
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2009

No. 09-9100

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 RESPONDENT

MS. SHARI MAO
COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

- I. Whether the Court considers the totality of the circumstances when determining if a defendant has standing to challenge the search of a rental vehicle.
- II. Whether Petitioner had standing to challenge the reasonableness of the government's actions.

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BRIEF FOR RESPONDENT

OPINIONS BELOW

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

PROVISIONS INVOLVED

The Fourth Amendment to the Constitution provides:

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 thing to be seized.

U.S. Const. amend. IV.

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).

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 THE CASE

On July 3, 2008, in anticipation of the holiday, Officer Womack, along with an increased number of officers, patrolled a neighborhood known for drugs. R. 3. Womack stopped a car speeding from a suspected drug den. R. 19. The driver, Tim Riggins, presented the officer with his valid driver's license and the rental agreement for the vehicle. R. 19. The rental agreement had only the defender's wife as an authorized driver. R. 19. Because Tim Riggins' name was not listed as an authorized driver, the officer asked to search the car. R. 3. Riggins refused the search, but was asked to step out of the vehicle. R. 4.

During the search of the vehicle, the officer discovered a taped brown paper bag containing 500 grams of cocaine in the unlocked glove compartment. R. 20. He also found a plastic bag with chemicals commonly used in the making of "crystal meth," along with various personal items. R. 20. The officer arrested Riggins. R. 4.

Riggins claimed that his wife had given him permission to drive the vehicle. R. 20. He had the keys to the car and the glove compartment on his key chain. R. 20. The credit card used to rent the vehicle listed Mr. Riggins as the primary card holder. R. 20.

Riggins moved to suppress the evidence claiming that the evidence was uncovered in a manner that violated his Fourth Amendment right to be free from unreasonable searches and seizures. R. 19. The district court denied Riggins' motion, and the appellate court affirmed the district court's ruling. R. 25. The Supreme Court granted writ of certiorari. R. 27.

SUMMARY OF THE ARGUMENTS

I.

The Court need not consider the totality of the circumstances when determining whether an unauthorized driver has standing to challenge a rental vehicle search. In order to have Fourth

Amendment standing, an individual must demonstrate a legitimate expectation of privacy that is supported by property law or an expectation of privacy that is recognized and permitted by society. An unauthorized driver has neither ownership nor a connection to the rental vehicle that is recognized or permitted by society. Therefore, the Court does not need to consider the totality of the circumstances to determine that an unauthorized driver does not have standing.

II.

Fourth Amendment rights are personal rights and may not be vicariously asserted. Riggins must show a subjective and an objective expectation of privacy in the property searched in order to prove that he is not vicariously asserting his rights. Riggins demonstrated a subjective expectation of privacy in the rental vehicle, but he failed to demonstrate an objective expectation of privacy supported by property law or recognized by society. Since he does not have both a subjective and an objective expectation of privacy in the property searched, he does not have standing. Therefore, since he does not have Fourth Amendment standing, he cannot challenge the reasonableness of the government's actions.

ARGUMENT

I. THE COURT NEED NOT CONSIDER THE TOTALITY OF THE CIRCUMSTANCES WHEN DECIDING WHETHER AN UNAUTHORIZED DRIVER HAS STANDING TO CHALLENGE A RENTAL VEHICLE SEARCH

The Fourth Amendment protects people against unreasonable governmental searches and seizures of their persons, houses, papers, and effects. U.S. Const. amend. IV. These rights protect people, and not places. *Katz v. United States*, 389 U.S. 347, 352 (1967). Yet, the extent in which people are protected depends on where those people are. *Minnesota v. Carter*, 525 U.S. 83, 88 (1998). Accordingly, the level of Fourth Amendment protection varies according to the place searched. *See id.* The sanctity of a home demands a stringent level of Fourth Amendment

protection whereas a highly regulated vehicle conveys a minimal expectation of privacy. *See California v. Carney*, 471 U.S. 386, 392-393 (1985).

Fourth Amendment rights are personal rights, and may not be vicariously asserted. *Rakas v. Illinois*, 439 U.S. 128, 134 (1978). Thus, a proponent of Fourth Amendment rights may establish standing to challenge the government's actions only if his own rights were violated by the search or seizure. *Id.* at 132. To prove that a proponent's *own* rights were violated, the proponent must demonstrate a *legitimate* expectation of privacy in the property searched. *See id.* at 143. In other words, he must demonstrate that he personally had an expectation of privacy in the property searched, and that this expectation was reasonable. *See id.*

The legitimate expectation of privacy is often discussed in terms of a subjective and an objective component. *See id.* A burglar present in a summer cabin during the middle of winter illustrates a subjective expectation of privacy. *See id.* The burglar is justified in his expectation of privacy. *See id.* Yet, he is a trespasser because he is present without the permission of the owner. *See id.* Therefore, his subjective expectation for privacy is not only rejected by property law, but is also rejected by society. *See id.*

It is insufficient for a proponent of Fourth Amendment rights to claim merely a subjective expectation of privacy. *See id.* He must manifest an objective expectation of privacy as well. *See id.* Ultimately, a proponent of Fourth Amendment rights must demonstrate a legitimate expectation of privacy supported by concepts of property law or accepted and permitted by society. *See id.*

A person who owns or lawfully possesses a property is likely to have a legitimate expectation of privacy in that property because of his right to exclude. *See id.* Circuit courts have generally held that a person who owns or leases a vehicle has Fourth Amendment interest.

See United States v. Walker, 237 F.3d 845, 849 (7th Cir. 2001). Accordingly, circuit courts have generally held that an unauthorized driver who neither leased nor owned the vehicle will not have standing to contest the legality of the search. *See United States v. Smith*, 263 F.3d 571, 586 (6th Cir. 2000). However, circuit courts split when deciding whether an unauthorized driver not on the rental agreement has a legitimate expectation of privacy if an authorized driver grants him permission to drive. *See id.*

The majority view applies a bright-line approach holding that an unauthorized driver does not have standing to challenge the search of a rental vehicle. *See, e.g. United States v. Boruff*, 909 F.2d 111, 117 (5th Cir. 1990) (holding that an unauthorized driver of a rental vehicle was not authorized as a legal operator of the vehicle, therefore does not have standing). These courts affirm that the true owner of a property has the right to exclude all others from that property. *See Rakas*, 439 U.S. at 143. However, a subset of this majority deviates from the property concept and applies a modified bright-line approach. They grant the unauthorized driver standing if that driver can prove that he had permission from the renter of the vehicle. *See United States v. Muhammad*, 58 F.3d 353, 355 (8th Cir. 1995).

The minority view applies a totality of the circumstances approach. These courts claim to follow the *Rakas* Court's concurring opinion stating that the Fourth Amendment is not an area of law in which bright-line rules will benefit public interest. *See Rakas*, 439 U.S. at 156 (Powell, J., concurring). This minority assesses a checklist of factors to determine whether an unauthorized driver has standing. *See, e.g., Smith*, 263 F.3d at 586.

The modified bright-line and the minority approaches have both deviated from the Supreme Court holding that requires the legitimate expectation of privacy to be supported by concepts of property law or understandings permitted by society. *See Rakas*, 439 U.S. at 143.

The modified bright-line approach inadvertently dismisses the concept that an owner of a vehicle has the right to exclude, and holds that a mere renter may convey an expectation of privacy to an unauthorized driver. *See Muhammad*, 58 F.3d at 355. The totality of circumstances approach is based on a misinterpretation of a Supreme Court concurring opinion. *See Smith*, 263 F.3d at 586. Both approaches overlook the established Fourth Amendment jurisprudence that the privacy expectation in vehicles is not analogous to dwelling places. *See Rakas*, 439 U.S. at 148.

It is the pure bright-line view that remains true to Supreme Court holdings. This approach asserts that a legitimate expectation of privacy must be supported by concepts of property law or understandings permitted by society. *See id.* at 143. This view affirms the repeated Supreme Court holdings that vehicles have a diminished expectation of privacy as compared to that of a home or an office. *See id.* It affirms that the true owner of a vehicle retains the right to exclude unauthorized drivers. *See Boruff*, 909 F.2d at 117. Ultimately, it supports the importance of a readily administrable rule in support of the government's interests in an area where individuals already have a weak expectation of privacy. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001).

A. The Modified Bright-Line Approach Overlooks Property Law and Societal Understandings of Privacy

While a clear majority of jurisdictions apply the bright-line approach by refusing an unauthorized driver standing to challenge a search of a rental vehicle, a subset of these jurisdictions have adopted a modified bright-line approach. This subset concludes that permission from an authorized driver may convey standing to an unauthorized driver. The Eighth Circuit Court confirms that an unauthorized driver without permission to drive the vehicle will not have standing. However, it then reasons that an unauthorized driver who acquires permission to drive the vehicle from an authorized driver will acquire standing to challenge a

search. *See Muhammad*, 58 F.3d at 355 (holding that the defendant may have a legitimate expectation of privacy in a vehicle if he had permission from the renter based on the holding in *United States v. Gomez*, 16 F.3d 254 (8th Cir. 1994)). *But see United States v. Gomez*, 16 F.3d 254, 256 (8th Cir. 1994) (finding that the defendant had permission from an authorized driver of a vehicle lacked standing because he did not have permission from the owner of the car). The Eighth Circuit Court fails to recognize that permission granted by an authorized driver is not the same as permission granted by an owner. The owner has restricted the driver's rights to the scope of the rental agreement. *See Boruff*, 909 F.2d at 117 (finding that the lease agreement did not give renter the authority to grant control of the rental vehicle to the defendant, an unauthorized driver).

A rental company grants a driver limited authority over the vehicle as delineated in the rental agreement. *See id.* (explaining that the authorized driver was the only legal operator of the car and did not have the authority to grant control of the vehicle to the defendant, an unauthorized driver). Rental agreements do not grant drivers the ability to freely designate unauthorized drivers without the rental company's knowledge. *See id.* Therefore, an authorized driver does not have the capacity to grant an unauthorized driver permission to drive the car. *See id.* Likewise, the authorized driver does not have the capacity to convey a legitimate expectation of privacy in the car. *See id.* Since the legal operator of the vehicle cannot convey rights to an unauthorized driver, an unauthorized driver will not have standing. *See id.*

Some circuit courts have adopted the modified bright-line approach using a different set of reasoning. These courts conclude that the mere violation of a lease agreement does not destroy standing. *See, e.g., United States v. Cooper*, 133 F.3d 1394, 1400 (11th Cir. 1998) (holding that a lessee who has retained possession of a rental vehicle past the expiration of the

lease maintains a legitimate expectation of privacy in the car). These courts reason that if an authorized driver retains a car past the expiration of the lease, then he would be in violation of the rental agreement. *See id.* Driving a car with an expired rental agreement is not a violation of the law. *See id.* Thus, the mere violation of a rental agreement should not negate a driver's legitimate privacy interest in the vehicle. *See id.* Therefore, even though the legitimate driver is in violation of the rental agreement, his expectation of privacy in the vehicle should not expire when his rental agreement expires. *See id.*

Under this set of reasoning, violating a lease agreement by maintaining possession of the rental vehicle should not eviscerate the legitimate expectation of privacy if an individual had possessory rights prior to the expiration of the agreement. *See id.* Accordingly, if the driver had standing to begin with, the lease violation will not destroy it. *See id.* However, if a driver did not have standing, a contract violation should not convey an expectation of privacy where there was none. *See Rakas*, 439 U.S. at 141 (affirming that by virtue of his wrongful presence, a defendant will not have standing to challenge a search).

The Ninth Circuit Court argues that an unauthorized driver may demonstrate an expectation of privacy that society is willing to accept through "joint control" or "common authority" over the property searched. *See, e.g. United States v. Thomas*, 447 F.3d. 1191, 1198-1199 (9th Cir. 2006). It asserts that the "joint control" standard is based on certain Supreme Court holdings. *See id.* Therefore, the Ninth Circuit adopts a modified bright-line view that an individual without possessory rights may acquire standing if he has joint control over a vehicle with an authorized driver. *See id.*

The Supreme Court has held that a person without property rights may have a legitimate expectation of privacy in another's property that society is willing to permit and accept. *See*

Carter, 525 U.S. at 89. Certain fixed structure, such as a home or an office, may convey an expectation of privacy through societal customs. See *Rakas*, 439 U.S. at 155 (Powell, J., concurring). The Ninth Circuit Court supports its modified bright-line approach by reasoning that joint control over a vehicle is the same as joint control over a fixed structure. See *Thomas*, 447 F.3d at 1198 (likening the privacy from the joint control of an apartment in *Jones v. United States*, 362 U.S. 257 (1960) to the privacy from the joint control of a rental vehicle). This reasoning directly contradicts the Court's history of holding that cars are not to be treated the same as houses or other fixed structures for Fourth Amendment purposes. See *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976) (affirming a Fifth Circuit Court holding and reversing a Ninth Circuit Court holding by emphasizing that an individual's expectation in a car is not as stringent as the sanctity of a dwelling).

The Supreme Court emphasized that the extent of a person's Fourth Amendment protection depends on where the person is and whether the person has a legitimate expectation of privacy in the invaded place. See *Carter*, 525 U.S. at 88. The Court has held on numerous occasions that individuals do not have the same expectation of privacy in cars as they do in houses or apartments. See *Rakas*, 439 U.S. at 148. This is because cars are highly regulated and subjected to pervasive government inspection and requirements, unlike a home. See *Carney*, 471 U.S. at 392.

The Court illustrates the difference in societal expectation of privacy between homes and vehicles through its holdings. It held that an overnight guest in a host's home has a legitimate expectation of privacy based on societal customs. See *Minnesota v. Olson*, 495 U.S. 91, 98 (1990). The Court reasoned that individuals may spend the day in public places, but will seek out a shelter in a home with the expectation of privacy at the end of the day. See *id.* In contrast,

the Supreme Court held that passengers in a vehicle, even with the permission and in the presence of the owner, do not have a legitimate expectation of privacy. *See Rakas*, 439 U.S. at 148. The Supreme Court held that the expectation of privacy in another's car is simply not analogous to the expectation of privacy in another's home. *See id.* Therefore, joint control over a mere rental vehicle will not convey the same expectation of privacy as joint control over the sanctity of a home. *See id.* Thus, the Ninth Circuit's application of joint control as a basis to justify an unauthorized driver's expectation of privacy in a rental vehicle is not based on privacy concepts acknowledged by the Court or by society. *See id.*

The pure bright-line view, in contrast, reaffirms that a legitimate expectation of privacy must be supported by concepts of property law or societal understandings. *See id.* at 143. This approach applies the concept of property law in emphasizing that the rental company is the rightful owner of a rental vehicle and maintains the right to exclude. *See United States v. Wellons*, 32 F.3d 117, 119 (4th Cir. 1994) (holding that the appellant may have the authorized driver's permission to drive the car, but he did not have permission from Hertz company, the owner of the car, therefore, the appellant does not have a legitimate expectation of privacy in the rental vehicle). The rental company has the right to grant control of the vehicle to authorized drivers and to exclude unauthorized drivers. *See id.* An unauthorized driver of a rental vehicle does not have permission from the rightful owner. *See id.* Therefore, the unauthorized driver does not have an expectation of privacy supported by concepts of property law or societal understandings. *See id.*

The unauthorized driver commits a direct interference of the vehicle without the owner's permission. *See Boruff*, 909 F.2d at 117. Since the unauthorized driver's presence is "wrongful," he is a trespasser. *See id.* Like a burglar in a summer cottage in the off-season, an

unauthorized driver may have a subjective expectation of privacy but not one that society is willing to accept. *See Rakas*, 439 U.S. at 141 (criticizing circuit courts for holding that a person in a stolen automobile should have standing to object to its search, despite the Supreme Court's holding that standing would not be availed to those who are wrongfully present).

An unauthorized driver is a trespasser and has no legitimate expectation of privacy that property law or society is prepared to accept. *See id.* at 143. A trespasser is present in the vehicle without the permission of the true owner. Not only does he not have an expectation of privacy in the vehicle, he does not have a reasonable expectation of privacy in any of the vehicle's compartments. *See Wellons*, 32 F.3d at 119 (concluding that a person without a legitimate claim upon a car may not reasonably expect the car to be a private repository for his effects). An unauthorized driver of a rental vehicle will not have standing to challenge a search in any part of the vehicle because his expectation of privacy is not supported by concepts of property law or societal understandings. *See id.* Therefore, in examining an unauthorized driver's expectation of privacy through property law and societal permissions, the pure bright-line approach remains true to the holdings of the Supreme Court. *See Rakas*, 439 U.S. at 143.

B. The Totality of the Circumstances Approach is based on a Misinterpretation

Nevertheless, a minority of jurisdictions depart from the bright-line approach by urging the adoption of a totality of the circumstances view in determining standing for an unauthorized driver. *See Smith*, 263 F.3d at 571. It suggests a checklist of factors to apply in reviewing the facts in light of the surrounding circumstances. *See id.* The Sixth Circuit Court refers to the *Rakas* Court's concurring opinion stating that search and seizure is not an area of the law in which any bright-line rule would preserve both Fourth Amendment rights and the public interest. *See Rakas*, 439 U.S. at 156 (Powell, J., concurring).

The totality of the circumstances view does not follow the Court's holding that a legitimate expectation must be supported by concepts of property law or societal permission. *See id.* at 143. This minority view suggests that to determine whether the legitimate expectation of privacy was reasonable, the court must examine all the facts in light of the surrounding circumstances. *See Smith*, 263 F.3d at 586. One factor examined is whether a driver had a valid license to drive a vehicle. *See id.* Another factor examines whether the driver is able to provide the rental agreement as well as details regarding the vehicle. *See id.* Although these factors may serve as a basis for forfeiting an individual's rights to drive a car, these factors do not establish privacy rights through property law or societal permission. *See id.* (citing to cases where standing was rejected because the unauthorized driver did not have a driver's license or was unable to provide a rental agreement).

This minority view considers whether the unauthorized driver had received permission to drive the vehicle from an authorized driver. *See id.* As discussed, legal operators of a rental vehicle do not have the legal authority to convey possessory rights to unauthorized drivers. *See Boruff*, 909 F.2d at 117. This invalid conveyance is not supported by property law or understandings of society. *See Rakas*, 439 U.S. at 143. Therefore, such a conveyance will not establish an objective basis for a reasonable expectation of privacy. *See id.*

Another factor that the court considers is whether an unauthorized driver actually paid for the rental vehicle. *See Smith*, 263 F.3d at 586. The court argues that if an unauthorized driver was the *de facto* renter of the vehicle, he will have standing. *See id.* This argument is not supported through concepts of property law or societal understandings. *See id.*

The rental company did not grant permission to the unauthorized driver to control the vehicle. *See id.* The unauthorized driver is not on the rental agreement, and therefore, the

company is not on notice that he is exercising control over its property. *See id.* Therefore, the unauthorized driver is a trespasser because he did not receive permission to control the vehicle, but merely paid for someone else's use of it. *See id.* Thus, his unauthorized control over the vehicle is not supported by property law or understandings of society. *See Rakas*, 439 U.S. at 143.

The Sixth Circuit Court asserts that the totality of the circumstances view is a loyal interpretation of Justice Powell's concurring opinion. *See id.* at 155-56 (Powell, J., concurring). However, this view takes Justice Powell's comment out of context. *See id.* In his concurring opinion, Justice Powell illuminated the well established Fourth Amendment jurisprudence by distinguishing the diverse range of expected privacy among various types of property. *See id.* at 154. He asserted that the minimal privacy of a vehicle is not comparable to that of an abode. *See id.* at 155. Consequently, he refused to draw a bright-line rule in general Fourth Amendment jurisprudence across all types of property, including vehicles, apartments, phone booths, and footlockers. *See id.* at 156.

Notably, the vehicle is one category of property that the Supreme Court has drawn bright-line rules in Fourth Amendment jurisprudence. *See id.* at 153-54 (emphasizing that in Fourth Amendment jurisprudence, nothing is better established than the distinct difference between one's expectation of privacy in a vehicle versus any other location). From the time when cars became part of the American landscape, the Supreme Court has held that a driver's expectation of privacy in a vehicle is substantially diminished compared to that of a dwelling house. *See Carroll v. United States*, 267 U.S. 132, 153 (1925). The Court has found that passengers who neither owned nor had a possessory interest in a vehicle do not have a legitimate expectation in the car searched. *See Rakas*, 439 U.S. at 148. The Court recently concluded that an owner in his

motor home has a lowered expectation of privacy, simply because the motor home is heavily regulated and is inspected more like a vehicle than a fixed structured home. *See Carney*, 471 U.S. at 153.

Throughout Fourth Amendment history of the United States, the Supreme Court has created and sustained bright-line rules within one area of Fourth Amendment jurisprudence. *See id.* That one area is vehicles. *See id.* The Court's bright-line rules within Fourth Amendment jurisprudence are consistent in holding that a vehicle has a weak expectation of privacy. *See id.*

C. A Bright-Line Rule Supports Law-Enforcement without Breaching a Legitimate Expectation of Privacy

The Supreme Court emphasizes the importance of “readily administrable rules” in Fourth Amendment jurisdiction. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001). It warns that standards requiring “sensitive case-by-case” analysis do not serve the Fourth Amendment balance, lest every judgment made by law enforcement becomes an opportunity for constitutional review. *See id.* By limiting variables to a very specific set of circumstances regarding a specific type of property, a bright-line rule will weigh in favor of the needs of law enforcement against an ordinarily weak personal-privacy interest. *See Wyoming v. Houghton*, 526 U.S. 295, 306 (1999) (concluding that “reasonableness” under the Fourth Amendment must weigh in favor of law enforcement in properties like vehicles where personal-privacy interests are typically weak). Therefore, a bright-line rule will support the government in circumstances where the individual's expectation for privacy is traditionally minimal, but the law enforcement interests at stake are significant. *Id.* at 304.

A proponent of Fourth Amendment rights must demonstrate that he had an expectation of privacy in the property searched and that this expectation is supported by concepts of property law or interests recognized and permitted by society. *See Rakas*, 439 U.S. at 143. An

unauthorized driver does not have the basic requisites necessary for standing, therefore, totality of the circumstances need not be considered when concluding that an unauthorized driver does not have Fourth Amendment standing to challenge a search. *See id.* Though an unauthorized driver may develop a subjective expectation of privacy in a rental vehicle, he is unable to acquire a legitimate expectation of privacy from the permission of an authorized driver. *See id.* Therefore, the modified-bright-line approach should not be applied. *See id.*

The bright-line approach recognizes that an unauthorized driver without the permission from the rental company does not have a legitimate expectation of privacy in the vehicle. *See id.* Since an unauthorized driver's interest in the rental vehicle is not based on property law or societal customs, he does not have the requisites necessary to achieve a legitimate expectation of privacy. *See id.* Without a legitimate expectation of privacy, an unauthorized driver fails to establish standing. *See id.* In an area of where individuals already have a weak expectation of privacy, a bright-line approach will support the government's interest through a readily administrable rule. *See id.* Therefore, the bright-line rule will affirm that an unauthorized driver of a rental vehicle will not have standing to challenge the government's actions. *See id.*

II. RIGGINS DOES NOT HAVE STANDING TO CHALLENGE THE REASONABLENESS OF THE GOVERNMENT'S ACTIONS

An individual's legitimate expectation of privacy in the property searched is required for Fourth Amendment standing. *See id.* The legitimate expectation of privacy is discussed in terms of a subjective and an objective component. However, a subjective expectation of privacy is not enough. Ultimately, the privacy expectation must be one that society is willing to recognize or one that is supported by concepts of property law. *See id.* at 143.

Riggins claims that he had an expectation of privacy in the rental car. He had received permission from his wife, the authorized driver, to use the car. R. 20. The credit card that she

used to rent the vehicle was a joint account and Riggins was the primary card holder. R. 20. He had personal effects throughout the car and had been using the car, and therefore, he claims that this proves joint ownership of the property. R. 20. Here, his subjective expectation of privacy in the vehicle is not enough. *See Rakas*, 439 U.S. at 143. He must also demonstrate that his expectation of privacy is one in which society is willing to accept and is validated by referencing concepts of property law. *See id.*

A. Riggins does not have Possessory Rights over the Vehicle

Even though Riggins is the primary card holder of the credit card that his wife used to rent the vehicle, the rental company did not give Riggins permission to have control over the car. *See Boruff*, 909 F.2d at 117. Riggins never communicated with the rental company regarding the rental. R. 19, 20. Since the company was unaware of his unauthorized control over its property, Riggins does not have a legitimate expectation of privacy in the rental vehicle. *See Boruff*, 909 F.2d at 117.

Riggins may argue that the violation of the rental agreement does not destroy his standing. Here, the rental company lawfully owns the car and has the right to exclude all others. *See Rakas*, 439 U.S. at 143. The owner had granted permission for usage to the authorized driver, Riggins' wife. R. 19. The rental company did not permit Riggins' wife to transfer control of the vehicle to a third party. *See Boruff*, 909 F.2d at 117. Though Riggins received permission from his wife, she did not have the legal authority to give him permission to have control over the vehicle. *See id.* Under concepts of property law, Riggins has no legal or legitimate possessory control over the property. *See Rakas*, 439 U.S. at 143. Riggins' expectation of privacy remains subjective. *See id.*

Here, he does not have the permission from the rightful owner of the property and is not listed on the lease agreement. *See id.* His expectation of privacy not only violates a lease agreement but this expectation is not supported by concepts of property law. *See id.* Therefore, the contract violation could not have destroyed his standing because, in fact, he never had standing. *See id.*

Riggins may claim that he had an expectation of privacy in the glove compartment or the plastic bag to contest the government's search. *See Wellons*, 32 F.3d at 119. Riggins may argue that he had the keys to the glove compartment and the capacity to exclude others under property law. R. 20. Yet, he did not lock the glove compartment, signifying his lack of subjective expectation of privacy. *See Wellons*, 32 F.3d at 119. Not only did he not have a subjective expectation of privacy, he was also exercising dominion over the car without the consent of the owner. *See id.* A person without possessory rights of a vehicle cannot legitimately expect the vehicle to be a personal repository for his private effects, even if the items are in an enclosed container or taped shut. *See id.* at 120 (holding that a person without a claim to the rental car cannot assert a reasonable expectation of privacy in a bag found in the car). Therefore, Riggins did not demonstrate a subjective or an objective expectation of privacy in the rental vehicle nor any repository within it. *See id.*

The capacity to challenge a search requires that the individual demonstrate a legitimate expectation of privacy supported by concepts of property law or understandings of society. *See Rakas*, 439 U.S. at 143. Riggins does not have a possessory right in the rental car or its glove compartment. *See id.* Since Riggins does not have a possessory or ownership right in the car, he lacks a legitimate expectation of privacy supported by property law. *See id.*

B. Riggins' "Joint Control" over a Vehicle does not Convey a Legitimate Expectation of Privacy

Here, Riggins may argue that he does not need to own the property in order to seek protection and standing under the Fourth Amendment since he had joint control over the car. He may claim that several Supreme Court holdings have held that property rights are not conclusive in determining Fourth Amendment standing. *See id.* Therefore, standing should not be based solely on ownership or property rights, but understandings of society. *See id.*

The Supreme Court has held in several circumstances that an individual may have a legitimate expectation of privacy through “joint control” over a property that he does not own, such as an apartment, an office, or a telephone booth. *See Carter*, 525 U.S. at 87-91. Under this analysis, Riggins may claim that he has a legitimate expectation of privacy because he had “joint control” in a vehicle with his wife who had possessory interest in the car. In certain Supreme Court holdings, an individual may acquire standing through “joint control” over a fixed structure, such as a house or an apartment. *See id.* However, society recognizes that the minimal privacy in a vehicle is not comparable to the sanctity of a house or an apartment. *See Carney*, 472 U.S. at 392-93.

The extent to which individuals are protected by Fourth Amendment rights depends on where those individuals are. *See Carter*, 525 U.S. at 88. Riggins’ joint control over a vehicle with a minimal expectation of privacy will not yield the same privacy as the joint control over a house or an apartment. *See Carney*, 472 U.S. at 392-93. Therefore, Riggins does not have a legitimate expectation of privacy that is acknowledged by the Court or society. *See id.*

Riggins does not own the rental vehicle, and has not received possessory rights from the rental company. R. 20. Therefore, he does not have a privacy expectation supported by concepts of property law. *See Rakas*, 439 U.S. at 143. Riggins’ joint control over the vehicle does not yield the same level of privacy as the joint control over a residence. *See Martinez-Fuerte*, 428

U.S. at 561. Therefore, he does not have a privacy expectation supported by understandings of society. Since Riggins does not have an expectation of privacy that is supported by concepts of property law or is permitted by societal understandings, he does not have standing to challenge the reasonableness of the government's actions. *See id.*

CONCLUSION

The Respondent respectfully prays that this Court will not consider the totality of the circumstances when deciding if an unauthorized driver of a rental vehicle has Fourth Amendment standing to challenge a government search. Since an unauthorized driver does not have a legitimate expectation of privacy that references concepts of property law or understandings that are accepted by society, he does not have standing.

Riggins is an unauthorized driver, and does not have a legitimate expectation of privacy that references concepts of property law or understandings that are accepted by society. Therefore, Riggins does not have standing to challenge the government's actions. For these reasons, Respondent prays this Court affirm the decision of the court below.

PRAYER

For these reasons, Respondent prays this Court affirm the decision of the court below.

Counsel for the Respondent

CERTIFICATE OF SERVICE

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

Counsel for the Respondent

