

CLIFTON JACKSON AFFIDAVIT AND APPENDIX OF EXHIBITS ARE NUMBERED [first two cover pages of affidavit unnumbered, iii-ixiii] IN ROMAN NUMERAL. EXHIBIT PAGES ARE CROSS REFERENCED AS APPENDIX [Appendix Pages are numbered 1-655] PAGES. AFFIDAVIT AND EXHIBITS ARE IN SUPPORT OF 26B MOTION TO REOPEN STATE OF OHIO v. CLIFTON JACKSON, CASE NO. 11CR083104, NINTH DISTRICT COURT OF APPEALS CASE NO. 14CA010555, Not Limited Too.

# EXHIBIT

K

EXHIBITS A-AAAE IN SUPPORT OF CLIFTON JACKSON ENCLOSED AFFIDAVIT AND APPENDIX PREPARED MARCH OF 2016 OF A DETAILED TIME LINE OF FACTUAL EVENTS BETWEEN JUNE 14<sup>th</sup>, 2011 AND OCTOBER OF 2015 TO THE BEST OF MY LAYMEN LEGAL ABILITIES.  
THIS EXHIBIT "K" IS REFERENCED IN ¶ 62 not limited too.

FILED  
LORAIN COUNTY

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

STATE OF OHIO

Plaintiff,

v.

CLIFTON JACKSON

Defendant.

COURT OF COMMON PLEAS  
RON HANAWSEN

CASE NO. 11CR083104

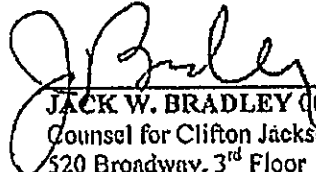
JUDGE EDWARD ZALESKI

BRIEF OF DEFENDANT

Now comes Clifton Jackson, by and through undersigned counsel, and hereby provides this Honorable Court with the attached memorandum of law as a supplement to the oral hearing of July 23, 2012.

Jackson submits that the attached memorandum supports his position that his Fourth Amendment rights were violated and the original motion to suppress should, as a matter of law, be granted.

Respectfully Submitted,

  
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## BRIEF IN SUPPORT

### Facts

Counsel hereby includes by reference all of the facts and argument provided in the initial motion to suppress.

### Law

A reasonable expectation of privacy existed when Mr. Jackson was stopped and subsequently denied a search of the vehicle. A reasonable expectation of privacy is further established when, "the driver of an automobile who demonstrates that he has the owner's permission to use the vehicle has a reasonable expectation of privacy in the vehicle and standing to challenge its stop and search. State v. Carter, 69 Ohio St. 3d 57, 63 (Ohio 1994), citing United States v. Rubio-Rivera (C.A.10, 1990), 917 F.2d 1271, 1275. Mr. Jackson was the driver of the rental car, and demonstrated that he did have permission to operate the vehicle. A search was conducted before the Trooper could establish the validity of any statements of Mr. Jackson. The Trooper, at the time of the search, did not attempt to confirm any statements before a search was performed. Therefore, in accordance with Carter, Mr. Jackson had demonstrated he was driving the vehicle, with the permission of the person who rented the vehicle and, therefore he had a reasonable expectation of privacy.

Further, the Ninth Circuit Court of Appeals notes that the Sixth Circuit Court of Appeals believes the court should examine the totality of the circumstances in determining the validity of a search. US v. Thomas 447 F.3d 1191 (2006). In Thomas, the Court states, "the Sixth Circuit examines the totality of the circumstances. US v. Smith, 263 F.3d 571, 586 (6<sup>th</sup> Cir. 2001). In Smith, the Sixth Circuit noted a broad presumption against granting unauthorized drivers standing to challenge a search. However, the court [in Smith] stated that the "rigged [bright-line] test is inappropriate, given that we must determine whether [the defendant] had a legitimate expectation

of privacy which was reasonable in the light of all the surrounding circumstances." Id. citing Rakas v. Illinois, 439 U.S. 128 at 152 (1978). Instead, the court opted to consider a wide range of factors, including: (1) whether the defendant has a driver's license; (2) the relationship between the driver and the lessee; (3) the driver's ability to present rental documents; (4) whether the driver had the lessee's permission to use the car; and (5) the driver's relationship with the rental company, and held that the defendant had standing to challenge the search. Thomas at 1197.

The five part test aforementioned is passed by the facts in the matter at bar. Mr. Jackson had a driver's license and a relationship with the lessee. Further, Mr. Jackson was in possession of a rental agreement, which furthers the fact that he had a relationship with the lessee of the vehicle and permission to use the car. Cumulatively, in accordance with Smith, Mr. Jackson had a reasonable expectation of privacy and standing to challenge the search to which he protested.

Some courts have found that the driver of a rental car who did not rent the car and did not have authorization to drive the rental car may not have grounds to challenge the search of that car. U.S. v. Edwards, 632 F. 3d 633, 642. (10<sup>th</sup> Cir. Colo. 2001). When the owner and authorized driver is not present, passengers typically do not have standing to challenge a search of that vehicle. Id. However, at the very least, even when the owner and authorized driver is not present, one does have standing to consent to or deny a search of their personal belongings in the form of luggage located within the vehicle. Id.

In the matter at bar, Mr. Jackson denied the Trooper a search of the vehicle. While Mr. Jackson did not rent the vehicle nor was he an authorized driver on the rental agreement, at the very least he still had a reasonable expectation of privacy within the luggage in the trunk. The search into the bags located in the trunk violated Mr. Jackson's Fourth Amendment rights. "Edwards does not have standing to challenge the search of

the car itself because it was rented in a woman's name and he was not an authorized driver of the vehicle. See United States v. Shareef, 100 F.3d 1491, 1499-500 (10th Cir. 1996); United States v. Obregon, 748 F.2d 1371, 1374-75 (10th Cir. 1984) (holding that defendant driver had no reasonable expectation of privacy in a rental car where the rental agreement demonstrated that the car had been rented by a third party and there was no evidence that the rental company had permitted defendant lawfully to drive the car)." Id.

However, the court in Edwards further states that Mr. Edwards does have a reasonable expectation of privacy in the luggage in the trunk. As in Edwards, Mr. Jackson had luggage located in the trunk of the vehicle,

"[A]lthough we found storage of luggage within the car's trunk insufficient to confer standing over the entire trunk, this court intimated that the defendants might have had standing to challenge a search of the luggage being stored there. Id. ("Given the uncertainty over the ownership of the vehicle, she may have possessed a reasonable expectation of privacy over the contents of the luggage, [but] not over the trunk where the luggage was located."); see also Arkansas v. Sanders, 442 U.S. 753, 761 n.8, 61 L. Ed. 2d 235, 99 S. Ct. 2586 (1979) (noting that "there is no question of [the defendant's] standing to challenge the search" where he asserted ownership over the luggage in question), abrogated on other grounds by California v. Acevedo, 500 U.S. 565, 579, 114 L. Ed. 2d 619, 111 S. Ct. 1982 (1991); United States v. Buchner, 7 F.3d 1149, 1154 (5th Cir. 1993) ("The owner of a suitcase located in another's car may have a legitimate expectation of privacy with respect to the contents of his suitcase."). United States v. Edwards, 632 F.3d 633, 642 (10th Cir. Colo. 2001).

The court continued its analysis of the luggage in the trunk and found that,

"Here, Edwards' bags were closed and stored in the trunk of the rental car. They contained items such as clothing and toiletries in addition to the contraband seized by the police, and were being used to transport Edwards' personal belongings while traveling. Based upon these facts, we find that Edwards clearly manifested a subjective expectation of privacy in the bags and that his expectation was one that society has recognized as reasonable. Accord Sanders, 442 U.S. at 761 n.8; Buchner, 7 F.3d at 1154. We therefore find that Edwards has standing to challenge the search of his personal luggage contained within the trunk of the

rental vehicle." United States v. Edwards, 632 F.3d 633, 642 (10th Cir. Colo. 2001).

Mr. Jackson also manifested a subjective expectation of privacy in the luggage in the trunk, which is evident in his denial of a search. In the denial of a search, Mr. Jackson clearly manifested a subjective expectation of privacy in the bags and that his expectation was one that society would recognize as reasonable.

The United States District Court for the District of Connecticut, adopted Edwards and found that,

Although Mikelic does not have a reasonable expectation of privacy in Battistelli's rental car, the Court must also consider whether Mikelic had a reasonable expectation of privacy in the blue duffel bag and the other items seized from the car, including the suitcase, notebook, camera, GPS device, and binoculars. See Elmore, 359 F. Supp. 2d at 19 ("[T]he owner of a closed bag has a reasonable expectation of privacy in the bag . . . even if the person does not have a reasonable expectation of privacy in the location the bag was seized." (citing Perea, 986 F.2d at 641-42; United States v. McGrath, 613 F.2d 361, 365-66 (2d Cir. 1979)); Edwards, 632 F.3d at 641 (stating that where police searched bags found in the trunk of a rental car, the court must determine whether the defendant has standing to challenge the search of the bags, even if the defendant does not have standing to challenge the search of the rental car itself"). United States v. Mikelic, 2011 U.S. Dist. LEXIS 50300, 15-16 (D. Conn. May 11, 2011).

There is a reasonable expectation of privacy in luggage found in the trunk of a rental car. The expectation still exists even when the owner of the vehicle is unknown and the driver is not an authorized driver.

WHEREFORE, because Mr. Jackson's Fourth Amendment rights were violated due to the search of the luggage in the rental car; the motion to suppress should as a matter of law, be granted.

Respectfully Submitted,



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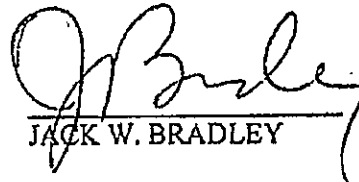
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CERTIFICATE OF SERVICE

A copy of the foregoing Brief was sent via regular U.S. mail to Lorain County  
Prosecutor Dennis Will at 225 Court St., Third Floor, Elyria OH 44035 this 11<sup>th</sup> day of  
August, 2012.



JACK W. BRADLEY