IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL 1999 SESSION

FILED

May 14, 1999

Cecil W. Crowson
Appellate Court Clerk

JOE GLASGOW, JR.,	)	
	)	**C.C.A. NO. 01C01-9803-CR-00105**
Appellant,	)	
	)	**DAVIDSON COUNTY**
VS.	)	
	)	**HON. WALTER C. KURTZ,**
STATE OF TENNESSEE,	)	**JUDGE**
	)	
Appellee.	)	(Post-Conviction)

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OPINION FILED:_____

AFFIRMED

JOHN H. PEAY,
Judge

O P I N I O N

This is the third time a panel of this Court has visited this case. See State v. Joe Glasgow, Jr., No. 01C01-9102-CC-00082, Davidson County (Tenn. Crim. App. filed October 10, 1991, at Nashville)(direct appeal of convictions); Joe Glasgow, Jr. v. State, 01C01-9603-CC-00092, Davidson County (Tenn. Crim. App. filed September 30, 1997, at Nashville)(post-conviction). In the most recent opinion, this Court remanded to the post-conviction court to allow the petitioner an opportunity to show he had standing to challenge the search of a rental vehicle that led to the discovery of drugs. On remand, the post-conviction court determined that the petitioner had standing to challenge the search of his person and the search of his belongings in the rental vehicle, but did not have standing to challenge the search of his stepfather's luggage, in which over five grams of a Schedule II controlled substance was found. The petitioner now appeals. Finding no error, we affirm the post-conviction court's order.

According to this Court's first opinion, a police informant reported that the petitioner and his stepfather, Jerry Webber, had traveled from Florida for the purpose of selling drugs, including hydromorphone. The informant believed that Webber, who was dying of cancer, would obtain prescriptions for hydromorphone from various Florida doctors, fill the prescriptions at different pharmacies, and give the excess to the petitioner to sell in Nashville. The informant stated that the petitioner and Webber, who were traveling in a yellow Monte Carlo rental car bearing Florida tags, would be stopping at the petitioner's father's house and then his sister's apartment, after which they intended to sell drugs in the "projects." Based on this information, the police observed the petitioner and Webber as they drove from the petitioner's father's house to his sister's apartment. When the petitioner and Webber exited the apartment and climbed into the rental car, the

officers stopped them. Webber was in the driver's seat and the petitioner was in the passenger's seat. The police officers searched the car and found luggage in the trunk. In Webber's suitcase, the police found 275 hydromorphone tablets, and in the petitioner's bag, the police found a small amount of marijuana.

The petitioner was convicted of possessing in excess of five grams of hydromorphone, a Schedule II controlled substance, for the purpose of sale and was sentenced as a Range II especially aggravated offender to fifty years in jail. He was also convicted of possessing marijuana, a Schedule VI controlled substance, for which he received a concurrent eleven month, twenty-nine day workhouse sentence. In his direct appeal of his convictions, he claimed inter alia that he received ineffective assistance of trial counsel in part because counsel failed to challenge the search that revealed the drugs by filing a motion to suppress. A panel of this Court affirmed. Glasgow, No. 01C01-9102-CC-00082.

The petitioner filed a petition for post-conviction relief, claiming inter alia that his attorney on the motion for new trial, who was different from his trial counsel, was ineffective because he failed to offer proof that a motion to suppress would have been meritorious. The post-conviction court ultimately denied him relief, ruling in part that the petitioner could not present evidence regarding the search issue because that issue had been previously determined. On appeal, a panel of this Court held that while the issue of whether trial counsel was ineffective had been previously determined, the issue of whether the attorney who filed the motion for a new trial was ineffective had not been previously determined. Thus, this Court remanded the case to allow the petitioner an opportunity to show "he had a legitimate expectation of privacy in the area where the seized drugs were found." Glasgow, 01C01-9603-CC-00092.

At the hearing on remand, the petitioner admitted that Webber rented the car, was the only authorized driver under the car rental agreement, and had the car keys at the time the police approached them. He maintained, though, that he was in the car every time it was driven, that he had Webber's permission to drive the car, and that they shared the driving duties from Florida to Tennessee. He also indicated that he had placed a luggage bag in the rental car's trunk and that he expected he could prevent others from opening the bag. Based on this evidence, the post-conviction court concluded that the petitioner had standing to object to "a search of his person and his own personal effects in the car" but did not have standing "to contest the search of the trunk as it relates to the seizure of his step father's bag."

The petitioner now argues that the trial court erred in concluding that he lacked standing to challenge the search of the rental car trunk. We disagree. To have standing to challenge the reasonableness of a search or seizure, a defendant must establish a legitimate expectation of privacy in the property searched. E.g., Rawlings v. Kentucky, 448 U.S. 98 (1980). Seven factors are applicable to the standing inquiry: (1) property ownership; (2) possessory interest in the thing seized; (3) possessory interest in the place searched; (4) whether the defendant had a right to exclude others from that place; (5) whether the defendant subjectively expected that the place would remain free from governmental invasion; (6) whether the defendant took normal precautions to maintain his privacy; and (7) whether the defendant was legitimately on the premises. State v. Oody, 823 S.W.2d 554, 560 (Tenn. Crim. App. 1991)(citing United States v. Haydel, 649 F.2d 1152 (5th Cir. 1981)). One may have a legitimate expectation of privacy even if the property searched belonged to another. State v. Turnbill, 640 S.W.2d 40, 45 (Tenn. Crim. App. 1982); see Rakas v. Illinois, 439 U.S. 128 (1978).

In Rakas, the defendants were passengers in a car driven by the car's owner when the car was stopped and searched, revealing contraband in the locked glove compartment and under the front passenger seat. Rakas, 439 U.S. at 130. They argued that they had standing to assert that a search of the car violated their Fourth Amendment rights merely because they were legitimately in the car with the owner's permission at the time it was stopped. Id. at 132-33. The Court disagreed, noting that the defendants did not assert either a property or a possessory interest in the automobile or an interest in the property seized. Id. at 148. Moreover, the Court stated the defendants had made "no showing that they had any legitimate expectation of privacy in the glove compartment or area under the seat of the car in which they were merely passengers. Like the trunk of an automobile, these are areas in which a passenger qua passenger simply would not normally have a legitimate expectation of privacy." Id. at 148-49.

Here, the petitioner was a passenger in a rental car driven by the lessee. The petitioner did not rent the car and did not have permission of the car owner, the car rental agency, to drive the car. He claims he had Webber's permission to drive the car and that he in fact drove the car at some point, but he was neither driving the car nor had the car keys at the time the search was conducted. Instead, Webber, the lessee, had control of the car at the time the search was conducted.

Under these circumstances, even though the petitioner testified he had a subjective expectation of privacy, he failed to prove he had a reasonable or legitimate expectation of privacy. Cf. United States v. Dunson, 940 F.2d 989 (6th Cir. 1991)(standing established where both defendants, one a driver and one a passenger when it was stopped, legitimately borrowed the car from its owner); United States v. Little, 945 F. Supp. 79, 83 & n.2 (S.D.N.Y. 1996)(defendant driver in sole possession of the car

established a legitimate expectation of privacy by proving the lawful lessee of the car gave him permission to use the car). Given the proof in the record, we will not disturb the post-conviction court's conclusion that the petitioner lacked standing to challenge the search of the rental car trunk. Rakas, 439 U.S. at 148-49; see United States v. Pino, 855 F.2d 357 (6th Cir. 1988)(where lessee was in car at the time it was stopped, defendant passenger who did not have a valid driver license and was not an authorized driver did not prove a legitimate expectation of privacy); United States v. Frederickson, 1990 WL 159411 (6th Cir. 1990)(unpublished disposition)(no legitimate expectation of privacy where the defendant did not have a driver license and was not listed on the rental agreement, even though the lessee was not in the rental car); cf. United States v. Jones, 44 F.3d 860, 871 (10th Cir. 1995)(stating that "a defendant in sole possession and control of a car rented by a third party has no standing to challenge a search or seizure of the car"); United States v. Riazco, 91 F.3d 752, 754-55 (5th Cir. 1996)(in accord with Jones); United States v. Wellons, 32 F.3d 117, 119 (4th Cir. 1994)(in accord with Jones). The order denying post-conviction relief is affirmed.

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JOHN H. PEAY, Judge

CONCUR:

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DAVID H. WELLES, Judge

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J. CURWOOD WITT, JR., Judge