IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-4916

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LLEWELLYN MOORE aka GERSHON MOORE,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
6:91 CR 62 (03)

March 25, 1993

Before KING and EMILIO M. GARZA, Circuit Judges, and COBB*, District Judge.

PER CURIAM:**

Llewellyn Moore conditionally pled guilty to one count of cocaine possession with the intent to distribute, a violation of 18 U.S.C. 841(a)(1), but reserved his right to appeal the district court's denial of his pre-trial motion to suppress. The

---

* District Judge of the Eastern District of Texas, sitting by designation.

**Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

district court sentenced Moore to 188 months' imprisonment to be followed by five years of supervised release. The only issue on appeal is whether the district court erred in denying Moore's Fourth Amendment motion to suppress evidence. Finding no error, we affirm.

Lllewellyn was a co-defendant of Robert Ryles, Jr., whose conviction we have affirmed on this same day. See United States v. Ryles, No. 92-4742, slip op. (to be reported in ___ F.2d ___). Because Moore's Fourth Amendment claim is essentially identical to Ryles' Fourth Amendment claim, which we rejected, we incorporate herein our factual and legal discussion in Ryles' case. (Our slip opinion in Ryles is attached hereto as an Appendix.)

We note that the only difference between Ryles' claim and Moore's claim was that Ryles was the driver of the van, from which the cocaine was seized, and Moore was a passenger with no ownership interest in the van. That factual difference is irrelevant to our disposition of the Fourth Amendment claim. Assuming, arguendo, that Moore has standing to challenge Trooper Washington's search of the van, see Rakas v. Illinois, 439 U.S. 128 (1978) (automobile passenger with no possessory interest in vehicle has no standing to assert Fourth Amendment claim), Moore's claim is of no avail. As we held in Ryles, the warrantless search and seizure of the cocaine in the van by Texas DPS Trooper Barry Washington was both reasonable and constitutional.

For the foregoing reasons, the district court's denial of Moore's motion to suppress was proper and, thus, Moore's conviction is AFFIRMED.