



UNITED STATES SUPREME COURT

POSSESSOR OF RENTAL CAR HAS RIGHT TO PRIVACY EVEN WHEN NOT ON RENTAL AGREEMENT

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“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.”

In *Byrd v. United States*,¹ the United States Supreme Court reviewed a case where a subject dealing in narcotics utilized his girlfriend to rent a vehicle. Byrd, the defendant in the criminal case, was not listed on the rental agreement. A search of the vehicle uncovered 49 bricks of heroin.

On September 17, 2014, petitioner 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 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. An addendum to the agreement, which Reed initialed, provides the following restriction on who may drive the rental car: “I understand that the only ones permitted to drive the vehicle other than the renter are the renter’s spouse, the renter’s co-employee (with the renter’s permission, while on company business), or a person who appears at the time of the rental and signs an Additional Driver Form. These other drivers must also be at least 25 years old and validly licensed.

“PERMITTING AN UNAUTHORIZED DRIVER TO OPERATE THE VEHICLE IS A VIOLATION OF THE RENTAL AGREEMENT. THIS MAY RESULT IN ANY AND ALL COVERAGE OTHERWISE PROVIDED BY THE RENTAL AGREEMENT BEING VOID AND MY BEING FULLY RESPONSIBLE FOR ALL LOSS OR DAMAGE, INCLUDING LIABILITY TO THIRD PARTIES.” App. 19.

¹ *Byrd v. United States*, __S.Ct.__ slip opinion 16-1371 (decided May 14, 2018)

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In filling out the paperwork for the rental agreement, Reed did not list an additional driver. With the rental keys in hand, Reed returned to the parking lot and gave them to Byrd. The two then left the facility in separate cars—she in his Honda, 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, he departed in the car alone and headed toward Pittsburgh, Pennsylvania. After driving nearly three hours, or roughly half the distance to Pittsburgh, Byrd passed 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, sitting far back from the steering wheel, and driving a rental car. Long knew the Ford Fusion was a rental car because one of its windows contained a barcode. Based on these observations, he 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.” He handed an interim license and the rental agreement to Long, stating that a friend had rented the car. Long returned to his vehicle to verify Byrd’s license and noticed Byrd was not listed as an additional driver on the rental agreement. Around this time another trooper, Travis Martin, arrived at the scene. While Long processed Byrd’s license, Martin conversed with Byrd, who 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.” A computer search based on Byrd’s identification returned two different names. Further inquiry suggested 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 he had a “blunt” in the car and offered to retrieve it for them. The officers understood “blunt” to mean a marijuana cigarette. They declined to let him retrieve it and continued to seek his consent to search the car, though 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, including by opening up and taking things out of a large cardboard box, 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 him 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. In pretrial proceedings 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 it contained marijuana, the District Court denied Byrd’s motion on the ground that Byrd lacked “standing” to contest the search as an initial matter. Byrd later entered a conditional guilty plea, reserving the right to appeal the suppression ruling. The Court of Appeals affirmed in a brief summary opinion. As relevant here, the Court of Appeals recognized that a “circuit split exists 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”; but it noted that Circuit precedent already had “spoken as to this issue . . . and determined such a person has no expectation of privacy and therefore no standing to challenge a search of the vehicle.” The Court of Appeals did not reach the probable-cause question.

In reviewing the case, the United States Supreme Court noted that a determination as to whether the search of a vehicle is proper where the occupant is not on the rental car agreement, turns on whether the occupant has a legitimate expectation of privacy in the vehicle. Thus the question for the Court was: “Does a driver of a rental car have a reasonable expectation of privacy in the car when he or she is not listed as an authorized driver on the rental agreement?”

As part of the analysis, the Court pointed out that “One of the main rights attaching to property is the right to exclude others” and noted that one who owns, lawfully possesses or controls property will “in all likelihood have a legitimate expectation of privacy by virtue of the right to exclude” others.

The Court noted that vehicle rental agreements have all types of restrictions such as no driving on unpaved roads and no use of hand-held telephones. The Court wrote, clearly a violation of one of these restrictions would not in some way undo the renter’s right to privacy in the vehicle. The Court also noted that under the rental car contract, allowing an unauthorized driver to drive did not void the contract but instead may lead to insurance coverage being voided.

The Court wrote that the central inquiry as to whether someone has a right to privacy turns on whether the person has lawful possession of the vehicle. The Court noted that a car thief would never have a privacy interest no matter what degree of possession and control they exercised over a vehicle.

The Court did not address the government’s argument that Byrd should be treated the same as a car thief since he had his girlfriend serve as a straw-renter in order to assist Byrd in committing a crime. The Court noted that the prosecution had not raised this argument in the trial court and thus, this question should be remanded to the trial court for consideration.

Additionally, the Court did not address whether the trooper had probable cause to search the vehicle and thus, searching the vehicle without a warrant would be proper. The Court also remanded this argument back to the lower court for consideration.

The Court concluded: **“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.”**

The Court left open the question of whether there would be a privacy interest when a person intentionally uses a third party to procure a rental car by a fraudulent scheme for the purpose of committing a crime.