

NOTICE

Decision filed 05/09/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0564

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Union County.
)	
v.)	No. 09-CF-54
)	
LIONEL MARTIN,)	Honorable
)	Mark M. Boie,
Defendant-Appellant.)	Judge, presiding.

JUSTICE DONOVAN delivered the judgment of the court.
Justices Spomer and Wexstten concurred in the judgment.

R U L E 2 3 O R D E R

Held: The trial court properly denied the defendant's motion to quash his arrest and suppress evidence because the defendant failed to establish a legitimate expectation of privacy sufficient to permit him to challenge the search of a sealed package that was found in a vehicle in which he was a passenger.

The defendant, Lionel Martin, appeals his conviction for unlawful possession of cannabis. The defendant argues that the trial court erred in denying his motion to quash his arrest and suppress evidence where the police officers lacked probable cause to search a sealed package found on the driver's seat in a vehicle owned and operated by the codefendant, Cedric J. Sinegal. We affirm.

Following a traffic stop, both the defendant and Sinegal were arrested and charged with unlawful possession with intent to deliver, cannabis trafficking, and unlawful possession of cannabis. The defendant and Sinegal filed their respective motions to quash the arrest and suppress the cannabis. The defendant alleged that the police officers lacked probable cause to arrest him and to search a sealed package found in the vehicle in which the

defendant was a passenger. The motions were set for a consolidated hearing. A summary of the evidence pertinent to the appeal follows.

The defendant was a passenger in a silver Nissan Maxima that was driven by the codefendant, Cedric J. Sinegal. Sinegal was driving his vehicle on Interstate 57, approaching Route 146, in Union County, when he caught the attention of Illinois State Trooper Rodger Goines.

Trooper Goines testified that he was on patrol, running radar and looking for equipment violations, when he noticed a silver Nissan Maxima traveling 68 miles an hour in a 65-mile-an-hour zone. The vehicle lacked a front license plate, and its rear window and side windows were darkly tinted. A vehicle registered in Illinois is required to have front and rear plates, and it is not permitted to have darkly tinted windows. Trooper Goines testified that he followed the vehicle as it exited the interstate. He observed that as the vehicle approached the end of the exit ramp, it began to turn right and then turned left. He noted that the vehicle did not come to a complete stop at the end of the exit ramp. Trooper Goines testified that based on the vehicle's movements, he felt that the driver was attempting to flee. Trooper Goines followed the vehicle to a nearby service station. The vehicle stopped near a gas pump. Trooper Goines pulled in behind the vehicle. The defendant and Sinegal quickly exited the vehicle. As Trooper Goines exited his patrol car, both Sinegal and the defendant stated that they needed to use the restroom. Sinegal also mentioned that he needed gasoline. Trooper Goines noticed that both men appeared more nervous than the average person who is stopped for a traffic violation.

Trooper Goines testified that he asked the defendant to get back into the car for a second. He then approached Sinegal and asked for his driver's license. Sinegal produced a Louisiana license. Sinegal agreed to a pat down before going to the restroom. No weapons or contraband were found during the pat down. Trooper Goines asked Sinegal where they

were going, and Sinegal stated that they were going to Indianapolis. Trooper Goines asked Sinegal for permission to look at his gas gauge to see if he needed gas. Sinegal consented. Trooper Goines could not see through the tinted window, so he opened the door of the vehicle to check the gas gauge. Trooper Goines observed a package, approximately two feet long and one foot wide, wrapped in green plastic shrink wrap, lying on the driver's seat. Trooper Goines testified that the appearance of package was consistent with the appearance of packaging used for trafficking narcotics and that he immediately suspected that the package contained narcotics. His opinion was based on his training in drug interdiction, his experience as a patrol officer, and the appearance of the package. When Sinegal returned to the car, Trooper Goines handcuffed him. Trooper Goines radioed for assistance.

Trooper Goines next approached the defendant and asked him for identification. The defendant produced a passport. Trooper Goines patted the defendant down. No weapons or contraband were found during the pat down. Trooper Goines asked the defendant about the package. The defendant told him that the package did not belong to him and that he did not know what was in the package or how it got there. Trooper Goines asked the defendant where they were going. The defendant said that he was along for the ride and did not know where they were going. Trooper Goines allowed the defendant to go to the restroom. He then checked the criminal histories of both men, and he discovered that each had a history of cocaine trafficking.

Sergeant Steven Lawrence responded to Trooper Goines' request for assistance. When Sergeant Lawrence arrived, he viewed the package. He saw that it was tightly packaged in shrink-wrapped, pressure-sealed, green cellophane. Sergeant Lawrence noted that narcotics are generally transported in shrink-wrapped packages because the airtight wrap makes it hard to detect a smell and the opaque wrap conceals the content. Sergeant Lawrence observed that the package found on the driver's seat was consistent with the appearance of packaging

used for trafficking narcotics. Based on his training in drug interdiction and his experience, Sergeant Lawrence suspected that the package contained narcotics. Sergeant Lawrence pierced the side of the package with his pocketknife and observed a green leafy substance that had the appearance and smell of cannabis.

The trial court found that Trooper Goines had permission to look at the gas gauge and that he discovered the package in plain view when he opened the door to do so. The court further found that Trooper Goines had probable cause to arrest the defendant and the codefendant and to search the car based on his training and experience, the nervousness displayed by both men, and the unique appearance of the package. The court further found that Sergeant Lawrence had probable cause to open the package at the scene based on his training and experience in drug detection, his knowledge of the defendants' prior history of drug trafficking, and the appearance of the packaging. The court denied the defendant's motion to suppress. Thereafter, the defendant entered a stipulation to the charge of unlawful possession of cannabis, and the State dismissed the other two charges. The defendant was convicted of the unlawful possession charge and was sentenced to a term of four years in prison. The defendant appealed.

The first issue is whether the defendant established a legitimate expectation of privacy sufficient to permit him to challenge the search of a package inside the vehicle in which he was a passenger.

Generally, a passenger lacks standing to challenge a search of another's vehicle unless that passenger has a legitimate expectation of privacy in the place searched or the property seized. *Rakas v. Illinois*, 439 U.S. 128, 58 L. Ed. 2d 387, 99 S. Ct. 421 (1978); *People v. Juarbe*, 318 Ill. App. 3d 1040, 1050, 743 N.E.2d 607, 616 (2001). A person has a legitimate expectation of privacy as a passenger of a vehicle if "(1) the individual, by his conduct, has exhibited a subjective expectation of privacy; and (2) such an expectation is justifiable under

the circumstances." *People v. Young*, 363 Ill. App. 3d 268, 270, 843 N.E.2d 489, 491 (2006). Relevant factors to be considered in determining whether an individual has a justifiable expectation of privacy include: (1) whether he has an ownership or possessory interest in the area or property searched, (2) whether he has a right or ability to exclude others' use of the property, (3) whether he had exhibited a subjective expectation of privacy in the property, (4) whether he has had prior use of the area searched or property seized, (5) whether he was legitimately present in the area searched, and (6) whether normal precautions were taken to protect his privacy interest. *People v. Juarbe*, 318 Ill. App. 3d 1040, 1050, 743 N.E.2d 607, 616-17 (2001); *People v. Frias*, 393 Ill. App. 3d 331, 337, 912 N.E.2d 1236, 1241 (2009). The question of whether a defendant had a legitimate expectation of privacy must be resolved on the basis of the totality of the circumstances in the individual case. *People v. Johnson*, 114 Ill. 2d 170, 192, 499 N.E.2d 1355, 1364 (1986).

In this case, the defendant did not establish any possessory interest in the vehicle or the package. The defendant did not claim any ownership interest in the vehicle. He did not present evidence to show that he had a right to exclude others from the vehicle. The defendant did not have a valid driver's license, so he could not legally operate the vehicle. The defendant did not have any personal belongings in the vehicle. The only personal items in the vehicle were an empty duffle bag, the codefendant's work clothes, and the package containing cannabis. The defendant was present and did not object when Sinegal allowed Trooper Goines to look inside the vehicle. There is no evidence that the defendant took any precautions to protect any privacy interest in the vehicle or the package. The package was lying on the driver's seat in plain view. The defendant, when questioned by Trooper Goines, denied ownership of the package. The defendant stated that he did not know what it was or how it got there. The defendant did not claim any expectation of privacy in the package.

Under the facts and circumstances presented in the record before us, the defendant did

not establish that he had any reasonable expectation of privacy that would confer fourth amendment protections to contest the search of the vehicle and the package. In light of this finding, we need not address the defendant's remaining contentions regarding the validity of the search. The trial court did not err in denying the defendant's motion to suppress.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.