COURT OF APPEALS
DECISION
DATED AND FILED

December 5, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2006AP549-CR **Cir. Ct. No. 2005CF114**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TODD A. RAMINGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marinette County: TIM A. DUKET, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Todd Raminger appeals a judgment of conviction for one count of possession with intent to deliver cocaine and an order denying his motions to suppress evidence. Raminger argues the evidence used against him was seized from a vehicle beyond the scope of a premises search warrant; his

subsequent confession was fruit of the poisonous tree; and, in any event, the warrant was invalid because the confidential informant who provided a basis for the warrant was never produced for cross-examination. We conclude Raminger lacks standing to challenge the search of the vehicle. Consequently, his admission is not tainted. In addition, the right to confrontation does not apply to a search warrant application. Accordingly, we affirm the judgment and order.

Background

¶2 A confidential informant told Marinette County Sheriff's Deputy Rick Berlin that Raminger routinely sold cocaine, was heavily armed, and had gang connections. Based on this information, Berlin began having garbage collectors hold garbage near Raminger's apartment. On several occasions, Berlin found what appeared to be marijuana stems and seeds. With this information, Berlin filed for a search warrant. The warrant authorized a search of the "Upper Apartments" at Raminger's street address, specifically "Apartment #2 … above the River Pub …." The warrant authorized seizure of "[m]arijuana, scales, pipes and other related paraphernalia for using marijuana in its various forms …."

¶3 When the warrant was executed, Raminger and his live-in girlfriend, Stephanie Harper, were both present. They were handcuffed and placed in separate squad cars. During the search, police noticed the empty package for a lock box, but found no such box in the apartment.

¶4 Peshtigo police officer Arden Kuhn, who was assisting with the search, knew Harper owned a white Toyota Camry titled to her and her father. Kuhn went to the garage which, although not directly attached to the apartment, was accessible through an interior stairway. Kuhn found the Camry, which he later stated was unlocked. He was able to access the trunk and discovered a lock

box that matched the picture on the empty packaging in the apartment. The lock box contained cocaine. When presented with this evidence later at the jail, Raminger stated the cocaine was his.

¶5 After he was charged, Raminger filed motions to suppress the cocaine and his statement to the police. He argued officers exceeded the scope of the warrant because neither the garage nor the car was part of the named premises, and cocaine was not the type of evidence to be seized. Based on an alleged improper search, Raminger challenged his admission that the cocaine was his, arguing the admission was fruit of the poisonous tree. The trial court denied the motions, concluding Raminger lacked standing to challenge the search of the vehicle. Raminger then entered a plea agreement. He was sentenced to four years' initial confinement and four years' extended supervision. The sentence was stayed pending appeal.

Discussion

¶6 Raminger argues the police exceeded the scope of the warrant because the garage and the vehicle were not part of the named premises, and the cocaine was not a specified item subject to seizure. He asserts he has standing to challenge the search because he had a reasonable expectation of privacy in the vehicle. We disagree with his standing claim.

¶7 To determine whether a defendant has standing to challenge a search under the Fourth Amendment, the critical question is "whether the person … has a legitimate expectation of privacy in the invaded place." ***State v. Trecroci***, 2001 WI App 126, ¶26, 246 Wis. 2d 261, 630 N.W.2d 555 (quoting ***Rakas v. Illinois***, 439 U.S. 128, 143 (1978)). The defendant has the burden of establishing a

reasonable expectation of privacy by the preponderance of the evidence. ***Trecroci***, 246 Wis. 2d 261, ¶35.

¶8 Whether someone has a reasonable expectation of privacy depends both upon whether the individual has exhibited a subjective expectation of privacy in the searched area and upon whether society is willing to recognize that expectation as reasonable. ***Id.*** Whether society will recognize the interest depends on an objective test, which is based on the following factors:

> 1. Whether the person had a property interest in the premises;
>
> 2. Whether the person was legitimately on the premises;
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> 3. Whether the person had complete dominion and control and the right to exclude others;
>
> 4. Whether the person took precautions customarily taken by those seeking privacy;
>
> 5. Whether the person put the property to some private use; and
>
> 6. Whether the claim of privacy is consistent with historical notions of privacy.

Id., ¶36.

¶9 We conclude that on the totality of the factors, Raminger had no objective expectation of privacy. First, while he had some property interest in the garage because a stall there was included in his lease, Raminger had no interest in the car. Although Raminger had a set of keys, Harper and her father were the registered owners of the vehicle.

¶10 Second, Raminger of course had a legitimate right to be in the garage whenever he chose because he leased that space. But the evidence established that his use of Harper's vehicle was only permissive and, therefore,

any legitimate presence in the vehicle arose only when he obtained Harper's permission to use the car. Even then, the legitimacy was only temporary because Raminger sought Harper's consent each time he took the vehicle. At the time of the search, Raminger was not using the vehicle.

¶11 Third, Raminger lacked the authority to exercise "complete dominion and control" over both the garage and the vehicle. While the number of people entering the garage was limited, he nonetheless shared it with another tenant and a tavern below the apartments kept its trash cans in the garage, meaning employees entered the garage at random times.[1] Raminger could not control the entry and exit of others using the garage. Raminger also had no dominion over the vehicle because it was Harper's. While she never denied him permission to use the vehicle, Raminger always sought Harper's authorization before using the car. Thus it was Harper, not Raminger, with dominion over the vehicle.

¶12 Raminger asserts he was taking precautions by those customarily seeking privacy because the garage was locked, and that he had put the property to some private use. Indeed, these factors are in Raminger's favor.

¶13 However, Raminger's claim of privacy in Harper's vehicle is ultimately inconsistent with historical notions of privacy and it is not one society would recognize as reasonable. In other cases where standing to challenge the search of the vehicle has been granted to the non-owner of a vehicle, the

[1] Raminger challenges the notion that his garage is a "common area" based on ***State v. Trecroci***, 2001 WI App 126, 246 Wis. 2d 261, 630 N.W.2d 555. Contrary to Raminger's characterization, ***Trecroci*** did not establish any bright line rule about common areas. Rather, applying the six-factor objective test, we concluded the defendants in that case satisfactorily established their reasonable expectation of privacy in a common stairwell. ***Id.***, ¶¶37-44.

non-owner was actually using the vehicle or in possession of the vehicle at the time of the search. *See, e.g.*, ***State v. Dixon***, 177 Wis. 2d 461, 470-72, 501 N.W.2d 442 (1993) ("[A] person who borrows a car and drives it with the owner's permission has an expectation of privacy" society will recognize.). Here, however, Raminger was not using the vehicle at the time it was searched. *See* ***United States v. Peters***, 791 F.2d 1270, 1281-82 (7th Cir. 1986); *see also* ***Dixon***, 177 Wis. 2d at 472-73. We decline to recognize a privacy right in a vehicle Raminger did not own, could not control, and was not using at the time of the search.[2]

¶14 Raminger has not demonstrated an objective expectation of privacy in the garage and the vehicle. He therefore lacks standing to challenge the search of Harper's car, regardless of his subjective expectation.

¶15 To the extent the cocaine seized was not specifically identified in the warrant, officers executing a valid warrant are entitled to seize evidence of crimes, even if those crimes are not the crimes on which the warrant was initially based. *See* ***State v. Wedgeworth***, 100 Wis. 2d 514, 535, 302 N.W.2d 810 (1981).[3]

[2] One member of our panel would additionally hold that the garage was part of the apartment's curtilage and, therefore, within the scope of the premises warrant. *See* ***State v. Leutenegger***, 2004 WI App 127, ¶21 n.5, 275 Wis. 2d 512, 685 N.W.2d 536 (attached garages, consistently held to be part of curtilage, are subject to warrant requirement); *see also* ***State v. O'Brien***, 223 Wis. 2d 303, 317-18, 588 N.W.2d 8 (1999) (premises warrant authorizes search of all "plausible receptacles," including vehicles in curtilage). However, the lack of standing is dispositive, and only dispositive issues need be addressed. ***Gross v. Hoffman***, 224 Wis. 296, 300, 277 N.W. 663 (1938).

[3] ***State v. Wedgeworth***, 100 Wis. 2d 514, 535, 302 N.W.2d 810 (1981), actually explains the four-prong test for seizing evidence beyond that named in the warrant. It is sufficient for us to say the record establishes that all four prongs are satisfied here. In addition, we note that contrary to Raminger's argument, we are not dealing with a warrantless search situation.

¶16 Raminger next challenges his statement the cocaine belonged to him, arguing this admission is fruit of the poisonous tree. He also claims that the statement was extorted and that there may have been a ***Miranda***[4] violation.

¶17 In the trial court, Raminger challenged his statement only as the product of an illegal search. He did not launch any other challenge there and agreed that if the search were valid, his statement was admissible. He is therefore precluded from arguing extortion or a ***Miranda*** violation on appeal. *See* ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997). Moreover, Raminger's alternate theories are conclusory, limited to a mere three sentences in his main brief. We will not develop his amorphous arguments for him. ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). Ultimately, because Raminger cannot challenge the search, he cannot challenge the admission of his statement.

¶18 Finally, Raminger asserts his Sixth Amendment right to confrontation was violated. He claims the confidential informant should have been questioned by the court and presented for cross-examination before the warrant could be issued. The right to confrontation of witnesses is a trial right; it does not attach when a warrant is sought. *See* ***Pennsylvania v. Ritchie***, 480 U.S. 39, 52-53 (1987); ***Barber v. Page***, 390 U.S. 719, 725 (1968); ***State v. Peters***, 2000 WI App 154, ¶11 n.10, 237 Wis. 2d 741, 615 N.W.2d 655, *rev'd on other grounds*, 2001 WI 74, 244 Wis. 2d 470, 628 N.W.2d 797. Raminger cites no authority to the contrary.

[4] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.