

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CR-09-81-L
	)	
MARCUS DEWAYNE OAKES, and	)	
DELON ANTOIN BAKER,	)	
	)	
Defendants.	)	

**ORDER**

Defendants Marcus Dewayne Oakes and Delon Antoin Baker are named together in a March 17, 2009 indictment charging attempted carjacking and brandishing a handgun in relation to a crime of violence (Counts 1 & 2). Additionally, each defendant is charged in separate counts with being a felon in possession of a firearm (Counts 3 (Oakes) & 4 (Baker)).

Trial in this matter is presently set to begin on July 6, 2009. Defendant Baker filed several pretrial motions, including a Motion to Dismiss and Suppress Evidence [**Doc. No. 47**]. Defendant Oakes later filed a Motion to Establish Standing and Motion to Join Co-Defendant Baker’s Motion to Suppress [**Doc. No. 72**]. The court allows defendant Oakes to join in Baker’s Motion to Suppress,

and has carefully considered the arguments made by both defendants.<sup>1</sup> The Motion to Suppress seeks an order suppressing certain evidence recovered on January 18, 2009 from a shed<sup>2</sup> behind a residence located at 1816 N.E. Wickliff in Oklahoma City.

The background facts reveal that at approximately 10:00 p.m. on January 17, 2009, Oklahoma City police responded to an alleged robbery and attempted carjacking that took place outside a baby shower being held at 1605 N.E. 18th Street. After an intense search which included a canine unit and Air One, the defendants were eventually located in the shed and were taken into custody. The officers searched the shed but no evidence was found that night. The next day, officers returned to the shed and located ski masks, gloves, and other items such as jewelry, car keys and a wallet belonging to one of the alleged victims.

It is undisputed that police officers did not obtain a search warrant before searching the shed on either January 17th or 18th, 2009. Defendants allege that the police did not obtain proper consent to search the shed on January 17th or 18th, 2009 and that a search warrant was required. The defendants assert that they had been invited social guests in the residence located at 1816 N.E. Wickliff and, as such, have standing to move to suppress the seizure of evidence

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<sup>1</sup> Because of similarity of the issues, the motions are generally referred to in this order as a single Motion to Suppress.

<sup>2</sup> The shed has been variously referred to by several descriptions, such as outbuilding, detached garage, apartment, abandoned building, and burned-out outbuilding. In this order, the court refers to the structure as a shed.

obtained in the warrantless search of the shed.

The government maintains that no warrant was required to search the shed on January 17, 2009 due to exigent circumstances. The government also argues that the defendants lack standing to challenge the search of the shed on January 18, 2009. In addition to lack of standing, the government has also attempted demonstrate that consent was actually obtained to conduct the search on January 18, 2009.

At a June 2, 2009 hearing on all pretrial motions, the court questioned whether either defendant had the capacity to challenge the search of the shed. The court called for supplemental briefs on this preliminary issue of “standing” to challenge the search, and a subsequent evidentiary hearing on the Motion to Suppress was held on June 10, 2009. Based upon the court’s review of the briefs of the parties, the pertinent authorities, and the evidence presented at the June 10, 2009 hearing, the court concludes that the defendants’ Motion to Suppress must be denied.

The Fourth Amendment to the United States Constitution protects citizens against unreasonable searches and seizures. In moving to suppress items of evidence gathered during an alleged illegal search, it is well settled that a defendant has the burden of proving that the search violated his Fourth Amendment interests. United States v. Rascon, 922 F.2d 584, 586 (10th Cir. 1990). Whether an individual has a cognizable Fourth Amendment right depends

upon two factors: whether the individual has exhibited a subjective expectation of privacy and whether society recognizes that subjective expectation as reasonable. *Id.* In United States v. Marchant, 55 F.3d 509, 512-513 (10th Cir. 1995), the Tenth Circuit further explained the defendant's burden to establish standing under the Fourth Amendment, stating:

In order to challenge the lawfulness of a search and seizure under the Fourth Amendment, a defendant must first establish his or her standing to do so. See United States v. Deninno, 29 F.3d 572, 576 (10th Cir. 1994), *cert. denied*, 513 U.S. 1158, 115 S.Ct. 1117, 130 L.Ed. 2d 1081 (1995). The term standing in this context “refer[s] to the determination of whether a defendant's Fourth Amendment rights have been violated, and not in its traditional sense as a constitutionally – or prudentially – based jurisdictional bar.” United States v. Eylicio-Montoya, 18 F.3d 845, 850 n. 3 (10th Cir. 1994). “The issue of ‘standing’ to challenge a search is not a concept which is separate and distinct from the merits of the underlying Fourth Amendment claim,” [United States v.] Betancur, 24 F.3d [73, 76 (10th Cir. 1994)], but one that is intertwined “with the substantive question of whether or not the proponent of the motion to suppress has had his own Fourth Amendment rights infringed by the search and seizure which he seeks to challenge.” Rakas v. Illinois, 439 U.S. 128, 133, 99 S.Ct. 421, 425, 58 L.Ed. 2d 387 (1978); see also United States v. Taketa, 923 F.2d 665, 669 (9th Cir. 1991) (“[T]o say that a party lacks fourth amendment standing is to say that *his* reasonable expectation of privacy has not been infringed.”) “Consequently, ‘a threshold issue in deciding a motion to suppress evidence is whether the search at issue violated the rights of the particular defendant who seeks to exclude the evidence.’” United States v. Soto, 988 F.2d 1548, 1552 (10th Cir. 1993) (quoting United States v. Rascon, 922 F.2d 584, 586 (10th Cir. 1990), *cert. denied*, 500 U.S. 926, 111 S.Ct. 2037, 114 L.Ed. 2d 121 (1991))). “Important considerations include ownership, lawful possession, or lawful control of the place searched.” United States v. Abreu, 935 F.2d 1130, 1133 (10th Cir.), *cert. denied*, 502 U.S. 897, 112

S.Ct. 271, 116 L.Ed. 2d 224 (1991). “Whether evidence sought to be introduced was obtained in violation of someone else’s Fourth Amendment rights is immaterial,” because “Fourth Amendment rights are personal and may not be asserted vicariously.” Eylicio-Montoya, 18 F.3d at 850. It is the defendant’s burden to establish “that his own Fourth Amendment rights were violated by the challenged search and seizure.” Abreu, 935 F.2d at 1132.

To determine whether a search violated the Fourth Amendment rights of the defendant, we inquire whether the defendant has established: (1) a subjective expectation of privacy in the property searched, and (2) that society would recognize that expectation of privacy as objectively reasonable. Betancur, 24 F.3d at 76; see also Rakas, 439 U.S. at 143 & n. 12, 99 S.Ct. at 430 & n. 12; Abreu, 935 F.2d at 1132. “The ‘ultimate question’ is ‘whether one’s claim to privacy from governmental intrusion is reasonable in light of all the surrounding circumstances.’” United States v. Leary, 846 F.2d 592, 595 (10th Cir. 1988) (quoting Rakas, 439 U.S. at 142, 99 S.Ct at 430 (Powell, J., concurring)).

The Tenth Circuit has recently held that a social guest does not have to be “settled” at a location to have a reasonable expectation of privacy; a simple overnight guest has Fourth Amendment standing. United States v. Poe, 556 F.3d 1113, 1122-23 (10th Cir. 2009) (citing Minnesota v. Olson, 495 U.S. 91 (1990)). In Poe, the Tenth Circuit concluded that a social guest having a degree of acceptance into the household and an ongoing and meaningful connection to his host’s home has a reasonable expectation of privacy in the home sufficient to raise a Fourth Amendment challenge to a warrantless search of the home. With respect to the expectation of privacy a person has in a building or structure other than the residence, the Tenth Circuit has held the protections of the Fourth

Amendment may extend beyond the home itself to the curtilage of the house, which is “the area that harbors the intimate activity associated with the ‘sanctity of a man’s home and the privacies of life.’” United States v. Cavely, 318 F.3d 987, 993 (10th Cir. 2003) (quotation marks and citation omitted). However, a defendant making a Fourth Amendment claim based on a violation of the curtilage has the burden of establishing a legitimate expectation of privacy in that curtilage. Id. at 994.

In determining whether Mr. Oakes or Mr. Baker has standing to challenge the search of the shed, the court has considered the facts and circumstances of this case, including the evidence presented at the hearing.<sup>3</sup> At the hearing, defendants presented the testimony of Shantell Moore. Ms. Moore testified that she lives with her grandmother at her grandmother’s residence located at 1816 N.E. Wickliff. Ms. Moore testified that she has known Mr. Oakes since he was four or five years of age and that she has known Mr. Baker since she was 14 or 15 years of age.<sup>4</sup> Ms. Moore has a child by Mr. Oakes’ brother. She said that

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<sup>3</sup> It should be noted that much of the testimony at the June 10, 2009 hearing dealt with the facts surrounding whether or not the police officers had requested and obtained consent from Shantell Moore or other persons regarding a search of the property located at 1815 Wickliff, including the shed. The presentation of evidence concerning the issue of voluntary consent represented a shift in the government’s arguments, which had previously focused on abandonment and lack of standing on the part of the defendants to challenge the search. The court is concerned that the evidence purportedly showing that consent had been obtained prior to the search was not raised earlier by the government. In light of the court’s ruling on the issue of defendants’ standing to challenge the search, the court need not address issues of consent. Therefore, the testimony regarding consent is not discussed at length in this order.

<sup>4</sup> At the time the indictment was filed, Mr. Oakes’ age was given as 20 and Mr. Bakers’ age was given as 33. [Doc. Nos. 18-2 & 18-3]. Ms. Moore’s age was not established at the hearing.

both Oakes and Baker have come to her grandmother's house in the past. On Saturday, January 17, 2009, Ms. Moore saw Baker earlier that day at a convenience store. Also on that day, Oakes had stopped in front of the house to say hello to a friend of Moore's who approached his car, but he did not enter the residence that day.

When asked if the defendants could stay in the shed located behind the house, Ms. Moore testified that it is "abandoned," but "if they wanted to, sure." She stated that the roof to the shed had fallen in and that there was lots of stuff left or stored in there. Ms. Moore knew that Oakes and Baker were friends with each other. She testified that there was no permission for Oakes to be on the property that day, but there was a "standing invitation" and he was never told not to come. She said that Oakes had been to the shed 12 or 13 years ago "when it wasn't like it looked now." Ms. Moore testified that on the night of January 17, 2009 she was in the residence, getting ready to go to a party. She stated that her grandmother isn't "too fond" of some of her friends, especially "guy" friends, and that her grandmother cannot stand to hear loud music, but "other than that, no problem." She testified that her friends would not come to see her at home if she wasn't there. She testified that neither defendant has a key to the house and that, to her knowledge, neither one has ever spent a night in the house or the shed. She said that the shed was caved in and that the last time she was inside the shed it had electricity, but that was "several years ago." In viewing

photographs of the shed that were admitted into evidence, Ms. Moore testified that parts of the roof were gone, that lots of boxes were in there, that a tree “went through” the roof and that the shed was “kind of dangerous” and she doesn’t go in there. She identified a photograph showing tree branches going through the roof of the shed. (Government’s Exhibit 7). She testified that she was not aware if officers found anyone on the property on the night of January 17, 2009. She said when she left the house to go to a party it was after midnight and that she has no idea who the police caught that night. Ms. Moore testified that prior to January 17, 2009, she would sometimes see Baker at the store or in the neighborhood. Regarding Oakes, she stated that he drives by her house every day and “sometimes stops if he has time.”

The government’s first witness was Sgt. Robert Caniglione, an Oklahoma City police officer in the city’s gang enforcement unit. At approximately 10:00 p.m. on January 17, 2009, he responded to a report of an armed robbery at 1605 N.E. 18th Street. Upon interviewing the victims, he learned that two baby shower guests had been robbed by two armed black males wearing dark clothing and dark ski masks and gloves. One of the victims had several items stolen, including a wallet, a diamond-encrusted cross, a watch and car keys. Sgt. Caniglione testified that a canine unit and Air One arrived to assist in the search for the suspects at approximately 10:30 p.m. He testified that two individuals were apprehended in an “abandoned apartment,” *i.e.*, the shed, behind the house at

1816 N.E. Wickliff. The suspects were already in custody when Sgt. Caniglione arrived at the shed.

Regarding the shed, Sgt. Caniglione testified that at one point it was probably a garage apartment. He said it appeared that no maintenance had been performed on the shed in fifteen years. He testified that the shed was not secured, the roof was partially collapsed, and it was full of trash, leaves, sticks, and parts of trees. Sgt. Caniglione described the shed as “uninhabitable.”

The video from Air One was played in open court during Sgt. Caniglione’s testimony. In the audio portion of the videotape, the Air One helicopter pilot is heard giving information to officers on the ground regarding an “abandoned building” with the roof burned out. He says that there is “definitely a guy in a burned out building.” He says that the roof is exposed on the top with several holes and that he can see people inside the shed. According to Sgt. Caniglione, the videotape, though difficult to see, does depict the condition of the shed on the night of January 17, 2009.

On the next day, January 18, 2009, at about 5:00 p.m., Sgt. Caniglione participated in a search which started at the house where the alleged robbery took place and extended to the areas where the suspects had fled. The officers were looking for discarded items or the guns used in the robbery. Sgt. Caniglione testified that Sgt. Walsh had made contact with the homeowners and said that consent to search had been obtained. Sgt. Caniglione and other officers

proceeded to the shed where Sgt. Caniglione found black gloves and ski mask and other property including a gold cross and chain, the drivers license of one of the victims, and a broken watch. He identified photographs taken of the shed that day and some of the evidence seized from the shed. He said that the leaves shown in one of the photographs depict the "floor, if you will" of the shed.

Sgt. Eldon Walsh, another Oklahoma City police officer assigned to the gang enforcement unit, was the government's only other witness at the hearing. He testified regarding his attempt to gain verbal consent to search the property at 1815 N.E. Wickliff.

Based upon the evidence presented, the court has no difficulty in concluding that the defendants could not and did not have a legitimate expectation of privacy in the shed sufficient to challenge the search. Although defendants make the argument that they were social guests at the residence located at 1816 N.E. Wickliff, there was no evidence that either of them were invited guests in the home or the shed at the time of the alleged robbery or the subsequent searches of the shed. Ms. Moore testified that to her knowledge neither one of the defendants had ever stayed overnight in the residence or in the shed located behind the residence. There was no evidence that the defendants had been in the house or the shed recently. Evidence of any prior stays at the residence or the shed by either of the defendants was lacking. There was no evidence that the defendants had ever used the home or the shed for storage.

Although Ms. Moore knew the defendants, she testified that her friends would only visit her at the house on 1816 Wickliff if she was home. There was no evidence that the defendants were visiting Ms. Moore or any other resident of the home on the night of January 17th or on January 18th, 2009. The defendants do not have a key to the residence. As for the shed, there was testimony that it was unsecured and open to the elements. The evidence demonstrates that no recent effort had been made to secure the shed or its contents in several years. The shed was a dilapidated structure with a caved-in roof. That defendants may have known of the shed or even visited it years ago as children does not rise to the level of a Fourth Amendment interest in the property. Neither defendant has established a subjective expectation of privacy in the shed that society would recognize as reasonable. Even assuming that the shed was located within the curtilage of the residence at 1816 N.E. Wickliff, the court finds that the shed cannot be reasonably described as an area harboring the intimate activity associated with the sanctity of a man's home and the privacies of life. The condition of the shed negates the argument that the defendants could have a reasonable expectation of privacy in the shed that was violated by the search.

Due to the lack of any evidence concerning the timing or nature of previous social visits by the defendants to the home or the shed, the court rejects defendants' bare argument that they have standing to challenge the search because of their meaningful connection to the property as social guests. The

facts of this case stand in contrast to the Poe case. In Poe, the Tenth Circuit noted that Wilson, the homeowner, had accepted the defendant, Poe, as a social guest at the time of the challenged search. For instance, around the time of the challenged search, Wilson and Poe had been together in the home until Wilson departed for work. When Wilson left for work, she specifically permitted Poe to remain at the home. Until a month before the challenged search, Poe had lived at the residence with Wilson for a year and a half and, with her knowledge, had a key to the residence. Poe was a regular visitor to Wilson's home even after he had moved out. See United States v. Poe, 556 F.3d at 1122. The factors the court relied on in Poe to establish standing of a social guest are not present in this case.

Therefore, in light of all of the surrounding circumstances, the court concludes that defendants have not established by a preponderance of the evidence that either of them have a cognizable Fourth Amendment right to challenge the search of the shed. Defendants have not exhibited a subjective expectation of privacy in the shed that society would recognize as reasonable. Because defendants have failed to establish standing to challenge the lawfulness of the search and seizure under the Fourth Amendment, the evidence resulting from the search of the shed need not be suppressed.

Accordingly, defendant Baker's Motion to Dismiss and Suppress Evidence [**Doc. No. 47**], and the supplement thereto [**Doc. No. 71**] are **DENIED**; defendant

Oakes' Motion to Establish Standing and Motion to Join Co-Defendant Baker's Motion to Suppress Evidence [**Doc. No. 72**] is **granted** to the limited extent that Oakes is allowed to join Baker's Motion to Suppress, but is otherwise **DENIED** on the merits, for the reasons stated above.

It is so ordered this 19th day of June, 2009.

A handwritten signature in cursive script that reads "Tim Leonard". The signature is written in black ink and is positioned above a horizontal line.

TIM LEONARD  
United States District Judge