

Rental Cars and Reasonable Expectations:
Not Just A Country Song Title
Legal Question of The Week
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I decided this week to start my songwriting career after a moment of serendipity¹ brought the following lyric to mind, which I thought would launch me to superstardom: “When we left Enterprise and got into the back seat, I didn’t know how far she would go, but my mind was full of rental cars and reasonable expectations.”² I’m having some trouble with the rest of the song, though. So far, the guy has lost the girl, his dog has died, and his trailer has rolled down the hill into the creek, but since it’s an upbeat song I need a happy ending.

While I was working on the song, I also realized that the topic of rental cars would make for a good legal update. Here’s this week’s hypothetical situation:

Let’s suppose that you have stopped a car for some legitimate reason. You walk up to the lone occupant seated in the driver’s seat and ask to see his license and registration. After examining his license and the rental agreement for the car, you determine that he is not an “authorized driver” under the rental agreement. He tells you that the person who rented the vehicle gave him permission to drive it to the store and back. You see nothing that gives you probable cause to suspect that there are drugs in the car, but your “Spidey-sense”³ is going off and you would like to search. You ask for consent but the driver says no. There is not a K-9 officer anywhere nearby. You search the car anyway and find a suitcase in the back seat which the driver tells you belongs to him. You open the suitcase and find the largest amount of cocaine you have ever seen. Was your search constitutionally valid?

The short answer is yes. But lawyers are never content with short answers, just like your middle school math teacher who always made you show your work. How do

¹ The effect by which one accidentally discovers something fortunate, especially while looking for something else entirely.

² I know it doesn’t rhyme, but I’m told by some people “in the know” that you no longer have to rhyme words for something to be considered poetry. These kids and their newfangled ideas... By the way, this lyric is ©Brian Beasley 2009. Go write your own song.

³ Spider-man has a “spider sense” that causes his brain to tingle when danger is close by. I use this phrase to refer to the feeling you get that something just isn’t quite right. You know what I’m talking about.

we justify this search done without a warrant, without probable cause, and without consent?

You remember, I'm sure, that the Fourth Amendment protects citizens from unreasonable searches and seizures. In order to safeguard this protection, the Supreme Court invented the exclusionary rule, which says that evidence discovered due to a violation of the Fourth Amendment must be excluded or suppressed. The exclusionary rule's benefits, however, only apply to the person whose rights were violated. In legal terms, we say that the person whose rights have not been violated does not have "standing" to raise the issue and have the evidence excluded as to him.

But asking whether a person has "standing" is really just another way to ask if the person's Fourth Amendment protections have been violated. To determine if a person had a Fourth Amendment interest, we ask whether he had a "reasonable expectation of privacy" in the place or in the item searched. For a reasonable expectation of privacy to exist, it is not enough for the person to have an expectation of privacy in a particular item or place – the expectation has to be one that society would view as objectively reasonable.

Applying this Fourth Amendment jurisprudence⁴ to our hypothetical situation, the issue becomes whether the driver had a reasonable expectation of privacy in his suitcase which was travelling in a vehicle that he was not authorized to drive. It is a close question, and the federal courts have split in their decisions. Fortunately for us, we work in the Fourth Circuit,⁵ which ruled that the driver in this case does not have a reasonable expectation of privacy.

In United States v. Wellons, 32 F. 3d 117 (1994), West Virginia⁶ State Trooper Donald Sizemore stopped a vehicle for speeding on the West Virginia Turnpike.⁷ He spoke with the driver, Sherman L. Wellons, Jr., who told him that the vehicle had been rented by a friend named Lawrence Dixon. It turns out that Dixon had rented the car in Pittsburgh, Pennsylvania, the day before the traffic stop. Dixon, Wellons, and a friend named Antonio Johnson had driven to Atlanta that same day. The next morning (and the date of the traffic stop), Dixon and Johnson had taken a flight back to Pittsburgh and Wellons was planning to drive back to Pittsburgh that day.⁸

Trooper Sizemore confirmed with the Hertz company that Sherman Wellons was not an authorized driver under the rental agreement and after writing a ticket for speeding asked Wellons for consent to search the vehicle. Wellons refused. Trooper Sizemore continued to detain Wellons until a K-9 officer could arrive on the scene. Eventually the

⁴ Add this to the list of words that lawyers use to sound really smart.

⁵ Motto: At least we're not the Ninth Circuit.

⁶ Motto: The State where everyone is one big family – literally.

⁷ The punishment for this crime (as with all crimes in West Virginia) is having to spend additional time in the state of West Virginia.

⁸ This unusual itinerary might be the thing that triggered Trooper Sizemore's "spidey-sense." Who drives from Pittsburgh to Atlanta only to turn right around and drive back?

K-9 alerted on the car and the Trooper executed a warrantless search. Two bags of luggage in the car contained cocaine and another was found to contain heroin.

In court, Wellons argued that the search was a violation of his Fourth Amendment rights and that even if the court held that he did not have a reasonable expectation of privacy in the car, he would have one in the luggage that he placed in the car. The Fourth Circuit⁹ Court disagreed. They determined that as an unauthorized driver of the vehicle, Wellons had no reasonable expectation of privacy even though the renter had given him permission to drive it. And since he could not make a legitimate claim to the car he was driving, the Court said, he could not “reasonably expect that the vehicle was a private repository for his personal effects, whether or not they were enclosed in some sort of a container, such as a paper bag.”

So, in addition to learning another tool that we can use to search a vehicle without a warrant, hopefully we learned one other thing. When you and your buddies decide to go on a quick cross-country trip – you don’t want to be the one left holding the suitcase.

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⁹ Other motto: “We’re number four!”