



**Does the fact that an otherwise authorized driver who is not listed as an authorized driver on a rental car agreement mean that the driver does not have a reasonable expectation of privacy in the rental car for purposes of the Fourth Amendment? The United States Supreme Court says, “No.”**



May 2018

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In *Byrd v. United States*, \_\_\_ U.S. \_\_\_, 2018 WL 2186175 (May 14, 2018), the United States Supreme Court granted certiorari to consider whether the lower courts had erred in denying Defendant/Petitioner Terrence Byrd’s motion to suppress. Specifically, the Supreme Court granted certiorari to address the question of whether a driver has a reasonable expectation of privacy in a rental car when he or she is not listed as an authorized driver on the rental agreement. The Supreme Court held that, as a general rule, someone in otherwise lawful possession and control of a rental car has a reasonable expectation of privacy in the car even if the rental agreement does not list him or her as an authorized driver. The relevant facts are as follows.

On September 17, 2014, Terrence Byrd and Latasha Reed drove in Byrd’s Honda Accord to a Budget car-rental facility in Wayne, New Jersey. Byrd stayed in the parking lot in the Honda while Reed went to the Budget desk and rented a Ford Fusion. The agreement that Reed signed required her to certify that she had a valid driver’s license and had not committed certain vehicle-related offenses within the previous three years. Reed also initialed an addendum to the agreement that restricted who could drive the rental car and further provided that allowing an unauthorized driver to operate the rental car violated the agreement and could result in the agreement being null and void. Reed did not list Byrd as an additional driver.

After renting the car, Reed returned to the parking lot and gave the keys to Byrd. The two then left the facility in separate cars—she in his Honda and he in the rental car. Byrd returned to his home in Patterson, New Jersey, and put his personal belongings in the trunk of the rental car. Later that afternoon, Byrd departed in the car alone and headed toward Pittsburgh, Pennsylvania.

On the way, Byrd passed Pennsylvania State Trooper David Long who was parked in the median of Interstate 81 near Harrisburg, Pennsylvania. Long was suspicious of Byrd because he was driving with his hands at the “10 and 2” position on the steering wheel, was sitting far back from the steering wheel, and was driving a rental car. Long knew that the Ford Fusion was a rental car because one of its windows contained a barcode. Based on these observations, Long decided to follow Byrd and, a short time later, stopped him for a possible traffic infraction.

When Long approached the passenger window of Byrd’s car to explain the basis for the stop and to ask for identification, Byrd was “visibly nervous” and “was shaking and had a hard time obtaining his driver’s license.” Byrd handed an interim license and the rental agreement to Long and stated that a friend had rented the car. Long, then, returned to his vehicle to verify Byrd’s license and noticed that Byrd was not listed as an additional driver on the rental agreement. Around this same time another trooper, Travis Martin, arrived at the scene. While Long processed Byrd’s license, Martin conversed with Byrd, and Byrd, again, stated that a friend had rented the vehicle. After Martin walked back to Long’s patrol car, Long commented to Martin that Byrd was “not on the renter agreement,” to which Martin replied, “yeah, he has no expectation of privacy.”

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A computer search based on Byrd's identification returned two different names. Further inquiry suggested that the other name might be an alias and also revealed that Byrd had prior convictions for weapons and drug charges as well as an outstanding warrant in New Jersey for a probation violation. After learning that New Jersey did not want Byrd arrested for extradition, the troopers asked Byrd to step out of the vehicle and patted him down. Long asked Byrd if he had anything illegal in the car. When Byrd said he did not, the troopers asked for his consent to search the car. At that point, Byrd said that he had a "blunt" in the car and offered to retrieve it for them. The officers understood "blunt" to mean a marijuana cigarette, but they declined to let him retrieve it and continued to seek his consent to search the car (although they stated they did not need consent because he was not listed on the rental agreement). The troopers then opened the passenger and driver doors and began a thorough search of the passenger compartment.

Martin proceeded from there to search the car's trunk where he found a laundry bag containing body armor. At this point, the troopers decided to detain Byrd. As Martin walked toward Byrd and said he would be placing Byrd in handcuffs, Byrd began to run away. A third trooper who had arrived on the scene joined Long and Martin in pursuit. When the troopers caught up to Byrd, he surrendered and admitted there was heroin in the car. Back at the car, the troopers resumed their search of the laundry bag and found 49 bricks of heroin.

Byrd was ultimately indicted for possession of heroin with intent to distribute and for being a prohibited person in possession of body armor. Thereafter, Byrd moved to suppress the evidence found in the trunk of the rental car, arguing that the search violated his Fourth Amendment rights. Although Long contended at a suppression hearing that the troopers had probable cause to search the car after Byrd stated that it contained a marijuana cigarette, the District Court, instead, denied Byrd's motion on the ground that Byrd lacked "standing" to contest the search. Byrd later entered a conditional guilty plea but reserved the right to appeal the suppression ruling.

On appeal, the United States Court of Appeals for the Third Circuit affirmed the District Court's denial of Byrd's motion to suppress. In its opinion, the Third Circuit recognized that a circuit split existed as to whether the sole occupant of a rental vehicle has a Fourth Amendment expectation of privacy when that occupant is not named in the rental agreement. However, the Third Circuit noted that its precedent had already spoken on this issue and had determined that such a person has no expectation of privacy and, therefore, no standing to challenge a search of the vehicle. Notably, the Third Circuit did not reach the probable-cause question.

Thereafter, the Supreme Court granted Byrd's petition for a writ of certiorari to address the conflict among the Courts of Appeals over whether an unauthorized driver has a reasonable expectation of privacy in a rental car for purposes of the Fourth Amendment. The Supreme Court began its Opinion by noting that the Fourth Amendment and the Supreme Court viewed with disfavor practices that permit police officers unbridled discretion to rummage at will among a person's private effects. This concern includes the search of an automobile. Nevertheless, the Supreme Court acknowledged that there is a diminished expectation of privacy in automobiles that often permits officers to dispense with obtaining a warrant before conducting a lawful search.

For purposes of this appeal, the Supreme Court stated that the key inquiry was whether Byrd had a legitimate expectation of privacy in the rental car even though he was not listed as a driver on the rental agreement. The Supreme Court explained that, although it had not established a single metric or exhaustive list of considerations to resolve the circumstances in which a person can be said to have a reasonable expectation of privacy, the Court explained that legitimization of expectations of privacy by law must have 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.

Accordingly, the Supreme Court rejected the Government's argument that a person not listed on a rental agreement can never have a legitimate expectation of privacy as constituting a too restrictive view of the

Fourth Amendment's protections. Likewise, the Supreme Court rejected Byrd's argument that possession alone is sufficient to establish a legitimate expectation of privacy because Byrd's argument would encompass a thief who had stolen a car, and a thief undoubtedly has no legitimate expectation of privacy in a stolen vehicle.

Instead, the Supreme Court focused on whether the individual has a right to exclude another from the car. Thus, the mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not always defeat his or her otherwise reasonable expectation of privacy. Accordingly, the Supreme Court remanded this case for a determination of two issues: (1) is one who intentionally uses a third party to procure a rental car by a fraudulent scheme for the purpose of committing a crime in the same position as a car thief who would not have a legitimate expectation of privacy for purposes of the Fourth Amendment and (2) did the officers have probable cause that justified the search of the rental car that Byrd was driving.

As a result, Byrd may still not ultimately be successful in his challenge of the denial of his motion to suppress. For now, however, the Supreme Court has resolved a circuit split by holding that the mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy for purposes of the Fourth Amendment.