

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

\$90,178.20 UNITED STATES
CURRENCY,

Defendant.

OPINION AND
ORDER

05-C-0538-C

This is a civil forfeiture action brought by the government against \$90,178.20 United States Currency. Michael Dobson, the owner of the money, has filed a motion to suppress the government's use at trial of the currency on the ground that it was seized illegally in violation of Dobson's Fourth Amendment interests. See One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania, 380 U.S. 692, 702 (1965) (extending Fourth Amendment's exclusionary rule to civil forfeiture cases). The parties have asked for a preliminary ruling on the issue whether Dobson has standing to seek suppression. Having considered the parties' submissions, I find that Dobson's ownership of the ammunition cans in which the currency was found is sufficient to establish his reasonable expectation of privacy in the containers; therefore, he may contest the reasonableness of the search and seizure of those containers.

From the reports attached to Dobson's motion, I find that the following facts are undisputed for the purpose of deciding whether Dobson has standing to seek suppression.

FACTS

On March 17, 2005, Anita DiModica met with law enforcement officers to file a domestic abuse complaint against her husband, Nicholas DiModica. Anita reported that her husband, a convicted felon, used drugs and kept guns at their residence located at 1640 Highways 12 and 18 in Deerfield, Wisconsin. After determining that probable cause existed to arrest Nicholas, police went to the house and arrested him.

After police transported Nicholas to the police station, Anita went with other law enforcement officers to the residence. Anita signed a written consent-to-search form, permitting the agents “to search every part of the premises under my control . . . and to take any drugs, illegal firearms, other contraband found there.” Once inside the home, she led officers to places she thought drugs or guns were likely to be found, including the top drawer of Nicholas’s dresser and his closet.

In the basement, law enforcement agents found eight metal ammunition cans. Six of the cans were found near the cistern access, covered in cobwebs and dust. Two cans were found in a cabinet behind the furnace. The agents opened the cans; inside they found United States coins and bags of currency concealed under the coins. Inside one can was a gallon-sized ziplock bag that held approximately \$50,000 in cash, bundled in \$1000 packs. The total amount of money found in the ammunition cans was \$90,178.20.

Anita signed a disclaimer form stating that the money was not hers. Nicholas also denied that the money was his, but declined to identify the owner. After the government

filed this forfeiture action against the currency, Dodson filed a claim asserting that he is the owner of the money.

OPINION

The Fourth Amendment prohibits both unreasonable searches and unreasonable seizures, and its protection extends to both “houses” and “effects.” United States v. Jeffers, 342 U.S. 48, 51 (1951). Because Fourth Amendment rights are personal, they can be enforced “only at the instance of one whose own protection was infringed by the search and seizure.” Simmons v. United States, 390 U.S. 377, 389 (1968). To demonstrate that he is entitled to Fourth Amendment protection, a defendant must show that “he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; *i.e.*, one that has ‘a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.’” Minnesota v. Carter, 525 U.S. 83, 88 (1998) (quoting Rakas v. Illinois, 439 U.S. 128, 143-144, and n.12 (1978)).

The government does not dispute that Dobson is the owner of the ammunition cans and their contents and it does not claim that he abandoned the cans when he left them at the DiModica residence. It contends that in order to challenge the search and seizure of the containers, Dobson must show not only that he has a protected privacy interest in the containers but also that he had a legitimate expectation of privacy in the DiModica home.

Although it is true that “possession of a seized good [is not] a substitute for a factual finding that the owner of the good had a legitimate expectation of privacy in the area searched,” United States v. Salvucci, 448 U.S. 83, 92 (1980), the relevant “area” in this case is not the DiModica home but the ammunition cans that the government concedes were Dobson’s. It is well settled that an individual may manifest an expectation of privacy by placing his personal effects inside a closed container. United States v. Chadwick, 433 U.S. 1, 11 (1977). He does not lose that expectation merely by exposing the outside of the container to the public or by entrusting the container to a third party. United States v. Basinski, 226 F.3d 829, 834 (7th Cir. 2000); United States v. Rodriguez, 888 F.2d 519, 523 (7th Cir. 1989). See also United States v. Karo, 468 U.S. 705, 726 (1984) (O’Connor, J., concurring) (when guest moves closed container into another’s home, privacy interests in home and those in closed container not necessarily coextensive). Recognizing these principles in Rodriguez, 888 F.2d at 523-24, the court had little trouble finding that the defendant’s wife’s consent was sufficient to allow police to “go ahead and look in the room” she shared with defendant and for them to look at and seize containers bearing defendant’s name, but not necessarily sufficient to authorize them to search those containers. The court refused to endorse the same argument that the government makes in this case, noting: “Why a lack of privacy in the room implies a lack of a privacy interest in the containers remains a mystery.” Id. at 524.

None of the cases cited by the government in this case solves that mystery or casts any doubt on the correctness of the court's holding in Rodriguez; indeed, the government does not even address defendant's contention that this is a "closed container" case. In light of this, along with the government's concession that Dobson did not abandon the ammunition cans, I find that Dobson's ownership of the containers is sufficient to allow him to contest the reasonableness of the search and seizure of those containers.

ORDER

IT IS ORDERED that claimant Michael Dobson has standing to seek suppression of the \$90,178.20 that was seized from the DiModica residence on March 17, 2005.

The parties are to advise the court in writing no later than July 26, 2006, of their respective positions on the need for an evidentiary hearing to decide the suppression motion.

Entered this 20th day of July, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge