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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1957**

Carlos Orlando Olivas-Varela, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 5, 2017
Affirmed
Smith, Tracy M., Judge**

Wright County District Court
File No. 86-CR-13-4095

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Thomas N. Kelly, Wright County Attorney, Greg T. Kryzer, Assistant County Attorney, Buffalo, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

On appeal from the denial of postconviction relief following his conviction of first-degree controlled-substance crime, appellant Carlos Olivas-Varela argues that the

postconviction court erred in concluding that the district court properly denied his motion to suppress evidence obtained in a warrantless vehicle search. Because the postconviction court correctly concluded that Olivas-Varela did not have a legitimate expectation of privacy in the vehicle and that the warrantless search therefore did not violate his constitutional rights, we affirm.

FACTS

On July 18, 2013, shortly after 11:00 a.m., Sergeant David Nystuen of the Wright County Sheriff's Office responded to a report of suspicious circumstances at an auto-parts store in Cokato, Minnesota. The store's manager informed Sergeant Nystuen that a young adult male, who was later identified as Olivas-Varela, had visited the store with two other individuals to purchase an air filter for the car that Olivas-Varela had driven to the store. The manager further stated that, after one of the other individuals said something that appeared to startle Olivas-Varela, Olivas-Varela ran out of the store and left the car in the parking lot. In looking at the car, Sergeant Nystuen noticed that it was left unlocked with the key in the ignition.

Later that day, at approximately 2:40 p.m., Wright County Deputy Todd Jorgenson arrived at the auto-parts store to investigate the car, which remained unlocked in the parking lot with the key in the ignition. Deputy Jorgenson was informed that the car was running when Olivas-Varela fled the store and had since been turned off. Deputy Jorgenson looked through the car's window and saw a clear plastic wrapper containing what appeared to be marijuana on the inside of the driver-side door. Deputy Jorgenson then opened the door, confirmed that the substance was marijuana, and decided to search

the car for more controlled substances and information regarding the car's owner. The key left in the ignition did not unlock the car's trunk, but Deputy Jorgenson was able to access the trunk by adjusting the rear-passenger seat. In the trunk, Deputy Jorgenson found a black fabric case designed to hold compact discs. When Deputy Jorgenson picked up the case, its contents made a noise that led him to suspect that it contained a rock-like material. Inside the case, he found a plastic container containing large crystals, which field-tested positive for methamphetamine.

Respondent State of Minnesota charged Olivas-Varela with two counts of first-degree controlled-substance crime, both of which related to the methamphetamine that Deputy Jorgenson discovered in the trunk. Olivas-Varela filed a motion to suppress evidence, challenging Deputy Jorgenson's warrantless search. The district court denied Olivas-Varela's motion. Following a jury trial, Olivas-Varela was found guilty of both counts of first-degree controlled-substance crime. The district court entered a judgment of conviction on one count of first-degree controlled-substance crime and sentenced Olivas-Varela to 86 months in prison. Olivas-Varela did not file a direct appeal.

Olivas-Varela filed a petition for postconviction relief, arguing that the search was unconstitutional because he had an expectation of privacy in the car and the noncriminal amount of marijuana observed by Deputy Jorgenson did not provide probable cause for the search. The postconviction court denied the petition after concluding that Olivas-Varela's "own conduct effectively waived any legitimate expectation of privacy that he may have had in the vehicle." Because the postconviction court concluded that Olivas-Varela lacked a legitimate expectation of privacy, the court did not address his probable-cause argument.

Olivas-Varela appeals.

DECISION

Olivas-Varela argues that the postconviction court erroneously concluded that he did not have a legitimate expectation of privacy in the car. We disagree.

Generally, we review a denial of a petition for postconviction relief under an abuse-of-discretion standard. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quotation omitted). We apply a de novo standard when reviewing a postconviction court’s legal conclusions. *Sanchez-Diaz v. State*, 758 N.W.2d 843, 846 (Minn. 2008).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. “But a search does not violate a person’s constitutional rights unless he or she has a legitimate expectation of privacy in the area or items searched.” *State v. Stephenson*, 760 N.W.2d 22, 24 (Minn. App. 2009). “To establish a protected interest, a defendant must demonstrate (1) ‘a subjective expectation of privacy’ and (2) that this expectation ‘was reasonable in light of longstanding social customs that serve functions recognized as valuable by society.’” *Id.* at 25 (quoting *State v. Carter*, 569 N.W.2d 169, 174 (Minn. 1997), *rev’d on other grounds*, *Minnesota v. Carter*, 525 U.S. 83, 119 S. Ct. 469 (1998)).

Olivas-Varela’s argument is contradicted by the Minnesota Supreme Court’s decision in *State v. Tunland*, 281 N.W.2d 646 (Minn. 1979). In that case, the appellant challenged the district court’s denial of his motion to suppress evidence, arguing that a

police officer's search of the appellant's vehicle violated his Fourth Amendment rights. *Id.* at 648-49. The supreme court concluded that the appellant's conduct—parking the vehicle on private land without permission, leaving an open liquor bottle lying on the vehicle's front seat in plain view, leaving the vehicle's keys in the ignition, and failing to lock the vehicle's doors—waived any legitimate privacy interest he may have ordinarily held in the vehicle. *Id.* at 650. As a result, the supreme court held that the officer's search of the vehicle did not violate the appellant's Fourth Amendment rights. *Id.*

The facts presented in this case are strikingly similar. When Olivas-Varela fled the auto-parts store, he left the car running and unlocked in the store's parking lot. The car remained in the parking lot for approximately four hours before Deputy Jorgenson arrived and saw marijuana in plain view on the inside of the driver-side door. In addition, even though the trunk was locked when Olivas-Varela fled, the trunk was accessible by adjusting the rear-passenger seat. We further note that that Olivas-Varela's expectation-of-privacy argument is weaker than the one advanced in *Tungland* because Olivas-Varela left the car running as opposed to merely leaving its key in the ignition.

Accordingly, in light of the supreme court's *Tungland* decision, the postconviction court did not err by concluding that Olivas-Varela's conduct waived any legitimate expectation of privacy that he otherwise may have had in the car. Therefore, because Olivas-Varela lacked a protected interest in the car under the Fourth Amendment, we need not consider his probable-cause argument.

Affirmed.