

B. It is reasonable for Riggins to have an expectation of privacy in the rental car because he had permission from the renter to use it.

Tim Riggins’ subjective expectation of privacy in the rental car was reasonable because he had permission from the renter, his wife, to drive it and he had been given possession of the car’s keys. R. 4-5. Further, his wife rented the car with the intention that he would be driving it. R. 5. While the Fifteenth Circuit refuses to recognize permission from the renter to be valid, other circuit courts have deemed the unauthorized driver’s expectation of privacy reasonable when he has permission from the renter. *United States v. Thomas*, 447 F.3d at 1999 (reasoning that permission from the renter gives the unauthorized driver joint authority over the car); *United States v. Muhammad*, 58 F.3d 353, 355 (8th Cir. 1995) (reasoning that the unauthorized driver is

in lawful possession of the car when he has permission from the renter). *See also United States v. Smith*, 263 F.3d 571, 586 (6th Cir. 2001)(holding that Smith had standing based on the surrounding circumstances, including permission from the renter, who was also his wife).

Prior to adopting the bright-line rule followed by the Fifteenth Circuit, the Fifth Circuit recognized that permission from the renter would give the unauthorized driver standing to challenge a search. *United States v. Kye Soo Lee*, 898 F.2d 1034, 1038 (5th Cir. 1990)(overruled by *United States v. Seeley*, 331 F.3d 471, 472 n. 1 (5th Cir. 2003)). The Fifth Circuit recognized that, per *Rakas*, standing hinges on a legitimate expectation of privacy, not on a property right in the area searched. *Lee*, 898 F.2d at 1038. It granted standing to the unauthorized driver of a rental truck because he had received permission and the keys to the vehicle from the renter, thereby being entrusted with the truck. *Id.* The court recognized that a property interest is a factor to be considered in determining standing, but that other factors must also be considered. *Id.* Accordingly, if federal circuit courts have found that an unauthorized driver who has permission from the renter of the vehicle has a reasonable expectation of privacy, it follows that society will consider it reasonable as well. *Olson*, 495 U.S.at 95; *Rakas*, 439 U.S.at 143, n. 12.

C. Tim Riggins' expectation of privacy is reasonable based on personal and societal values protected by the Fourth Amendment.

A person may have a legitimate expectation of privacy in a place that is not his own because the Fourth Amendment protects people, not places. *Rakas*, 439 U.S. at 143; *Katz*, 389 U.S. at 351. Wherever a person has a legitimate expectation of privacy, the Fourth Amendment will provide sanctuary. *Olson*, 495 U.S. at 97, n. 5. A legitimate expectation of privacy is one that society will recognize as reasonable. *Id.* at 95; *Rakas v. Illinois*, 439 U.S.128, 143, n. 12. (1978). It is an everyday expectation shared by us all. *Olson*, 495 U.S. at 98. The test for legitimacy is whether the search violates personal and societal values which are protected by the

Fourth Amendment. *Oliver*, at 181-83. The Court has held that a person should expect as much privacy in places other than his own as he would in a public phone booth. *Olson*, 495 U.S. at 99 (referring to the holding in *Katz* that the defendant had a legitimate expectation of privacy in a public phone booth.).

In *Olson*, the Court held that the defendant, who was wanted in connection with an armed robbery and murder, had standing in the home in which he was staying as an overnight guest. 495 U.S. at 93-98. The Court held that his status as an overnight guest gave him an expectation of privacy in the house that society could find reasonable as an everyday expectation shared by everyone. *Id.* at 98-99. Based on Judge Harlan's concurring opinion in *Rakas*, the Tenth Circuit recognized that a motel guest who remains past the scheduled check-out time had a reasonable expectation of privacy in the room. *United States v. Owens*, 782 F.2d 146, 149-150 (10th Cir. 1986). Similarly, the Ninth and Eleventh Circuits have recognized that the renter of a car has a reasonable expectation of privacy even if the rental period had expired because he retained sufficient control and possession over the car. *Henderson*, 241 F.3d at 647; *Cooper*, 133 F.3d at 1402. Because courts have recognized a reasonable expectation of privacy for individuals in situations such as those in *Katz*, *Olson*, *Owens*, *Henderson*, and *Cooper*, Tim Riggins' expectation of privacy in the rental car should be recognized as reasonable as well. It is reasonable for a person to believe he has an expectation of privacy in rental car that is being shared with one's spouse while their personal car is not working.

Another factor used by the Court in determining if a person has a legitimate expectation of privacy in a place that is not his own is how he uses the area, such as if he stays in there overnight or keeps his belongings there. *Oliver*, at 178. *Rakas*, at 153 (Harlan, J. concurring). Tim Riggins used the rental car as a replacement while the Rigginses' personal car was not

running. R. 5. He drove the car often during the rental period and kept personal belongings in it, including a business suit and workout clothes. R.5, 20. At the time of the stop, he had used the car to visit a friend. R. 7. He kept the keys to the car on his key ring. R. 4. Tim Riggins was using the rental car as he would his personal car and, thus, had a legitimate expectation of privacy in it as he would if he was driving his own car.

Additionally, Tim Riggins had an expectation of privacy in the rental car because in a sense he was the *de facto* renter of the car. In *Smith*, the Sixth Circuit Court held that the unauthorized driver of a rental car had standing based on several factors: he had permission from the renter, his wife, to drive the car; although his wife completed the rental agreement, he made the reservation; and the rental was paid for using a credit card issued in his name (joint account?). *Smith*, 263 F.3d at 86-87. The court determined that under the circumstances, Smith could be considered the *de facto* renter. *Id.* Further, it deemed his relationships with the rental company and his wife as those recognized by law and society upon which standing could be based. *Id.* While not identical, Tim Riggins' situation is similar to that of the driver in *Smith*. Tim Riggins' credit card account was used to pay for the car rental and his wife was the renter. R. 5. He directed his wife to rent the car in order for them to both use it while their personal car was not working. R.5. He drove the car often during the rental period and kept personal belongings in it. R.5, 20. Based on his use of the car, his relationship with his wife, and his connection to the rental company Tim Riggins' expectation of privacy in the car would be considered reasonable. *Rakas*, 439 U.S. at 143, n. 12.

Finally, Tim Riggins' use of the rental car arose out of his marriage and family life. R. 5. When the Rigginses' personal car broke down, Tim asked his wife, Lyla, to obtain a rental vehicle. R.5. She rented the car using a credit card in her name that was issued from their joint

account; Tim Riggins is the primary card holder on the account. R. 5. He is also the sole breadwinner of the family and pays the credit card bills. R. 5. Because they shared their personal car, the rental car was to be used by both Lyla and Riggins. R. 5. In fact, during the time the Rigginses had the rental car, Tim drove it more often than Lyla. R. 5. Lyla did not include Tim as an authorized driver on the rental agreement because she did not think it was necessary, even though she knew he would be driving it. R. 5. Marriage is a fundamental right. *Zablocki v. Redhail*, 434 U.S. 347, 383-84 (1978). It is a union so intimate as to be called “sacred”. *Id.* (quoting *Griswold v. Connecticut*, 381 U.S. 479 (1965)). As husband and wife, the Rigginses acted as one, sharing income, a car, and a credit card. R. 5. Likewise, as husband and wife, they rented and shared the car Tim was driving at the time of the search. R. 5. Because his use of the rental car is so connected to his marriage and family life, society would recognize he had a reasonable expectation of privacy in the rental car at the time of the search. *Rakas*, 439 U.S. at 143, n. 12.

CONCLUSION

Tim Riggins had a legitimate expectation of privacy in the rental car and, therefore, has standing to challenge the search. While not controlling, a property interest is a factor to be considered in determining standing. At the time of the search, Tim Riggins was in lawful possession and control of the rental car because he had permission from the renter, his wife, to use it. While his unauthorized use of the rental car was a breach of the rental agreement, it was not unlawful.

Society would recognize Tim Riggins' expectation of privacy in the rental car as reasonable. Tim Riggins' use of the rental car arose out of his marriage and family life. The Rigginses rented the car because their personal car was not running. Accordingly, he used the car as he would have used their own. Tim requested that his wife rent the car and the rental was paid for using their joint credit card account. Tim's wife, Lyla rented the car with the intention that Tim would be driving it and she gave him permission to do so. She did not list Tim on the rental agreement because she did not think it was necessary to do so. The circumstances surrounding Tim Riggins' use of the rental car gave him an expectation of privacy while he drove it. Based on these circumstances, society would recognize Tim Riggins' expectation of privacy as reasonable. Therefore, Tim Riggins had a legitimate expectation of privacy in the rental car and has standing to challenge the search.

PRAYER

For these reasons, Petitioner prays the Court overturn the decision of the court below.

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.

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