

SUPREME COURT OF OREGON

State v. De Witt Simons

375 Or. 70 (2026) · No. S070787 · Decided March 26, 2026

SUMMARY

The Oregon Supreme Court held that accessing the internet through a public Wi-Fi network does not eliminate a person’s privacy right under Article I, section 9, of the Oregon Constitution. It further held that terms-of-service provisions did not eliminate that right and that the coordinated, year-long monitoring of the defendant’s internet activity by the Wi-Fi provider and law enforcement constituted state action and a search. Because the state obtained no warrant and did not establish a warrant exception, the court reversed the Court of Appeals in part, reversed the circuit court’s judgment, and remanded.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	James, J.; Bushong, J.; Other members of the Oregon Supreme Court
JURISDICTION	Supreme Court of Oregon
DECIDED	March 26, 2026
DOCKET	S070787
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant sought review of the Oregon Court of Appeals' decision affirming the denial of his motion to suppress evidence obtained through warrantless monitoring of his internet activity over a public Wi-Fi network. The Oregon Supreme Court reversed in part and remanded.
STANDARD OF REVIEW	The denial of a motion to suppress is reviewed for errors of law, with factual findings binding when supported by constitutionally sufficient evidence.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; precedential.
PARTIES	Randall De Witt Simons v. State of Oregon

TOPICS

- search and seizure
- warrant requirement
- state action
- suppression of evidence
- appellate procedure

PRACTICE AREAS

constitutional law

criminal procedure

search and seizure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether a person retains a privacy right under Article I, section 9, of the Oregon Constitution in internet browsing activity conducted through a publicly accessible third-party Wi-Fi network.
2. Whether terms-of-service provisions notifying users that the network provider may monitor activity and cooperate with law enforcement eliminate the user's Article I, section 9, privacy right.
3. Whether the coordinated year-long monitoring by A&W and law enforcement constituted state action.
4. Whether the warrantless monitoring constituted a search under Article I, section 9, and whether the state established an exception to the warrant requirement.

HOLDINGS

1. The mere fact that a person accesses the internet through a public Wi-Fi network operated by a third party does not eliminate the person's Article I, section 9, right to privacy in internet browsing activities.
2. Terms-of-service provisions informing a public Wi-Fi user that the provider may monitor network activity or cooperate with law enforcement do not, by themselves, eliminate the user's Article I, section 9, privacy right in internet browsing activity.
3. A&W's owner and consultant acted as state agents during the year-long monitoring period because law enforcement directed and supported their information-gathering activities.
4. The state-affiliated, year-long surveillance of defendant's internet activities invaded a protected privacy interest and constituted a search under Article I, section 9. Because the state obtained no warrant and did not establish an applicable warrant exception, the trial court erred in denying the motion to suppress.

KEY QUOTATIONS

“the mere fact that a person accesses the internet through a public network does not eliminate the Article I, section 9, right to privacy that exists for one’s internet browsing activities.” (72)

“Accordingly, the state’s year-long surveillance of defendant’s internet activities was a search under Article I, section 9.” (72)

“For Article I, section 9, Oregonians have a right to freedom from governmental scrutiny, even if they may not have an expectation to freedom from potential third-party scrutiny.” (88)

“On this record, therefore, we conclude, as did the trial court, that the actions of A&W’s owner and consultant, from July 2018 until June 2019, were attributable to the state such that they were “subject to constitutional restrictions on state searches and seizures.”” (99)

FACTUAL BACKGROUND

Defendant used a publicly accessible A&W restaurant Wi-Fi network from 2018 through 2019 to access the internet. After A&W alerted law enforcement to suspicious activity, an A&W consultant, acting in coordination

with police, created user-specific logs and alerts and provided law enforcement with records of 255,723 webpage visits and other unencrypted internet traffic over approximately one year. Police used the information to identify defendant, locate his home, obtain a warrant, and seize a laptop containing child pornography.

PROCEDURAL HISTORY

The Lane County Circuit Court denied defendant's combined motion to controvert and suppress, concluding that defendant lacked a protected privacy interest in his use of A&W's Wi-Fi network, and convicted him after a stipulated-facts trial. The Court of Appeals affirmed the ruling that no constitutionally protected privacy interest or search existed under the circumstances, although it separately reversed on a ground not presented for review. The Supreme Court allowed review, reversed the Court of Appeals in part and reversed the circuit court judgment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case is remanded to the Lane County Circuit Court for further consideration of defendant's combined motion to controvert and suppress in light of the Supreme Court's holding that the year-long warrantless surveillance was a state search.

CASES CITED

- State v. DeJong, 368 Or. 640, 497 P.3d 710 (2021)
- State v. Davis, 313 Or. 246, 253, 834 P.2d 1008 (1992)
- State v. Campbell, 306 Or. 157, 164, 170-72, 759 P.2d 1040 (1988)
- State v. Juarez-Godinez, 326 Or. 1, 5-6, 942 P.2d 772 (1997)
- State v. Smith, 327 Or. 366, 374, 963 P.2d 642 (1998)
- State v. Wacker, 317 Or. 419, 426, 856 P.2d 1029 (1993)
- Carpenter v. United States, Carpenter v. United States, 585 U.S. 296, 304, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018)
- State v. Tanner, 304 Or. 312, 321 n. 7, 745 P.2d 757 (1987)
- State v. Newcomb, 359 Or. 756, 764, 375 P.3d 434 (2016)
- State v. Lien/Wilverding, 364 Or. 750, 759-64, 441 P.3d 185 (2019)
- Gollersrud v. LPMC, LLC, 371 Or. 739, 749-51, 541 P.3d 864 (2023)
- Riley v. California, 573 U.S. 373, 385, 395, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014)
- Oliver v. United States, 466 U.S. 170, 177, 104 S. Ct. 1735, 80 L. Ed. 2d 214 (1984)
- Katz v. United States, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967)
- McLain v. Boise Cascade Corp., 271 Or. 549, 554, 533 P.2d 343 (1975)
- Mauri v. Smith, 324 Or. 476, 482, 929 P.2d 307 (1996)

- *Hinish v. Meier & Frank Co.*, 166 Or. 482, 502-03, 506, 113 P.2d 438 (1941)
- *State v. Dixon*, 307 Or. 195, 198, 211-12, 766 P.2d 1015 (1988)
- *State v. Meredith*, 337 Or. 299, 301-07, 96 P.3d 342 (2004)
- *State v. Sines*, 359 Or. 41, 50, 59, 62, 379 P.3d 502 (2016)
- *State v. Benton*, 371 Or. 311, 320 n. 3, 322-25, 534 P.3d 724 (2023)
- *State v. Smith*, 310 Or. 1, 13, 791 P.2d 836 (1990)
- *State v. Acremant*, 338 Or. 302, 327-29, 108 P.3d 1139 (2005)
- *United States v. Warshak*, 631 F.3d 266, 286 (6th Cir. 2010)
- *State v. Plowman*, 314 Or. 157, 163-64, 838 P.2d 558 (1992)
- *State v. Robertson*, 293 Or. 402, 649 P.2d 569 (1982)
- *State v. Ghim*, 360 Or. 425, 436-37, 381 P.3d 789 (2016)
- *Priest v. Pearce*, 314 Or. 411, 415-16, 840 P.2d 65 (1992)
- *Couey v. Atkins*, 357 Or. 460, 490-91, 355 P.3d 866 (2015)
- *State v. Davis*, 350 Or. 440, 446, 256 P.3d 1075 (2011)
- *State v. Rogers*, 330 Or. 282, 297, 4 P.3d 1261 (2000)
- *State v. Carter*, 342 Or. 39, 42-44, 147 P.3d 1151 (2006)
- *State v. Holt*, 291 Or. 343, 347, 630 P.2d 854 (1981)
- *State v. Louis*, 296 Or. 57, 60-61, 672 P.2d 708 (1983)
- *State v. Caraher*, 293 Or. 741, 750, 752, 653 P.2d 942 (1982)
- *State v. McDaniel*, 39 Or. 161, 65 P. 520 (1901)
- *Jones v. Hoss*, 132 Or. 175, 178, 285 P. 205 (1930)
- *State v. Turay*, 371 Or. 128, 167-69, 532 P.3d 57 (2023)