



Legal Update

June 2018

The Supreme Court holds 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 in the motor vehicle.

Byrd v. United States, 200 L. Ed. 2d 805 (2018).

Latasha Reed signed an agreement to rent a car in New Jersey. The agreement specified that permitting an unauthorized driver to drive the car would violate the agreement. The agreement contained the following clause:

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.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

Reed listed no additional drivers on the form, although she gave the keys to the petitioner, Terrence Byrd upon leaving the building. Byrd left for Pennsylvania and stored personal belongings in the rental car's trunk. While in Pennsylvania, state troopers stopped Byrd for a traffic infraction and learned that the car was rented. Byrd was not listed as an authorized driver, and the troopers discovered that he had prior drug and weapons convictions. Byrd also stated he had a marijuana cigarette in the car. The troopers proceeded to search the car and they recovered body armor along with 49 bricks of heroin in the trunk. The evidence was turned over to federal authorities, who charged Byrd with federal drug and other crimes.

Byrd filed a motion to suppress the evidence as the fruit of an unlawful search. The District Court denied the motion and the Third Circuit Court of Appeals affirmed. Both courts concluded that, because Byrd was not listed on the rental agreement, he lacked a reasonable expectation of privacy in the car. The Supreme Court grant certiorari to address the question 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.

Conclusion: The Supreme Court reversed the Appeals Court's decision and held that someone in 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 the person as an authorized driver.

1st Issue: Does a person who is not listed on a rental agreement have a reasonable expectation of privacy?

The Court considered whether the names listed on a rental agreement for a car controls whether the person driving it has an expectation of privacy. In *Rakas v. Illinois*, 439 U.S. 128 (1978), the Court previously found that passengers do have an expectation of privacy in automobiles, but found that the passengers there had not claimed "any legitimate expectation of privacy in the areas of the car which were searched." *Id.* at 150. Here, Byrd was the rental car's driver and sole occupant. Similar to *Jones v. United States*, 362 U.S. 257 (1960), where the Court found that the petitioner had a reasonable expectation of privacy in his friend's apartment because he "had complete dominion and control over the apartment and could exclude others from it," Byrd had complete control over the vehicle here. The Court's analysis establishes that the expectation of privacy that comes from lawful possession and control. Additionally, the attendant right to exclude should not differ depending on whether a car is rented or owned by someone other than the person currently possessing it, much as it did not seem to matter whether the defendant's friend in Jones owned or leased the apartment he permitted the defendant to use in his absence.

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The concept of lawful possession is critical here because a wrongful presence at the scene of a search would not enable a defendant to object to the legality of the search. Thus, a car thief would not have a reasonable expectation of privacy in a stolen car no matter the degree of possession and control. The Government argued that “Byrd should have no greater expectation of privacy than a car thief because he intentionally used a third party as a strawman in a calculated plan to mislead the rental company from the very outset, all to aid him in committing a crime.” The Court did not address this issue because it was not raised in the prior appeal.

2nd Issue: Does a breach of a rental car agreement impact whether Byrd had a reasonable expectation of privacy?

The second issue the Court considered was whether Byrd driving the rental car was a breach of contract and therefore impacted his right to claim he had an expectation of privacy in the rental car. In this case, the contract only stated that a violation may not result in coverage, not that the agreement would be void or that the renter would be fully responsible for any loss or damage. Additionally, the Court did not find that the breach of contract alone would impact an individual’s expectation of privacy in the car. By this logic, a car thief would not have a reasonable expectation of privacy in a stolen car no matter the degree of possession and control.

Based on the Court’s conclusions regarding expectation of privacy, the case was remanded to address two unresolved issues.

1. Whoever intentionally uses a third party to procure a rental car by a fraudulent scheme for the purpose of committing a crime is no better situated than a car thief?
2. Even if Byrd had right to object to the police searching car, was there probable cause to justify the search?

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