

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREG VILLEGAS, ALFREDO JIMENEZ,
and IRIE BELIA LOPEZ,

Defendants.

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4:05-cr-00177

ORDER

Before the Court are a Motion to Sever Defendants (Clerk’s No. 62-1) and a Motion to Suppress Evidence (Clerk’s No. 61-1), both filed by Defendant Alfredo Jimenez (“Jimenez”) and joined by his co-defendants (Clerk’s Nos. 63, 65). The motions relate to an amended Indictment filed against Defendants Greg Villegas (“Villegas”), Jimenez, and Irie Belia Lopez (“Lopez”)¹ on August 9, 2005 (Clerk’s No. 2-2). The Government’s charges are as follows: (1) one count against each Defendant for knowingly and intentionally conspiring to distribute 500 grams or more of a mixture and substance containing methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846; and (2) one count against each Defendant for knowingly and intentionally possessing with intent to distribute 500 grams or more of a mixture and substance containing methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 18 U.S.C. § 2. The Court held a hearing on the motions on January 13, 2006. The matters are fully submitted.

¹ The Government’s original Indictment identified Lopez as Irie Belia Jaramillo.

I. FACTS

At the hearing on the present motions, the Government called Darby Jason McLaren (“McLaren”), a Deputy at the Cass County sheriff’s office, as a witness. Hr’g Tr. at 10.² McLaren testified that on June 16, 2005, he stopped a Ford Thunderbird that was traveling eastbound at a speed of 85 miles per hour in a 65 mile per hour zone on Interstate 80. *Id.* at 11-12. Villegas was driving the vehicle, which had California license plates. Lopez was in the front passenger seat, and Jimenez was in the back seat. *Id.* at 12. Villegas did not have identification, so McLaren asked Villegas to accompany him to his vehicle. *Id.* at 13. McLaren attempted to verify the information Villegas had given him and learned that Villegas’s driving privileges had been suspended in California. *Id.* McLaren testified that Villegas’s physical appearance did not match the description McLaren received on the radio, and McLaren began to question his identity. *Id.* McLaren placed Villegas under arrest for having no driver’s license, and conducted a search of Villegas’s person incident to that arrest. *Id.* McLaren found some methamphetamine in Villegas’s pocket and placed Villegas in the police vehicle. *Id.* at 14.

McLaren asked Villegas if he could search the Thunderbird, and Villegas consented, both verbally and in writing. *Id.* at 14; Gov’t Ex. 7. McLaren then called another officer, Brian Todd Rink, to the scene. Hr’g Tr. at 15. Rink arrived with his canine unit.³ Rink’s dog indicated that narcotics were present in the vehicle. Specifically, the dog indicated that the scent was strongest along the

² All citations to the hearing transcript are to the Court’s unedited Real Time transcript.

³ On cross examination, McLaren testified that Deputy Rink arrived before Villegas consented to the search, but that Villegas consented to the search before the canine unit was used.

bottom of the door seam. *Id.* at 67. Rink testified that he searched the vehicle and found a small bag of marijuana in the back seat, as well as drug paraphernalia in the glove box. *Id.* at 68. McLaren then placed Lopez and Jimenez under arrest for possession of controlled substances. *Id.* at 16. The officers transported the Defendants to the Cass County jail. The Sheriff, who had arrived at the scene, transported the Thunderbird to the Sheriff's office, also called the Cass County Law Center ("Law Center"). At the Law Center, the officers continued their search of the vehicle. *Id.* They found a computer that contained some United States treasury bond checks, which the officers believed the Defendants were attempting to manufacture. *Id.* The officers then contacted the United States Secret Service, which sent an agent to the jail to question the Defendants. *Id.* at 17. Rink also looked under the car, where he noticed that some of the original U-joints underneath the car had been replaced. *Id.* at 88.

McLaren testified that he went off duty at approximately 1:00 a.m. *Id.* at 18. The following afternoon, McLaren returned to the Law Center. *Id.* He took the vehicle to a local mechanic, who placed the vehicle on a hoist. *Id.* at 21. McLaren told the mechanic that he believed there might be drugs hidden in the vehicle. The mechanic observed that the drive shaft and the gas tank had been altered. The mechanic also observed that, when hit with a screwdriver, the drive shaft did not sound hollow, as a typical drive shaft would. *Id.* at 22. McLaren used a drill to make a hole in the drive shaft. *Id.* The initial hole revealed red cloth inside the drive shaft. *Id.* McLaren then drilled a second hole in the drive shaft, and a "white crystal" came out. *Id.* at 23. According to McLaren's testimony, the crystal field tested as methamphetamine. *Id.*

At that point, McLaren decided to prepare a search warrant, which a Cass County judicial

officer approved. *Id.* at 23-24; Gov't Ex. 6. After obtaining the search warrant, McLaren and the Mechanic removed the drive shaft from the vehicle and cut the drive shaft open. *Id.* at 25. They found approximately eight pounds of methamphetamine inside the drive shaft. *Id.* After returning to the jail, McLaren and another law enforcement officer began questioning the Defendants. *Id.* All three Defendants told him they were aware that there were drugs in the vehicle. McLaren learned that they were supposed to call a cellular telephone number when they arrived at a rest stop outside of Des Moines. *Id.* at 26.

II. LAW AND ANALYSIS

A. *Motion to Sever Defendants or Exclude Evidence*

The Defendants assert that their cases should be severed for trial because the joinder of their cases could prejudice each of them. In particular, the Defendants argue that the “confession-like statements” that each of them allegedly made during questioning would unfairly prejudice a jury when deciding their individual culpability. The Defendants contend that joinder of their case could violate the rule set forth in *Bruton v. United States*, 391 U.S. 123 (1968). In *Bruton*, the Supreme Court held that admission of a co-defendant’s confession violated the petitioner’s right to cross-examination guaranteed by the Confrontation Clause of the Constitution, despite the fact that the jury received a limiting instruction regarding the confession. *Bruton*, 391 U.S. at 137.

“In ruling on a motion for severance, a court must weigh the inconvenience and expense of separate trials against the prejudice resulting from a joint trial of codefendants.” *United States v. Pherigo*, 327 F.3d 690, 693 (8th Cir. 2003). A court should not grant a motion for severance unless a joint trial would result in unnecessary prejudice that is severe and compelling. *Id.* This is because “a

joint trial gives the jury the best perspective on all of the evidence and, therefore, increases the likelihood of a correct outcome.” *Id.* (citation omitted). In this case, where the three defendants were stopped while riding in a car together, a joint trial will facilitate the jurors’ understanding of the facts leading to the charges against the defendants. It will also save time, since much of the evidence against the individual defendants is likely to be repetitive. Rather than sever the cases, the Court will decide objections to potentially prejudicial testimony either in limine prior to trial or during presentation of evidence at trial.

B. *Motion to Suppress*

The Defendants argue that the Court should suppress the evidence relating to the eight pounds of methamphetamine that were found in the Thunderbird because the search of the car was illegal. In considering the Defendants’ claim, the Court will examine: (1) whether the Defendants have “standing” to challenge the search of the vehicle; and (2) whether the search violated their Constitutional rights.

1. *The Defendants do not have “Standing” to Challenge the Search of the Car.*

The Government argues that the Defendants do not have standing to challenge the search of the vehicle because none of them owned it.⁴ At the hearing on January 13, 2006, Jimenez testified that he did not own the car, but that it was loaned to him and Villegas. Hr’g Tr. at 5, 8. He testified that both he and Villegas drove the car during the course of their trip from California to Iowa. *Id.* at 6. Jimenez

⁴The United States Supreme Court has recognized that any “standing” inquiry in this area is analytically the equivalent of a substantive Fourth Amendment analysis because the basic question is whether a particular defendant’s “own protection was infringed by the search and seizure.” *See Rakas v. Illinois*, 439 U.S. 128, 138-39 (1978) (citation omitted). Nonetheless, the Court will address the question in terms of “standing” because the parties have done so.

also testified that he felt that he had the right to regulate access to and use of the car, and that he “felt while it was in [his] possession that it was like [his] own car.” *Id.*

It is well established that passengers in a car do not have standing to challenge evidence obtained from the car following a traffic stop because they do not have a legitimate expectation of privacy in the vehicle. *United States v. Green*, 275 F.3d 694, 699 (8th Cir. 2001) (citing *Rakas*, 439 U.S. at 148-49). The burden of establishing standing is on the defendant moving to suppress a search. *United States v. Gomez*, 16 F.3d 254, 256 (8th Cir. 1994) (citing *Rakas*, 439 U.S. at 130-31 n.1). To establish a legitimate expectation of privacy, the Defendants must demonstrate: (1) a subjective expectation of privacy; and (2) that this expectation is one that society is prepared to recognize as objectively reasonable. *Green*, 275 F.3d at 699 (citing *United States v. Muhammad*, 58 F.3d 353, 355 (8th Cir. 1995)). The United States Supreme Court held in *Rakas* that passengers in a car they did not own did not have a legitimate expectation of privacy in the vehicle. *Rakas*, 439 U.S. at 148-49; *see also Green*, 275 F.3d at 699 (observing that “a person has no reasonable expectation of privacy in an automobile belonging to another”).

The Defendants argue, however, that they have standing to challenge the search of the car because they were using it with the permission of the owner. The Defendants cite *Gomez*, a case in which the Eighth Circuit examined whether a defendant who was driving a vehicle that did not belong to him had standing to challenge the search of that vehicle. *See Gomez*, 16 F.3d at 256. In *Gomez*, the defendant testified that a third party had told him that the owner of the car he was driving had given him permission to use it. The Eighth Circuit concluded that this testimony was not sufficient to establish a privacy interest in the vehicle. *Id.* In another case, the Eighth Circuit concluded that a defendant who

drove a rental car that was rented to a third party did not have standing to challenge the search of the car because he did not present any evidence that the party who had rented the car gave him permission to use it. *Muhammad*, 58 F.3d at 355 (observing approvingly the parties' agreement that "the defendant must present at least some evidence of consent or permission from the lawful owner/renter to give rise to an objectively reasonable expectation of privacy"); *see also United States v. Sanchez*, 943 F.2d 110, 114 (1st Cir. 1991) (holding that defendant lacked standing where he borrowed a car from a friend who in turn had borrowed it from another friend); *United States v. Rose*, 731 F.2d 1337, 1343 (8th Cir. 1984) (holding that defendant had standing to challenge search of a car where he had his sister's permission to drive the car and used it as many as two or three times per week).

In this case, when asked where he got the Thunderbird, Jimenez stated, "It was loaned to me." He testified that he treated the car as if it was "like my own car." When asked about his co-defendant, Villegas, Jimenez stated that the car was loaned to both of them, and that Villegas was present at the time the car was loaned. At no point did Jimenez state who loaned them the car, the terms of the loan, or the scope of permission for the use of the car. Because the Defendants did not present more than cursory evidence that the car's owner granted them permission to use the car, they have not met their burden of proving a legitimate expectation of privacy in the vehicle. *See Muhammad*, 58 F.3d at 355; *Gomez*, 16 F.3d at 256. Accordingly, the Court concludes that the Defendants do not have "standing" to challenge the search of the vehicle.⁵

⁵ The Defendants argue that a defendant who is charged with possession of the evidence seized should be conferred automatic standing to challenge the search and seizure. The Supreme Court rejected this proposition in *United States v. Salvucci*, 448 U.S. 83, 84-85 (1980).

2. *Suppression is not Warranted on Other Grounds.*

Even assuming that the Defendants did have standing to challenge the search, the Court concludes that the search was reasonable. “[A] traffic violation—however minor—creates probable cause to stop the driver of a vehicle.” *United States v. Gregory*, 302 F.3d 805, 809 (8th Cir. 2002) (citations omitted). Here, there was a clear traffic violation, making the initial stop legal. Upon stopping the vehicle, McLaren learned that Villegas did not have a driver’s license with him. He therefore arrested Villegas and conducted a search of Villegas’s pockets incident to that arrest, finding methamphetamine. *See United States v. Pratt*, 355 F.3d 1119, 1121 (8th Cir. 2004) (citing *United States v. Robinson*, 414 U.S. 218, 226 (1973)). Villegas then consented to a search of the vehicle. Before searching the vehicle, Officer Rink’s canine unit alerted to the presence of drugs in the vehicle, creating yet another basis to search the vehicle. *See United States v. Gregory*, 302 F.3d at 810 (“The positive indication of a reliable drug-sniffing dog is alone sufficient to provide probable cause for the search of a vehicle for controlled substances.”). McLaren also testified that the Defendants told him conflicting stories about the purpose and destination of their trip. Hr’g Tr. at 42. Under the “automobile” exception to the warrant requirement, no warrant is necessary to search a vehicle once a law enforcement official has established probable cause. *Maryland v. Dyson*, 527 U.S. 465, 467 (1999). Both McLaren and Rink credibly testified to events that gave them probable cause to search the vehicle.

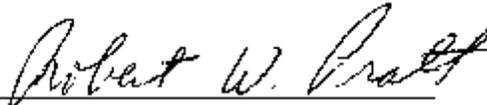
The Defendants argue that the continued search of the car after it was taken to the Law Center, and particularly the decision to drill holes in the drive shaft, constituted an unreasonable search. However, “[t]here is no requirement that the warrantless search of a vehicle occur contemporaneously

with its lawful seizure.” *United States v. Johns*, 469 U.S. 478, 484 (1985). A vehicle that the police have seized may be searched on the basis of probable cause even though the vehicle is immobilized after the seizure. A reasonable delay does not make the search improper. *Id.* at 486-87 (upholding warrantless search of packages found in vehicles even though three days had passed since packages were placed in a Drug Enforcement Agency warehouse). Furthermore, officers who have probable cause to believe there is contraband in a vehicle may dismantle the vehicle, even if doing so damages the vehicle. *See United States v. Alvarez*, 235 F.3d 1086, 1089 (8th Cir. 2000) (concluding that officers who had probable cause to suspect there was contraband in a vehicle acted reasonably when they removed the tire); *United States v. Martel-Martines*, 988 F.2d 855, 858 (8th Cir. 1993) (holding that officers who placed truck on a hoist and punctured hole in the body acted reasonably because they had both consent and probable cause). In this case, McLaren credibly testified that he waited one day to search the underside of the vehicle because the Cass County Law Center did not have a vehicle hoist. Hr’g Tr. at 21. The Court finds that the delay and the search were reasonable under the circumstances.

For the reasons discussed above, the Motion to Sever is DENIED as to all three Defendants. The Motion to Suppress Evidence is also DENIED as to all three Defendants.

IT IS SO ORDERED.

Dated this ___13th___ day of February, 2006.



ROBERT W. PRATT
U.S. DISTRICT JUDGE