STATE OF CONNECTICUT *v.* EDWARD JEVARJIAN
(SC 18728)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Harper, Js.

Argued September 28—officially released December 4, 2012

Lisa J. Steele, with whom, on the brief, was *Frank J. Riccio II*, for the appellant (defendant).

Laurie N. Feldman, special deputy assistant state's attorney, with whom, on the brief, were *Michael Dearington*, state's attorney, and *John Waddock*, supervisory assistant state's attorney, for the appellee (state).

Opinion

ZARELLA, J. The defendant, Edward Jevarjian, appeals from the judgment of the Appellate Court, which affirmed the trial court's judgment of conviction following the defendant's conditional plea of nolo contendere to the charge of possession of marijuana with intent to sell by a person who is not drug-dependent. See General Statutes § 21a-278 (b).[1] The defendant's plea was conditioned, pursuant to General Statutes § 54-94a,[2] on his right to appeal the trial court's denial of his motions to suppress evidence obtained from a search of his home and of a recreational vehicle belonging to and occupied by Dennis Earl Thompson, which was parked on the defendant's property at the time of the search.[3] After the Appellate Court affirmed the trial court's judgment; *State* v. *Jevarjian*, 124 Conn. App. 331, 353, 4 A.3d 1231 (2010); we granted the defendant's petition for certification to appeal, limited to the following issue: "Whether the Appellate Court properly determined that the judge issuing a search warrant made a scrivener's error as to the time of execution?" *State* v. *Jevarjian*, 299 Conn. 923, 11 A.3d 152 (2011). The state argues that this issue is not properly before us because the appeal is moot. We agree with the state and dismiss the appeal.

In its opinion, the Appellate Court set forth the following relevant facts and procedural history. "During the late evening hours of May 17, and into the early morning hours of May 18, 2007, law enforcement officials seized approximately 600 pounds of marijuana from the defendant's house and garage and from a recreational vehicle [that was parked] on the [defendant's] property [but] that belonged to and was occupied by Thompson. The defendant and Thompson were arrested at that time. The defendant was charged with possession of marijuana with intent to sell by a person who is not drug-dependent in violation of § 21a-278 (b) and conspiracy to possess marijuana with intent to sell by a person who is not drug-dependent in violation of General Statutes §§ 53a-48 and 21a-278 (b). Except for sentencing, the [defendant's and Thompson's] cases . . . were prosecuted simultaneously.

"On August 13, 2007, the defendant filed a motion to suppress the evidence that had been seized, claiming that the search had commenced [before] the judge signed the search warrant. After a four day evidentiary hearing, the court denied the motion . . . [on] May 13, 2008. On May 22, 2008, the defendant filed a second motion to suppress, seeking an evidentiary hearing pursuant to *Franks* v. *Delaware*, [438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978)], claiming that the application for the [search] warrant contained either a deliberate falsehood or a statement made in reckless disregard [of] the truth. Specifically, the defendant claimed that the search warrant affidavit contained uncorroborated assertions of an unreliable informant and, as such, did

not provide a substantial basis to establish probable cause to conduct the search. The defendant also filed at that time a motion for disclosure of the name and location of the confidential informant who provided information contained in the affidavit. The court . . . denied both motions on June 18, 2008. On July 16, 2008, the defendant entered a conditional plea of nolo contendere to one count of possession of marijuana with intent to sell [by a person who is not drug-dependent] in violation of § 21a-278 (b) and was sentenced to eighteen years incarceration, suspended after eleven years, and three years probation." *State* v. *Jevarjian*, supra, 124 Conn. App. 334–35.

The defendant appealed to the Appellate Court, claiming that the trial court "improperly denied his first motion to suppress the evidence seized from the house, garage and recreational vehicle because the search was commenced prior to the time noted [in] the warrant by the judge who signed the warrant."[4] Id., 335. Before reaching this argument, the Appellate Court addressed the threshold issue of whether the defendant had standing to contest the search of Thompson's recreational vehicle, an argument that the trial court had rejected. See id. After reviewing the record, the Appellate Court determined that the trial court's finding that the defendant lacked standing with respect to that search was not clearly erroneous. Id., 338. The Appellate Court also concluded that the trial court's determination that the search was not unreasonably premature, but, instead, was marred only by a scrivener's error in the warrant that did not invalidate it, was not improper based on the trial court's weighing of the facts. See id., 341, 344. This appeal followed on the Appellate Court's second holding alone. The state argues that the defendant's failure to appeal the standing determination has rendered moot the issue of the warrant's validity. Mootness implicates this court's subject matter jurisdiction over an appeal. E.g., *Private Healthcare Systems, Inc.* v. *Torres*, 278 Conn. 291, 298, 898 A.2d 768 (2006). Accordingly, we first must address the state's argument that the certified question is moot because the defendant could obtain no practical relief regardless of how the certified issue is resolved. See, e.g., id.; see also *In re Allison G.*, 276 Conn. 146, 156, 883 A.2d 1226 (2005).

"We begin with the well-settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction . . . ." (Internal quotation marks omitted.) *Windels* v. *Environmental Protection Commission*, 284 Conn. 268, 279, 933 A.2d 256 (2007). "When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot." (Internal quotation marks omitted.) *RAL Management, Inc.* v. *Valley View Associates*, 278 Conn. 672, 679–80, 899 A.2d 586 (2006); see also *State* v. *Macri*, 189 Conn. 568, 569, 456 A.2d 1203

(1983) ("it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow").

In the present case, the state contends that the appeal is moot because the defendant sought certification to appeal only as to the validity of the search warrant and did not appeal the Appellate Court's determination that he lacked standing to contest the search of Thompson's recreational vehicle. As a result, the state maintains that, even if the certified issue is resolved in the defendant's favor and the search of the defendant's home is deemed to be unlawfully premature, the defendant's plea under § 54-94a nevertheless would be left undisturbed because the evidence seized from Thompson's recreational vehicle would not be affected, thereby precluding a withdrawal of the conditional plea of nolo contendere. The defendant claims that the appeal is not moot because, if this court grants the relief that he requests, the remaining evidence seized from Thompson's recreational vehicle could be excluded under the exclusionary rule, potentially enabling our decision to yield practical relief.[5] We agree with the state. Because the issue of whether the defendant had standing to contest the search of Thompson's recreational vehicle is not before us, we conclude that our resolution of the certified issue can yield no practical relief, which would render our decision an academic exercise. See, e.g., *State* v. *Macri*, supra, 189 Conn. 569. We therefore conclude that the defendant's appeal is moot.

The defendant's argument as to why the appeal is not moot is unavailing because it misconstrues the exclusionary rule. Under certain circumstances, the judicially created exclusionary rule may serve to bar the introduction of certain evidence obtained as a result of an unlawful search in violation of the fourth amendment. See, e.g., *United States* v. *Leon*, 468 U.S. 897, 906, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984); *Rakas* v. *Illinois*, 439 U.S. 128, 134, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978). The use of such evidence against the victim of an unlawful search does not create a new fourth amendment violation beyond the search itself, however, and the doctrine is instead intended to have a general deterrent effect on improper police conduct. See, e.g., *United States* v. *Leon*, supra, 906.

In *Leon*, the United States Supreme Court explained that "[s]tanding to invoke the rule has . . . been limited to cases in which the prosecution seeks to use the fruits of an illegal search or seizure *against the victim of police misconduct*." (Emphasis added.) Id., 910; see also *Wong Sun* v. *United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963) (explaining that such evidence cannot "constitute proof *against the victim of the search*" [emphasis added]). Similarly, in *Rakas*, the court observed that "[a] person who is aggrieved

by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his [f]ourth [a]mendment rights infringed." *Rakas* v. *Illinois*, supra, 439 U.S. 134; accord *State* v. *Gonzalez*, 278 Conn. 341, 348, 898 A.2d 149 (2006). Thus, the application of the exclusionary rule, a remedial measure intended to protect against fourth amendment violations, would be inappropriate in the absence of a showing of some such infringement of the defendant's own fourth amendment rights. See *Rakas* v. *Illinois*, supra, 133–34 (fourth amendment rights are personal and may not be asserted vicariously); *State* v. *Gonzalez*, supra, 348 (same).

In the present case, even if we were to agree with the defendant that the search of his home and garage was unlawfully premature and that evidence obtained therefrom should be excluded, the exclusionary rule could not preclude the admission of the evidence seized from Thompson's recreational vehicle because the defendant was not "the victim of the search" of that vehicle. *Wong Sun* v. *United States*, supra, 371 U.S. 484. Instead, the Appellate Court agreed with the trial court that the defendant lacked standing to contest the search of the recreational vehicle because he did not have a reasonable expectation of privacy therein. *State* v. *Jervarjian*, supra, 124 Conn. App. 338. Thus, the defendant suffered no fourth amendment violation with respect to the search of the recreational vehicle. See *Rakas* v. *Illinois*, supra, 439 U.S. 134; *State* v. *Gonzalez*, supra, 278 Conn. 348. For the foregoing reasons, the exclusionary rule is unavailable to the defendant on these facts, and our resolution of the certified issue would not affect the defendant's conditional plea. Accordingly, because we conclude that the defendant's appeal is moot, we do not reach the merits of the certified issue.

The appeal is dismissed.

In this opinion the other justices concurred.

[1] General Statutes § 21a-278 (b) provides in relevant part: "Any person who manufactures, distributes, sells, prescribes, dispenses, compounds, transports with the intent to sell or dispense, possesses with the intent to sell or dispense, offers, gives or administers to another person any narcotic substance, hallucinogenic substance other than marijuana, amphetamine-type substance, or one kilogram or more of a cannabis-type substance, except as authorized in this chapter, and who is not, at the time of such action, a drug-dependent person, for a first offense shall be imprisoned not less than five years or more than twenty years; and for each subsequent offense shall be imprisoned not less than ten years or more than twenty-five years. . . ."

[2] General Statutes § 54-94a provides: "When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's motion to suppress or motion to dismiss, the defendant after the imposition of sentence may file an appeal within the time prescribed by law provided a trial court has determined that a ruling on such motion to suppress or motion to dismiss would be dispositive of the case. The issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied the motion to suppress or the motion to dismiss. A plea of nolo

contendere by a defendant under this section shall not constitute a waiver by the defendant of nonjurisdictional defects in the criminal prosecution."

[3] Thompson also was prosecuted, and, following a conditional plea of nolo contendere and an unsuccessful appeal to the Appellate Court, he filed an appeal with this court; see *State* v. *Thompson*, 300 Conn. 905, 12 A.3d 1004 (2011); which we also decide today. *State* v. *Thompson*, 307 Conn. 567, A.3d (2012).

[4] Before the Appellate Court, the defendant also raised claims regarding the trial court's denial of his motion to suppress pursuant to *Franks* v. *Delaware*, supra, 438 U.S. 154, as well as the trial court's denial of his motion to disclose the identity of a confidential informant. *State* v. *Jevarjian*, supra, 124 Conn. App. 344, 352. These issues were not preserved on appeal, and, accordingly, we do not address them.

[5] The defendant frames his argument in terms of the "fruit of the poisonous tree" doctrine, an extension of the general exclusionary rule that specifically applies to evidence derived indirectly from an unlawful search rather than all evidence unlawfully seized. See annot., " 'Fruit of the Poisonous Tree' Doctrine Excluding Evidence Derived from Information Gained in Illegal Search," 43 A.L.R.3d 385, 394 (1972) (tracing origins of " 'fruit of the poisonous tree' " doctrine as "an extension of the exclusionary rule of evidence"). For purposes of this opinion, we treat the defendant's argument as one arising under the exclusionary rule.