

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-12-820

RAYMOND WILSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 22, 2013

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT
[NO. CR-2011-294]

HONORABLE CINDY THYER,
JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Following the trial court's denial of his motion to suppress evidence, Raymond Wilson entered a conditional guilty plea to a charge of trafficking a controlled substance—cocaine. He was sentenced to 120 months' imprisonment. He now appeals, arguing that the trial court erred by denying his motion to suppress. We affirm.

Appellant, who is a resident of Malden, Missouri, was arrested after a canine search revealed cocaine inside a rental vehicle that he was driving on Interstate 55 in Mississippi County. Several days prior to the stop, authorities in Missouri had placed a global-positioning-satellite (GPS) tracking device on the vehicle. Appellant argued at the hearing on his motion to suppress that the placement of the GPS device and the search of the vehicle were done in violation of his constitutional rights. He also argued that he was unreasonably detained following the traffic stop.



At the hearing, Marcus McKinney, the regional manager for Enterprise Rental Car, identified rental contracts for several vehicles, including the white Dodge Charger in which the drugs were found. The agreements were between Enterprise and a woman named Billie Williams. All of the agreements expressly stated that no drivers other than Ms. Williams were permitted to drive the vehicles. Billie Williams, a resident of Jonesboro, Arkansas, testified that appellant is the father of her eight-year-old daughter. She stated that she rented the vehicles for appellant so that he could provide transportation for their daughter.

Pam Buchanan, a narcotics officer for the Dunklin County (Missouri) Sheriff's Department, testified that her office confirmed through buys by confidential informants that appellant was selling crack cocaine. Mark McClendon, a sergeant with the Missouri State Highway Patrol, testified that the investigation of appellant revealed that he was using rental vehicles to obtain cocaine from out of state. In the early morning hours of September 22, 2011, Sergeant McClendon placed a GPS tracking device on a Dodge Charger rented by Ms. Williams. Sergeant McClendon testified that, when he placed the device on the vehicle, it was parked in the side yard of 601 Gertie in Malden, Missouri. Appellant resided at 603 Gertie.

Blake Bristow, an officer with the Jonesboro Police Department, testified that he was contacted by Officer Buchanan and notified that appellant might be coming through Jonesboro carrying cocaine. He was able to use the GPS device that had been placed by Sergeant McClendon to track appellant. Officer Bristow contacted a state trooper and advised the trooper to find probable cause to stop the vehicle.



Arkansas State Trooper Brandon Bennett testified that he had received a call from Officer Bristow on October 2, 2011, informing him that appellant was going to be traveling on Interstate 55 and was suspected of carrying cocaine in the vehicle. Trooper Bennett stopped appellant, who was driving the white Dodge Charger that had been rented by Ms. Williams, for speeding and for crossing the fog line. Appellant told Trooper Bennett that he was returning to Malden from Fort Worth after helping someone move. Appellant produced the rental agreement between Enterprise and Billie Williams. According to Trooper Bennett, appellant was nervous and would not make eye contact. Appellant gave consent for a search of the vehicle. Trooper Bennett did not locate any contraband during his search, but he did see that there were spots on the vehicle's carpeting that appeared to have been purposely pulled back. Trooper Bennett requested that a canine be brought to the scene of the stop. The canine gave a positive alert, and the narcotics were found in the rear of the vehicle, under the speakers. Video of the stop shows that Trooper Bennett pulled appellant over at 9:03 p.m. Trooper Bennett's search of the vehicle concluded at 9:20. The canine arrived at 9:43. The drugs were recovered at 9:59.

Raymond Wilson, Sr., appellant's father, testified that appellant was living at 603 Gertie on October 2, 2011. Mr. Wilson had never seen appellant park a vehicle at 601 Gertie. Appellant also testified that he lived at 603 Gertie and that he never parked a vehicle at 601 Gertie.

The trial court filed a letter opinion on June 9, 2012. In the opinion, the trial court found that the stop of the vehicle was lawful and that the language of the rental contract



prohibited appellant from asserting that he had a legitimate expectation of privacy in the vehicle, thus depriving him of standing to challenge the legality of the search. The trial court further found that the detention of appellant after the initial stop was not unreasonable in light of the totality of the circumstances presented. Regarding the placement of the GPS device, the trial court specifically credited Sergeant McClendon's testimony that the vehicle was located at 601 Gertie when the device was placed. As a result, the trial court concluded that the Fourth Amendment was not implicated with respect to appellant's residence. The trial court also concluded that, because the officers involved had reasonably relied on binding appellate precedent, the good-faith exception applied to the placement of the device and that the evidence collected was not subject to the exclusionary rule. An order denying appellant's motion to suppress was entered on June 18, 2012. Appellant's conditional plea of guilty and this appeal followed.

We review a trial court's denial of a motion to suppress evidence *de novo* based on the totality of the circumstances, recognizing that the trial court has a superior opportunity to determine the credibility of witnesses and reversing findings of historical fact only if they are clearly erroneous. *Martin v. State*, 2013 Ark. App. 110, 426 S.W.3d 515. The trial court determined that appellant lacked standing to challenge the search of the vehicle. We agree. A defendant has no standing to challenge the search of a vehicle owned by another person unless he can show that he gained possession of the vehicle from the owner or from someone who had authority to grant possession. *Ray v. State*, 2009 Ark. 521, at 10, 357 S.W.3d 872, 879. The vehicle in question was owned by Enterprise Rental Car and was rented by Billie



Williams. The rental agreement clearly stated that Ms. Williams was the only person allowed to drive the vehicle. The case of *Littlepage v. State*, 314 Ark. 361, 863 S.W.2d 276 (1993), is on point. In that case, the defendant was driving a vehicle that was rented by someone who was not present in the vehicle. The rental agreement stated that the renter was the only authorized driver. Our supreme court held that Littlepage had no expectation of privacy in the vehicle and lacked standing to challenge the search. Accordingly, appellant lacks standing to challenge the search of the vehicle in the instant case.

Appellant also lacks standing to challenge the placement of the GPS tracking device on the vehicle. As discussed above, he neither owned nor had any reasonable expectation of privacy in the vehicle itself. The trial court found, based upon the testimony of Sergeant McClendon, that the vehicle was on the property of another person when the device was placed. A person's Fourth Amendment rights are not violated by the introduction of damaging evidence secured by the search of a third person's premises or property. *Davasher v. State*, 308 Ark. 154, 823 S.W.2d 863 (1992). Simply put, appellant cannot challenge actions by the police involving someone else's vehicle that occurred while that vehicle was on someone else's property.¹ Because appellant lacks standing to challenge the placement of the device on the vehicle, it is unnecessary to consider the application of the "good faith" exception to the search-warrant requirement.

¹In support of his argument, appellant cites *United States v. Jones*, 132 S. Ct. 945 (2012), in which the Supreme Court of the United States held that placement of a GPS tracking device without a warrant constituted an infringement under the Fourth Amendment. It is important to note, however, that in *Jones* the defendant's standing to raise the Fourth Amendment challenge was not at issue.



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Appellant argues that his detention following the initial search of the vehicle by Trooper Bennett was in violation of his constitutional rights and Arkansas Rule of Criminal Procedure 3.1. Because appellant lacked standing to challenge the search of the vehicle, we affirm without reaching the merits of this argument. *See Travis v. State*, 95 Ark. App. 63, 233 S.W.3d 705 (2006).

Affirmed.

HARRISON and WHITEAKER, JJ., agree.

John H. Bradley, Chief Public Defender, for appellant.

Dustin McDaniel, Att’y Gen., by: *Kathryn Henry*, Ass’t Att’y Gen., for appellee.