

IN THE
Supreme Court of the United States

TIM RIGGINS,

Petitioner,

v.

UNITED 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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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*.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment of the U.S. Constitution and the Texas Business and Commercial Code § 91.001 are reproduced in addendum to this brief.

STATEMENT OF THE CASE

Petitioner, Tim Riggins, disputes the Fifteenth Circuit's holding that he lacks standing to challenge the constitutionality of the search of the rental vehicle he was driving. (R. at 26).

On July 8, 2006, Riggins was stopped for speeding while driving a rented Chevy Malibu. (R. at 3). Riggins' wife, Lyla Riggins, a stay-at-home mother and the authorized driver of the rental car, rented the car for the couple because the personal car they shared was being repaired. (R. at 5). Riggins, the sole income provider for his family, is the primary account holder on the joint credit card that Lyla Riggins used to procure the rental car. (R. at 7). Unaware that her husband's name should have also been listed on the rental agreement, Lyla Riggins permitted Riggins to drive the vehicle throughout the term of the rental contract. (R. at 5).

During the traffic stop, Riggins presented Officer Mac Womack with his valid driver's license as well as the vehicle's rental documents. (R. at 7). Officer Womack noticed that Riggins' name was not listed as an authorized driver on the rental contract. (R. at 7). As a result, Officer Womack asked Riggins for permission to search the vehicle, which Riggins expressly

refused. (R. at 7). Officer Womack, believing he did not need consent from an unauthorized driver, proceeded with a warrantless search of the rental car and rummaged through Riggins' personal effects, finding such items as an mp3 player, a gym bag containing men's athletic clothing, men's tennis shoes and a business suit hanging in the back seat. (R. at 8). Upon opening the unlocked glove box, Officer Womack discovered a wrapped brown paper sack containing a white substance, which was later confirmed as cocaine, and other drug-related paraphernalia. (R. at 8). After discovering the drugs, Officer Womack immediately placed Riggins under arrest. (R. at 8).

Riggins filed a motion to suppress the cocaine seized from the glove box. (R. at 7). The District Court of Dillon denied the motion to suppress the evidence, reasoning that an unauthorized driver of a rental car lacks standing to assert a Fourth Amendment challenge. (R. at 22). The Fifteenth Circuit Court of Appeals affirmed the district court's decision. (R. at 24).

On March 7, 2009, Riggins' petition for writ of certiorari to this Court was granted. (R. at 27). Riggins respectfully requests this Court reverse the decision of the Fifteenth Circuit Court of Appeals because an unauthorized driver of a rental vehicle may have standing to challenge an unreasonable search under the Fourth Amendment.

SUMMARY OF THE ARGUMENT

I.

Riggins' privacy was invaded when an officer unreasonably searched the rental car he was driving. Subsequently, the Fifteenth Circuit unreasonably denied Riggins standing to challenge the legality of the government's search. After the landmark decision in *Katz v. United States*, the reach of the Fourth Amendment goes as far as a person's reasonable privacy expectation, which can be shown through concepts that are recognized and accepted by society.

In adopting this new approach, the Court abandoned its previous analysis, which focused almost exclusively on arcane property distinctions.

The circuit courts have applied three different tests to determine whether it is objectively reasonable for an unauthorized driver to have a legitimate expectation of privacy in a rental vehicle: a bright line approach, which restricts the driver from asserting a Fourth Amendment claim by focusing on property rights and rigid adherence to contract distinctions; a permission test, which allows a claim based on permission to use the rental car; and a totality of the circumstances approach, which considers the surrounding facts in addition to widely shared societal values to determine whether an unauthorized driver has a legitimate expectation of privacy. Based on this Court's faithfulness to fact-specific analysis of the reasonableness inquiry in Fourth Amendment cases, the totality of the circumstances test should be adopted.

II.

The Fifteenth Circuit erred in denying standing to Riggins, based solely on his lack of a contractual or property interest in the vehicle. According to this Court's previous holdings, Riggins can establish a legitimate expectation of privacy since he demonstrated consensual possession and joint authority over the area searched, and he had the ability to exclude others from the premises. Additionally, by applying the Sixth Circuit's totality of circumstances test, Riggins had a legitimate expectation of privacy while driving the rental car. He had a business relationship with the rental agency based on the joint credit card that Riggins' wife used to procure the rental car. Moreover, he had permission from his wife, who was the authorized driver, and with whom he had an intimate relationship. Therefore, Riggins has standing to assert a Fourth Amendment claim against the unreasonable search of the rental vehicle and this Court should reverse the decision of the Fifteenth Circuit Court of Appeals.

ARGUMENT

I. THIS COURT SHOULD REJECT THE FIFTEENTH CIRCUIT’S BRIGHT-LINE APPROACH AND INSTEAD APPLY A TOTALITY OF THE CIRCUMSTANCES STANDARD OF REVIEW TO DETERMINE WHETHER AN UNAUTHORIZED DRIVER OF A RENTAL CAR HAS STANDING TO CHALLENGE THE LEGALITY OF A SEARCH.

The Fifteenth Circuit Court of Appeals improperly applied a bright-line rule in determining that Riggins lacked standing to assert a Fourth Amendment challenge of the search of the rental vehicle he was driving at the time of the traffic stop. The standing principle in Fourth Amendment cases requires one who contests the legality of a search to prove that he was personally the victim of an invasion of privacy. *Rakas v. Illinois*, 439 U.S. 128, 139 (1978). While this Court has never addressed whether an unauthorized driver of a rental vehicle has standing to challenge a warrantless search, it has construed that the Fourth Amendment protects individuals from unreasonable government intrusions, holding that the Fourth Amendment safeguards people, not places. *Katz v. United States*, 389 U.S. 347, 351-52 (1967).

Because Fourth Amendment privacy rights are personal, establishing standing to challenge a search requires an individual to manifest a subjective expectation of privacy in the place searched and such expectation must be one society recognizes as objectively reasonable. *Rakas* at 143. A legitimate expectation of privacy must stem from grounds independent of the Fourth Amendment, either through common law property concepts or from widely held social conventions that are acknowledged and permitted by society. *Id.* at 143 n. 12. Therefore, because protection under the Fourth Amendment is not exclusively dependent on a property interest in the place searched, courts will constitutionally honor standing to challenge a search in circumstances where an individual demonstrates an objectively reasonable expectation of privacy in the invaded space. *Id.* at 143.

Circuit courts are split on the question of whether an unauthorized driver of a rental vehicle has standing to challenge a search. *United States v. Smith*, 263 F.3d 571, 582-86 (6th Cir. 2001). The Eighth and Ninth Circuits have adopted a permission test, under which an unauthorized driver of a rental car may have standing if he received permission from the authorized driver to use the car. *See United States v. Muhammad*, 58 F.3d 353, 355 (8th Cir. 1995); *United States v. Thomas*, 447 F.3d 1191, 1199 (9th Cir. 2006). Alternatively, the Fourth, Fifth and Tenth Circuits have adopted a rigid bright-line test based solely on the rental agreement, denying standing to challenge the search to any driver not listed as an authorized driver on the rental contract. *See United States v. Wellons*, 32 F.3d 117, 119 (4th Cir. 1994); *United States v. Boruff*, 909 F.2d 111, 117 (5th Cir. 1990); *United States v. Roper*, 918 F.2d 885, 887-88 (10th Cir. 1990). Finally, the Sixth Circuit has applied a totality of the circumstances analysis, whereby permission is just one of several factors that determine whether the driver has standing. *Smith*, 263 F.3d at 586.

A. The totality of the circumstances test conforms to this Court’s precedent and upholds the fidelity to the Fourth Amendment’s objectives by rejecting a single-factor analysis.

A successful individual claim of protection from a governmental invasion must be reasonable in light of the surrounding circumstances. *Rakas*, 439 U.S. at 152 (Powell, J., concurring). The benchmark of Fourth Amendment jurisprudence is *reasonableness*, which this Court has historically measured objectively by examining the totality of the circumstances. *Ohio v. Robinette*, 519 U.S. 33, 39 (1996). Disputes arising under the Fourth Amendment generally call for a review of the facts taken as a whole, with the Court consistently favoring a fact-based assessment of reasonableness over narrow bright-line rules. *Id.* at 39. In his concurring opinion in *Rakas*, Justice Powell emphasized that a single bright-line rule would not serve to protect both Fourth Amendment personal privacy rights and fair and effective law enforcement, as the

possible scenarios in search and seizure cases are endless, yielding infinite combinations of factual circumstances. *Rakas* at 155-156 (Powell, J., concurring). Following the *Rakas* logic, this Court's more recent search and seizure decisions have also emphasized that no single-factor rule fully encompasses the evolving complexities of human nature and typical behavior. *See Arizona v. Gant*, 129 S. Ct. 1710, 1723 (2009) (blind fidelity to a single-factor rule would authorize a myriad of unconstitutional searches); *Georgia v. Randolph*, 547 U.S. 103, 125-26 (2006) (Breyer, J., concurring) (this Court measures reasonableness by examining the totality of the circumstances and should the circumstances change, so should the result).

In deciding a case factually analogous to the instant case, the Sixth Circuit recently concluded that a rigid bright-line rule was unworkable and alternatively adopted the totality of the circumstances test to determine whether the defendant, Smith, had a reasonable expectation of privacy in the rental vehicle, despite the fact he was not a listed driver on the agreement. *Smith*, 263 F.3d at 586. The *Smith* Court considered five factors in deciding whether the defendant's case was an exception to the general bright-line rule: (1) the driver's ability to present a valid driver's license; (2) the nature of the relationship between the unauthorized driver and the lessee; (3) whether the driver can produce the rental agreement; (4) whether the vehicle lessee gave the driver permission to use the car; and (5) whether the driver and the rental company had a business relationship. *Id.* at 586. When examining the totality of the circumstances, no single fact is dispositive although some factors may arise as especially significant. *Id.* at 586. In Smith's case, he met all five factors, but the court factored the most weight to his personal connection to the rental car based on his relationship with both the lessee, who was his wife, and the rental company, with whom he had an established business association. *Id.* at 587. After determining it was a mere technicality that Smith was not a listed driver on the rental agreement, the court declared him the "*de facto*" renter of the car and granted

him standing to challenge the search. *Id.* at 587. The *Smith* court emphasized that the unique facts of the case precluded it from applying the general bright-line rule, which would have bluntly and unreasonably denied standing to Smith. *Id.* at 586. Strikingly similar to the factual situation of the *Smith* defendant, Riggins' case presents its own unique set of facts, deserving of thoughtful analysis in light of Riggins' specific personal circumstances. R. at 7. Therefore, this Court should adopt the Sixth Circuit's totality of the circumstances approach to determine whether society would recognize Riggins' legitimate expectation of privacy in the rental car, as fact-specific reasoning remains most faithful to the logic of Fourth Amendment jurisprudence.

B. A permission-based test, while more narrow than the totality of the circumstances approach, considers multiple factors in determining whether a privacy right exists.

The Eighth and Ninth Circuits utilized a permission test to determine whether an unauthorized driver can establish a privacy interest in a rental car. *See Muhammad*, 58 F.3d 353; *Thomas*, 447 F.3d 1191. In *Muhammad*, the Eighth Circuit found that in addition to producing evidence of permission to use the vehicle, an individual should also be able to show a familial relationship to the lessee of the vehicle, or prove a history of regular use of the car to support a legitimate expectation of privacy. *Muhammad* at 355. Following the same line of reasoning, the *Thomas* court held that outside an affirmation of permission, holding a key to the car and having the right and ability to exclude others were pertinent to establishing an objective expectation of privacy. *Thomas* at 1198-99. The Ninth Circuit reasoned that an unauthorized driver who received permission to use a rental car has manifested a possessory interest by exercising joint authority and control over the car. *Id.* at 1199. Consequently, the unauthorized driver may challenge the search to the same degree as the authorized renter. *Id.* at 1199. While this permission-based approach is not presented as a totality of the circumstances rationale per se, courts applying this test similarly weigh multiple factors in addition to permission to determine

whether a legitimate privacy interest exists. *Smith*, 263 F.3d at 586. Therefore, this Court should also consider applying a permission test to determine whether an unauthorized driver has a legitimate privacy in a rental vehicle.

C. Fourth Amendment privacy interests are not dependent upon a single bright-line rule based on a contractual or property interest in the place searched.

The government suggests that an individual's privacy interest should rest on a bright-line rule, whereby a driver not listed on the rental agreement lacks standing to challenge the search. R. at 14. This bright-line rule adopted by the Fourth, Fifth, and Tenth Circuits limits the range of legitimate privacy interests by relying entirely on rights established by a contract or through a property interest in order to honor protection under the Fourth Amendment. *See Wellons*, 32 F.3d at 119; *Boruff*, 909 F.2d at 117; *Roper*, 918 F.2d at 887-88. However, this Court has consistently rejected the proposition that a property interest in a place or a thing is requisite to asserting a Fourth Amendment claim. *See Minnesota v. Olson*, 495 U.S. 91 (1990) (where an overnight guest was granted standing to challenge the search of a *friend's* duplex); *Katz*, 389 U.S. 347 (where the Court found a reasonable expectation of privacy existed in a *public* telephone booth). Additionally, the *Rakas* Court held that the constant element in defining reasonableness is the evolution of widely shared social expectations, though naturally influenced by property law are not bound by its rules. *Rakas*, 439 U.S. at 143 n. 12.

Comparatively, a legitimate privacy interest can exist despite a violation of the rental contract by the defendant. *See United States v. Cooper*, 133 F.3d 1394, 1398-1402 (11th Cir. 1998) (holding that defendant had standing to challenge search of a rental car after lease period expired). The control and authority an individual exercises over the rental vehicle falls sufficiently within the constitutionally protected zone of privacy. *Id.* at 1402. Thus while driving a rental car under an expired contract or without the rental agency's permission might violate

company policy or breach the rental agreement, it is not illegal and should not be the absolute litmus-test in recognizing a legitimate privacy interest. *Smith*, 263 F.3d at 587. Furthermore, under the bright-line approach, the single fact that a driver is not listed as an authorized driver on a rental agreement harshly disqualifies one from asserting a constitutionally held right to privacy in the vehicle without considering any of the surrounding circumstances. *See, e.g., Boruff*, 909 F.2d at 117. Thus, by failing to consider an individual's personal connection to the rental car, instead considering only the car's boundaries per a rental agreement, the bright-line rule protects places, not people, and violates the holding in *Katz*. *Katz*, 389 U.S. at 351-52.

Finally, the government contends that a bright-line rule is preferred since it affords law enforcement an easily administrable rule regarding search procedures. R. at 15. Courts have contradicted this assertion, finding that bright-line rules, though efficient, may not be the best answer for fact-bound questions, such as standing. *Smith*, 263 F.3d at 586. The *Rakas* Court cautioned against blind adherence to a bright-line rule, where "superficial clarity" and ease of administration does not necessarily produce results that would otherwise be derived through careful analysis. *Rakas*, 439 U.S. at 148. Moreover, adopting strict per se rules based on administrative simplicity permits law enforcement to make a rote determination regarding an individual's Fourth Amendment privacy right, discounting the reasonableness premise by deferring to police the unbridled authority to conduct searches, which would instead be better served by relying on rational conclusions about human behavior in light of all the circumstances. *Gant*, 129 S. Ct. at 1723. Thus by following the bright-line approach, the Fifteenth Circuit overlooked the societal concepts of reasonableness regarding one's expectation of privacy by placing far too much emphasis on an individual's property interest. *See Katz* at 352-353. Since the bright-line rule presumptively denies standing to all unauthorized drivers of rental cars, this

Court should reject the single-factor test in favor of a fact-bound review of the totality of the circumstances.

II. RIGGINS HAS STANDING TO CHALLENGE THE GOVERNMENT'S ACTIONS BECAUSE THIS COURT'S LINE OF REASONING IN SIMILAR CASES RECOGNIZES RIGGINS' PRIVACY INTEREST IN THE RENTAL CAR. ADDITIONALLY, UNDER THE TOTALITY OF THE CIRCUMSTANCES APPROACH, RIGGINS HAD A REASONABLE EXPECTATION OF PRIVACY, GIVING RISE TO HIS STANDING TO CONTEST THE SEARCH.

The Fifteenth Circuit erred in denying Riggins' standing based solely on his lack of a contractual or property interest in the vehicle. This flawed approach suggests legitimate privacy interests should hinge on a narrow concept of property law, whereas a proper analysis recognizes that Riggins has the right to claim Fourth Amendment protection from the unlawful search of the rental car. Following the line of reasoning this Court initiated in *Jones v. United States*, 362 U.S. 257 (1960), redefined in *Katz v. United States*, 389 U.S. 347 (1967), and clarified in *Rakas v. Illinois*, 439 U.S. 128 (1978), an individual can claim protection under the Fourth Amendment by establishing a legitimate expectation of privacy through consensual possession and joint authority over the area searched, and by demonstrating the ability to exclude others from the premises. Additionally, because Riggins' wife, who was in lawful possession of the vehicle, granted him permission to drive the rental vehicle, and since Riggins had an established business relationship with the rental car company based on the use of his joint credit card, this Court should grant him standing to challenge the search because he demonstrated an objectively reasonable expectation of privacy in the rental car after considering the totality of the circumstances. R. at 5.

- A. According to a framework of precedent from this Court, Riggins can claim protection under the Fourth Amendment against the government's unreasonable search of the rental car since he received permission from his wife to drive it, and demonstrated joint authority and control over the vehicle at the time the government action occurred.**

Beginning in *Jones*, this Court considered factors other than property interests in determining whether a defendant has standing to suppress evidence. *Jones* at 266-67. In *Jones*, this Court held that the defendant had standing to assert a Fourth Amendment challenge to a search of his friend's apartment, where Jones was staying temporarily. *Id.* at 267. Jones' friend, who was the lessee of the apartment, gave him a key and permission to admit himself to stay overnight while his friend was out of town. *Id.* at 259. Although Jones' permanent residence was elsewhere, he had a suit and shirt in the apartment at the time of the search. *Id.* at 259. The lower courts refused to constitutionally honor Jones' motion to suppress the evidence, finding he lacked standing in absence of a property interest in the apartment. *Id.* at 259-60. This Court, unpersuaded by the lower courts' conclusions, determined that Jones was entitled to a hearing on the merits of his motion to suppress evidence because Jones demonstrated he was "legitimately on the premises" since he had permission from the lessee to use the apartment, had personal effects in the apartment and was in control of the apartment at the time it was searched. *Id.* at 267.

In *Katz*, the Court held a privacy interest in a public telephone booth was constitutionally equivalent to that of a home in determining whether the defendant had a legitimate expectation of privacy. *Katz*, 389 U.S. at 359. The defendant, Katz, was seeking to exclude his private conversations, which the government intercepted by attaching a recording device to the outside of a public phone booth. *Id.* at 348. Because Katz entered the booth, closed the door behind him and paid the toll to make a call, the Court found he had a constitutionally held right to a private conversation void of government intrusion. *Id.* at 352. The *Katz* Court emphasized that although the phone booth was accessible to the public, it was reasonable for Katz to rely upon the protection of the Fourth Amendment to keep his conversation private. *Id.* at 358-59. One major significance of the *Katz* holding is that although Katz obviously had no property interest in a

public phone booth, he demonstrated he could exclude others by legally using the enclosed phone booth as a barrier to protect his conversation from prying ears, thus the Court recognized his legitimate right to privacy. *Id.* at 352. In addition, Justice Harlan’s concurring opinion established a new two-prong approach for determining whether a defendant meets the standing requirement in search and seizure cases: (1) whether the defendant had a subjective expectation of privacy in the place searched; and (2) whether society would find the expectation of privacy objectively reasonable. *Id.* at 361 (Harlan, J., concurring).

In the *Rakas* decision, the Court applied a combination of the *Jones* and *Katz* reasoning to passengers in a getaway car that was stopped and searched, revealing a sawed-off rifle underneath the front seat. *Rakas*, 439 U.S. at 130. The passengers in the car in *Rakas* claimed no ownership of either the vehicle or the gun articles, but were denied an evidence suppression hearing since they lacked standing. *Id.* at 131. The *Rakas* Court found the “legitimately on the premises” approach the *Jones* Court applied to be too broad a measure and chose instead to adopt the *Katz* approach, thereby narrowing the privacy inquiry based on what society would find objectively reasonable. *Id.* at 142. In distinguishing the factual situations of the passengers in *Rakas* from the facts in *Jones*, the *Rakas* Court found that while Jones had demonstrated dominion and control over the apartment and could exclude others from it, save the owner of the apartment, the passengers in *Rakas* had no control or dominion over the vehicle or in the areas of the vehicle that were searched and could not exclude others since they did not have keys to the car. *Id.* at 148-49, 155. In a closely contested 5-4 opinion, the majority decision held that the vehicle passengers in *Rakas* could not sufficiently equate their positions to that of the *Jones* defendant, and thus concluded the *Rakas* passengers lacked an objective expectation of privacy to claim protection under the Fourth Amendment. *Id.* at 148. There are two relevant points of the *Rakas* holding that deserve emphasis: first, the Court implied that the *Rakas* passengers would

have had a legitimate expectation of privacy in the vehicle had they exercised joint authority or demonstrated some control or dominion over the areas that were searched, such as having a key to the glove box; second, the defendant in *Jones* would have had a legitimate expectation of privacy had his case been decided using the *Katz* two-prong test. *Id.* at 149. In other words, Jones was both “legitimately on the premises” and, according to the *Rakas* court, also had an objective expectation of privacy in his friend’s apartment that society would find reasonable. *Id.* at 149.

Applying the same line of reasoning to the case at bar, it follows that Riggins had a legitimate expectation of privacy in the rental vehicle, since he displayed characteristics similar to the defendants in *Jones* and *Katz*, both of whom were granted standing. Similar to the *Jones* defendant, Riggins was in consensual possession, since he had been given permission to drive the rental vehicle and had the car keys in his possession. R. at 7-8. Riggins had a legitimate privacy interest under the twin rationales of the *Rakas* reasoning since: (1) he had numerous personal items in the vehicle, such as a gym bag and a suit, which proves his subjective expectation of privacy in the vehicle; and (2) he was exercising control and joint authority over the vehicle he rented along with his wife. R. at 8. In addition, Riggins had the right to exclude others since he had the car keys in his possession, thus fulfilling the objective expectation of privacy test where the *Rakas* passengers could not. R. at 10. Analogous to the defendant in *Katz*, Riggins secured himself in an enclosed space, a car, for which he had legally paid a “toll” to use through the joint credit card, and sought to keep his personal effects private by demonstrating the ability to exclude others, both from the glove box and the vehicle itself since he had the keys to both. R. at 7-8. Therefore Riggins can establish an objective expectation of privacy under the *Katz* analysis.

The fact that Riggins sought privacy in a rental vehicle, as opposed to an apartment or a phone booth should make no difference to this Court’s standing determination. *Katz*, 389 U.S. at 359. The *Katz* Court reasoned that Fourth Amendment protection was not dependent on the type

of area searched, but rather is determined by the individual's affirmative action to seek privacy of his personal effects or conversations. *Id.* at 353. Additionally, this Court's 2009 decision in *Arizona v. Gant* emphasized that a privacy interest in a vehicle is absolutely worthy of constitutional protection, recognizing that a warrantless search of a vehicle is a substantial invasion of privacy and expressing concern over the unfettered authority of police officers to rummage through a person's private effects. *Gant*, 129 S. Ct. at 1720. Moreover, the rental car in Riggins' case was serving as the couple's *de facto* personal vehicle, their only mode of transportation, since the one car they mutually shared was temporarily out of commission. R. at 5. Consequently, it is entirely reasonable that society would recognize that both spouses have a legitimate expectation of privacy in a shared rental car they procured while their common personal vehicle is being restored.

In sum, the *Jones*, *Katz*, *Rakas* and *Gant* decisions fashion a workable highest-court framework to conclude that Riggins had an expectation of privacy that society would find objectively reasonable. Therefore, this Court should overturn the lower courts' rulings and constitutionally honor Riggins' standing to challenge the legality of the search of the rental car.

B. Under the totality of the circumstances analysis, Riggins has a legitimate expectation of privacy in the rental car because he satisfies the Sixth Circuit's five-factor test.

Riggins can also meet the standing inquiry by applying the five factors used in *Smith* to determine whether he has a legitimate expectation of privacy in a rental car. *Smith*, 263 F.3d at 586-87. Like the defendant in *Smith*, Riggins satisfies each of the five factors because he: (1) produced a valid driver's license; (2) presented the rental agreement to the officer; (3) had an intimate relationship with his wife, the authorized driver; and (4) was granted permission from his wife to use the car. R. at 7. The essential fact that Riggins' wife granted him permission to use the car warrants emphasis. The marital relationship is one that both the law and society

recognize as intimate; therefore, an authorized user of a rental vehicle who grants permission to his or her spouse to use that vehicle gives the other the same expectation of privacy in the vehicle that he or she holds. *Smith* at 587. It is a long-held societal norm that husbands and wives share possessions interchangeably, and courts have found that a husband would have an expectation of privacy in his wife's vehicle, even though his name was not listed on the vehicle title. *See United States v. Posey*, 663 F.2d 37, 41 (7th Cir. 1981) (where the defendant had an expectation of privacy in a vehicle owned by his wife and over which he was exercising dominion and control pursuant to her permission at the time of the search). Additionally, some states have enacted legislation extending rights under rental car agreements to individuals having a close relationship to the renter, such as a spouse, a business partner or an employee, implying Fourth Amendment protection to those not explicitly listed on the agreement. *See*, Tex. Bus. & Com. Code Ann. § 91.001 (Vernon 2009).

The fifth and final factor in the Sixth Circuit's analysis is also met by Riggins. While the record does not indicate whether Riggins had a previous business relationship with the rental agency, this rental was procured with his credit card, which he jointly holds with his wife, and for which he pays the bills. R. at 7. Lyla Riggins, as the caretaker of the home, does not work and produces no income for the family, and was acting in her capacity as Riggins' agent. R. at 5. Riggins was the *de facto* payer of the rental car, since his income alone pays the joint credit card bill. Lyla Riggins' affidavit states that she was not aware that the rental agreement required both spouses be listed as authorized operators of the vehicle; therefore it is inconclusive whether the rental agency informed her of such a condition. R. at 5. Under the Sixth Circuit's approach, the mere technicality Riggins' name is not listed on the agreement does not overshadow a conclusive showing that Riggins expected to keep his personal effects private while driving the vehicle. *Smith*, 263 F.3d at 587. Therefore, because Riggins meets the five factors from *Smith's* totality

of the circumstances test, he established an objective expectation of privacy in the rental car and accordingly this Court should grant him standing to challenge the warrantless search of the rental vehicle.

C. Riggins has standing to challenge the search under a permission test because he had a legitimate expectation of privacy in the rental car since he had permission from his wife to drive it.

It is undisputed that Riggins had permission from his wife to drive the rental car. R. at 7. A driver who is given permission to use a rental car is given consensual possession of that car by the authorized driver. *Smith* at 586. Because Lyla Riggins had a lawful property and possessory interest in the car for the duration of the contract, it was not illegal for her to grant permission to her husband to drive the vehicle. R. at 5; *Smith* at 586. In addition, common authority is not dependent on a technical property interest, and thus does not rest upon the law of property, but rather on the mutual use of the property by persons having joint access or control. *Randolph*, 547 U.S. at 110. Moreover, common authority may be broader than the rights conferred by property law, instead recognized by evidence of customary social usage which comports with Fourth Amendment reasonableness in light of the specific circumstances. *Id.* at 120. Riggins demonstrated an objective expectation of privacy by exercising control and authority over the vehicle, and he maintained the right to exclude others, with the exception of his wife and the rental agency. R. at 7. Therefore permission to use the rental car may serve as a sufficient basis for granting Riggins standing to challenge the search.

D. A bright-line rule denying standing to an unauthorized driver of a rental car is a rebuttable presumption that Riggins can disprove.

A bright-line rule presumes the denial of a constitutional privacy right to any unauthorized driver of a rental car. *See Boruff*, 909 F.2d at 117. Such a presumption is a rebuttable claim in situations where an individual can bring forth facts that would lead society to

reach a different conclusion. *Smith*, 263 F.3d at 586. It is reasonable that a bright-line test might become unworkable and inequitable in light of the infinite variations in the circumstances surrounding drivers of rental vehicles. *Id.* at 586. Riggins did not steal the rental car; instead he was using it as a temporary surrogate vehicle while his own personal car was being repaired. R. at 5. An unfortunate misunderstanding of a contract term should not be the dispositive factor in the standing determination, especially since it is Riggins' constitutional rights which are at stake here, and not the rental agency's. Riggins demonstrated a privacy expectation by using the car throughout the two-week rental period, placing personal items in the vehicle, and recognizing his right to exclude others, with the exception of his wife or the rental agency. R. at 8. Even Officer Womack understood Riggins had a right to exclude others from the vehicle, evidenced when Womack requested permission from Riggins to search the car. R. at 3. If Officer Womack did not believe there was a privacy interest at stake, he would have proceeded with the search without first seeking permission.

Additionally, conducting a search without a warrant demands exceptional circumstances, as this Court held in *Johnson v. United States*, 333 U.S. 10, 14-15 (1948). There is nothing in the record indicating Officer Womack had a genuine safety or advance evidentiary concern to justify his search. *See Gant*, 129 S. Ct. at 1716. No apparent reason exists for the failure to seek a search warrant here except to allow an officer to turn a routine traffic stop into an opportunity to ferret out unrelated criminal activity. *See Robinette*, 519 U.S. at 41 (Ginsberg, J., concurring). The presence of a search warrant serves a vital purpose in our society, not to protect criminals from their illegal activities, but so that a neutral mind might evaluate the need for the government intrusion in order to enforce the law. *Johnson* at 14. Hence, the institution of a bright-line rule in Riggins' case permits unchecked discretion and subjective power to law enforcement, something

the Fourth Amendment seeks to avoid. U.S. CONST. amend. IV. Accordingly, this Court should reverse the Fifteenth Circuit's ruling and grant Riggins standing to contest the search.

CONCLUSION

In remaining faithful to the Fourth Amendment's reasonableness premise, this Court should consider the totality of circumstances to determine whether an unauthorized driver has a legitimate expectation of privacy in a rental car. In light of the surrounding circumstances, Riggins has established a legitimate expectation of privacy because he exercised dominion and control over the rental car, displayed the ability to exclude others, maintained a business relationship with the rental agency based on the joint credit card payment, and had an intimate relationship with the authorized driver, his wife, from whom he received permission to use the car. Additionally, a bright-line rule giving law enforcement unrestricted power to detain an unauthorized driver and conduct a warrantless search of the vehicle does not comport with this Court's historical approach to interpreting the reasonableness inquiry in search and seizure cases. The result of instituting a bright-line rule pertaining to unauthorized drivers of rental cars provides too much discretion to law enforcement, leading to unreasonable intrusions upon the privacy of less powerful members of society. For these reasons, Tim Riggins urges the Court to reverse the decision of the Fifteenth Circuit.

Respectfully submitted, this 24th day of November, 2009.

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APPENDIX

FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

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.

STATE STATUTES

Tex. Bus. & Com. Code Ann. § 91.001 (Vernon 2009).

BUSINESS AND COMMERCE CODE

TITLE 5. REGULATION OF BUSINESSES AND SERVICES

SUBTITLE B. RENTAL PRACTICES

CHAPTER 91. PRIVATE PASSENGER VEHICLE RENTAL COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. In this chapter:

(1) "Authorized driver" means:

(A) the renter;

(B) a person whom the rental company expressly designates on the rental agreement as an authorized driver;

(C) the renter's spouse if the spouse:

(i) holds a driver's license; and

(ii) satisfies any minimum age requirement established by the rental company;

(D) an employer, employee, or coworker of the renter if the person:

(i) holds a driver's license;

APPENDIX
(continued)

(ii) satisfies any minimum age requirement established by the rental company; and

(iii) is engaged in a business activity with the renter at the time of the rental; or

(E) a person who:

(i) holds a driver's license; and

(ii) is driving directly to a medical or police facility under circumstances reasonably believed to constitute an emergency...