

# SCOTUS – Vehicle Searches: Unauthorized Drivers of Rental Cars Could Have Reasonable Expectation of Privacy in the Vehicle

By **DLG Learning Center**

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**DAIGLE LAW GROUP**

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# SCOTUS – Vehicle Searches: Unauthorized Drivers of Rental Cars Could Have Reasonable Expectation of Privacy in the Vehicle

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This week, the Supreme Court of United States issued its decision *Byrd v. United States* (No. 16-1371), 584 US \_\_\_\_ (2018). This is an important case for law enforcement in terms of vehicle searches. The issue before the Court was whether an unauthorized driver of a rental car has a reasonable expectation of privacy in the rental car. The Court held that the mere fact that a driver is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy.

## FACTS

On September 2014, Latasha Reed rented a car in New Jersey while petitioner Terrence Byrd waited outside the rental facility. Her signed agreement warned that permitting an unauthorized driver to drive the car would violate the rental agreement. Reed listed no additional drivers on the form, but she gave the keys to Byrd upon leaving the building, and they left the facility in separate vehicles. Byrd stored personal belongings in the rental car's trunk and then left alone for Pennsylvania. While driving in Pennsylvania, State Troopers stopped Byrd for a traffic violation (illegal use of the left lane). The trooper noted that Byrd appeared "visibly nervous" and was "shaking and had a hard time obtaining his driver's license." Upon requesting the usual documentation, the troopers noticed that Byrd was not an authorized driver under the rental agreement. Byrd also provided an interim license from New Jersey with no picture and a different name. The troopers also discovered that Byrd had previous drug and weapons convictions 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. The troopers asked Byrd whether he had anything illegal in the vehicle. When he said he did not, the troopers then asked for his consent to search the vehicle. At that point Byrd admitted to having a marijuana cigarette in the vehicle, and offered to retrieve it. The troopers declined to let him retrieve it and continued to ask for consent to search the vehicle, though they stated they did not need his consent since he was not listed on the rental agreement. The troopers searched the interior of the vehicle, and then moved to the vehicle's trunk. In the trunk, the troopers discovered body armor in a laundry bag and decided to detain Byrd. A further search of the trunk ultimately revealed 49 bricks of heroin. Byrd was turned over to the federal authorities and charged with distribution and possession of heroin with intent to distribute and possession of body armor by a

prohibited person.

## **PROCEDURAL HISTORY**

At a pretrial hearing, Byrd filed a motion to suppress the evidence discovered in the trunk, challenging the initial stop, the length of the stop, and the search by arguing that it violated his Fourth Amendment rights against an unreasonable search and seizure. The District Court denied the motion concluding that because Byrd was not listed as an authorized driver in the rental agreement, he had no reasonable expectation of privacy in the rental vehicle and therefore, lacked standing to challenge the search. As the District Court concluded that Byrd did not have an expectation of privacy, it did not consider whether the officers had probable cause to conduct the search of the car.

Byrd appealed to the Third Circuit Court of Appeals, which affirmed the lower court's decision. As the Appellate Court also found that Byrd had no expectation of privacy in the rental vehicle, it did not reach the question as to whether the troopers had probable cause to search the vehicle.

Byrd appealed to the United States Supreme Court. The Supreme Court granted 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.

## **REASONING**

The Supreme Court reversed the Court of Appeals' ruling. In doing so, the 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 it even if the rental agreement does not list him or her as an authorized driver. In reaching this conclusion, the Court stated that the "central inquiry turns on the concept of lawful possession." The Court explained that the expectation of privacy that comes from lawful possession and control and 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. The concept of lawful possession is central, 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 Supreme Court stated that it is unclear from the record whether the Government's inferences paint an accurate picture of what occurred. The Court, however, declined to reach this question because the Government did not raise

this argument in the District Court or the Court of Appeals.

The Government also stressed that Byrd's driving the rental car violated the rental agreement, and therefore the violation meant Byrd could not have had any basis for claiming an expectation of privacy in the rental car at the time of the search. The Court rejected this argument stating that while rental agreements are replete with prohibitions and restrictions, e.g. not driving on unpaved roads or driving while using a handheld cell phone, few would contend that violating these provision has anything to do with a driver's reasonable expectation of privacy in the vehicle. While allowing an unauthorized person to operate the vehicle may be a serious violation of the agreement, the Government failed to explain what bearing this breach, standing alone, has on expectations of privacy in the vehicle.

The Government also argued that the troopers had probable cause to believe the vehicle contained evidence of a crime when they initiated the search. The Court stated that if this were true, the troopers may have been permitted to conduct a warrantless search of the vehicle under the automobile exception to the warrant requirement. The Supreme Court, however, declined to rule on this argument as the Appellate Court did not reach this question because it concluded, as an initial matter, that Byrd lacked a reasonable expectation of privacy in the rental vehicle.

## **HOLDING**

The Supreme Court vacated the Court of Appeals' judgment and remanded the case to consider the following issues:

1. Whether one who 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 for purposes of an expectation to privacy; and
2. Whether, despite Byrd's objection to the search, the troopers had probable cause to conduct a search under the automobile exception to the warrant requirement.

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