IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO	)	**CASE NO. CR 18 632968**
	)	
Plaintiff,	)	**JUDGE JOHN P. O'DONNELL**
	)	
vs.	)	**JUDGMENT ENTRY DENYING**
	)	**THE DEFENDANT'S MOTION TO**
ERNEST MATTHEWS	)	**SUPPRESS EVIDENCE**
	)	
Defendant.	)	

John P. O'Donnell, J.:

Ernest Matthews is charged in this indictment with drug trafficking and drug possession. The case arises from a traffic stop on May 22, 2018, that resulted in the discovery of 443 grams of marijuana in the car Matthews was driving.

Matthews filed a motion to suppress evidence taken from the car. A hearing on the motion was held March 28, 2019, and this judgment follows.

The evidence

On May 22, 2018, Ernest Matthews was driving east on Miles Avenue near East 110 Street in Cleveland. Miles at that point is a four-lane road, with two lanes going east and two going west, divided by a yellow center line. At the same time, Chad Schell, a trooper for the Ohio State Highway Patrol, had just concluded writing a ticket to another driver and was walking back to his cruiser, a marked Chevrolet Tahoe stopped in the eastbound curb lane.

Schell saw Matthews driving a sport utility vehicle toward him coming from the west. Matthews's vehicle was on the wrong side of the center line, and as Matthews passed him, Schell noticed that Matthews appeared "rigid" behind the steering wheel and "nervous" while he tried to

avoid looking at Schell. Because Matthews was left of center, Schell followed him to make a traffic stop. Schell was behind Matthews as he turned first off of Miles on to a side street without signaling the turn and next to another street without signaling. Matthews then pulled into a driveway and Schell pulled in behind him.

Both men got out of their vehicles and Schell approached Matthews while the defendant's driver's door was still open. The trooper smelled the odor of marijuana and decided to hold Matthews while he conducted a "probable cause search of the vehicle" for drugs. As Schell was handcuffing the defendant and preparing to put him in the back seat of the patrol cruiser before beginning his search, a woman emerged from the house where Matthews was parked, ran to the driveway, grabbed the keys from the car, closed and locked the car's doors, and ran back into the house.

This left Schell unable to search the automobile.

In a quandary about what to do next, Schell and some of his colleagues from the highway patrol embarked on a "45 minute deliberation" of how to proceed with a search in the face of the locked car. During this time, two women who were related to Matthews came to the scene and informed the troopers that the woman who took the keys was a relative of Matthews. The troopers also ascertained that the car was owned by a rental car company. No evidence was offered at the hearing to demonstrate that the car was rented to Matthews or whether he was named as a permitted driver under someone else's rental contract.

Schell is a canine officer and he had with him Jimmy, a dog trained in the detection of illegal drugs, including marijuana. He did not, however, have Jimmy sniff the car for the presence of drugs. Neither did he seek a search warrant. Matthews, meanwhile, was handcuffed in the trooper's back seat.

Eventually the relatives on the scene persuaded the woman in the house to unlock the car, whereupon it was searched and 443 grams of marijuana were found in two large bags. Matthews was arrested for the drugs but was never cited for going left of center or turning without signaling. The car was towed to an impound lot.

The motion to suppress

Matthews now moves to suppress from evidence at trial the drugs and anything else found in the car.

As the initial basis for his motion, he asserts that Schell never observed Matthews violate a traffic law and therefore had no reason to follow and stop him in the first place. Second, Matthews argues that even if the initial traffic stop was lawful then the warrantless search of his vehicle was unlawful because it was not justified by any recognized exception to the warrant requirement of the Fourth Amendment to the United States Constitution.

The State of Ohio contends that reasonable suspicion existed to justify the traffic stop and that the warrantless search of the vehicle was lawful under the so-called automobile exception to the Fourth Amendment's warrant requirement.

The Fourth Amendment of the United States 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 things to be seized.

Section 14, Article I, of the Ohio Constitution contains nearly identical language, and that section has been held to extend protections in conformity with those of the federal constitution. *State v. Robinette*, 80 Ohio St. 3d 234, 238 (1997).

It is a first principle of Fourth Amendment jurisprudence that the police may not conduct a search unless they first convince a neutral magistrate that there is probable cause to do so. *New York v. Belton*, 453 U.S. 454, 457 (1981). The United States Supreme Court has recognized, however, that the exigencies of the situation may sometimes make exemption from the warrant requirement imperative. *Id*. One of those exigencies is present in the case of an automobile that may hold contraband or other evidence of a crime because a car is not stationary and it can easily be moved and the evidence lost. As the United States Supreme Court observed almost a century ago:

> [T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.
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> *Carroll v. United States*, 267 U.S. 132, 153 (1925).

Thus began the automobile exception to the Fourth Amendment's warrant requirement. But it is necessary to keep in mind the rationale for the exception: a car is movable, its occupant is alerted, and the car's contents may never be found again if a warrant must be obtained. *Chambers v. Maroney*, 399 U.S. 42, 51 (1970). A car is a "fleeting target" for a search. *Id*. If the facts of a particular case don't support that rationale then the automobile exception does not apply. After all, the word "automobile" is not a talisman in whose presence the Fourth Amendment fades away and disappears. *Coolidge v. New Hampshire*, 403 U.S. 443, 461 (1971). If courts excuse the

warrant requirement where there are no exigent circumstances present simply because it is a car that is involved, it is but a short step to the position that it is *never* necessary for the police to obtain a warrant before searching and seizing an automobile, provided that they have probable cause. *Id*., 479.

Here, the evidence does show that Schell had reasonable suspicion to believe the traffic law had been violated when he saw Matthews go left of center and, upon pulling him over and smelling marijuana, he had probable cause to believe that a drug possession crime was afoot.

But the evidence does not demonstrate the presence of circumstances sufficient to invoke the automobile exception to the warrant requirement. When Schell was ready to search the car – and before it was locked – he had Matthews, the car's sole occupant, under control and unable to move the car or get in it to destroy evidence. Additionally, the car was blocked in and couldn't go anywhere. Since the car could not be accessed or moved at that point it is, at best, debatable whether the exigency justifying the warrantless search of a car existed. But then the car was locked and the keys taken away. Surely by then there is no way that whatever evidence of a crime may have been in the car was going anywhere. And since the troopers were watching the car while they spent 45 minutes figuring out how to proceed, that time could have been used to secure a warrant without much additional expenditure of law enforcement time and resources.

Accordingly, because there was no chance that any evidence in the car would be lost or destroyed before a warrant could have been issued, the car should not have been searched without a warrant.

Yet that conclusion does not necessarily require the suppression of the drug evidence at Matthews's trial. The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure. *Rakas v. Illinois*,

439 U.S. 128, 130 (1978), footnote 1.[1] A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. *Id*., 134. Still, a criminal defendant may have his Fourth Amendment rights infringed by a warrantless search of property he does not own. The capacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the amendment has a legitimate expectation of privacy in the invaded place. *Id*., 143. Matthews, therefore, may invoke the exclusionary rule in this case only if he proves he had a reasonable expectation of privacy in the car.

The hearing evidence revealed only three things about the car. First, Matthews was driving it. The mere fact that Matthews was driving the rental – i.e., he was in possession of it – is not conclusive of his right to privacy in the vehicle. There is no evidence that he rented the car. There is no evidence about how long Matthews had the car. There is no evidence of the presence of any other personal items in the car, which might tend to show that he treated the vehicle as if it were his own. Simply getting behind the wheel of a car does not automatically confer on the driver an expectation of privacy, yet that is the extent of the evidence in this case.

The second thing known about the car is that it was a rental. A person operating a motor vehicle without the permission of its owner has no standing to challenge the validity of a search of the automobile by law enforcement officers. *State v. Henderson*, Fifth Dist. No. 07COA031, 2008-

[1] Placing the burden on the defendant is salutary for at least one reason present in this case. A defendant cannot, on the one hand, claim that his car or his house may not be searched without a warrant and then, at trial, assert or argue that the evidence found in the car or house could not have belonged to him because the house or car in question was not his. Matthews chose not to present any evidence to support an expectation of privacy in the vehicle, possibly hoping it would either be taken for granted or proved inferentially by the fact he was driving the car. By forgoing such evidence he preserves his ability to deny at trial that what was in the car – namely, the drugs – belongs to him.

Ohio-5007, ¶22. The owner is the rental company, and the record is devoid of any evidence of who rented the car and, if it wasn't Matthews, whether Matthews was a permitted driver.

The final piece of evidence about the vehicle is that the woman from the house exercised control over the car by locking it and taking the keys. Just as Matthews's mere possession of the vehicle while he drove it does not establish his own expectation of privacy in the car, the woman's control over the keys does not necessarily demonstrate that she was the renter or a permissive user. But her actions nullify any inference of an expectation of privacy that Matthews might argue exists through his possession of the car since the woman demonstrated at least an equal right to possession.

Conclusion

The record evidence does not show that the Fourth Amendment rights of defendant Ernest Matthews were infringed by the May 22, 2018, search of the rental car he was driving, and his February 13, 2019, motion to suppress at trial the evidence discovered during that search is denied.

IT IS SO ORDERED:

_____ April 8, 2019

Judge John P. O'Donnell Date

SERVICE

A copy of this judgment entry was emailed to the following on April 8, 2019:

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_____
Judge John P. O'Donnell