



JACKIE LACEY
DISTRICT ATTORNEY

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

COPYRIGHT © 2018 LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE. ALL RIGHTS RESERVED. MAY BE REPRODUCED FOR NON-COMMERCIAL PROSECUTORIAL, LAW ENFORCEMENT AND EDUCATIONAL PURPOSES ONLY. 1MB@da.lacounty.gov

NUMBER: 2018-08 **DATE:** 05-22-18 **BY:** Devallis Rutledge **TOPIC:** Rental Car "Standing"

ISSUE: Can a person driving a vehicle rented by someone else claim that a search of that vehicle infringes his legitimate expectation of privacy?

Crooks who transport drugs don't like to use their own vehicles. A plate check on their own car may let officers know **the vehicle has been associated with narcotics**, and an arrest while they're transporting drugs in their own cars may result in the loss of their vehicle by **asset forfeiture**. So, they routinely use rented cars.

However, their own criminal records may disqualify them from being able to rent a car, or may provide police with investigative leads. So, they have a friend rent the car, and they "borrow" it from the friend. If things go south, the absentee friend is "Shocked! Shocked, mind you," to find out that the car was being used to transport drugs.

But since the driver isn't listed on the rental agreement as an authorized driver, can he challenge a search of the rented car by asserting a legitimate expectation of privacy based on the fact that he has the **permission** of the actual renter to be using the car?

- Terrence Byrd waited in his own car outside the rental agency while his girlfriend went inside and rented a car, the rental agreement listing her as the only authorized driver. When she came out, she handed the keys to Byrd, and she drove off in his car. He took the rental car home, loaded it with 49 bricks of heroin, and headed for his delivery destination. At a traffic stop enroute, a search of the car revealed the drugs.

Byrd moved to suppress. The government argued lack of "standing," and both the trial court and the Third Circuit denied suppression on this ground. The US Supreme Court has unanimously reversed.

The court pointed out that for Fourth Amendment purposes, the issue is not whether a person is a party to a car-rental contract, but whether the person is a **permissive user** of the car. Since Byrd's friend had voluntarily permitted him to use the car she had rented, he was a permissive user and could therefore claim a privacy interest.

"The Court now holds that, as a general rule, someone in 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." *Byrd v. US* (2018) 584 US ___, WL 2186175, slip opn. at 2.

- This ruling means that neither police nor prosecutors should rely on a permissive driver's lack of "standing" to contest a search of a rented car, but should develop and argue as many **independent grounds** for justifying a search as the circumstances support. (The *Byrd* case was remanded to the lower courts to consider two alternative grounds for upholding the search.)

- The Supreme Court reaffirmed that *"No matter the degree of possession and control, the **car thief** would not have a reasonable expectation of privacy in a **stolen car.**"* *Id.*, slip opn. at 12; accord, *People v. Carter* (2005) 36 Cal.4th 1114, 1141.

BOTTOM LINE: *"[T]he 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 reasonable expectation of privacy."* *Byrd v. US, supra*, slip opn. at 15.

(Bold emphases added in quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.