

SUPREME COURT OF NORTH CAROLINA

State v. Terrell, 372 N.C. 657

831 S.E.2d 17 (2019) · No. 55A18 · Decided August 16, 2019

SUMMARY

The Supreme Court of North Carolina considered whether a law enforcement officer's warrantless search of a defendant's USB drive was permissible under the private-search doctrine after a private individual had viewed some of its contents. The court held that the officer's search exceeded the scope of the prior private search and violated the Fourth Amendment. The court affirmed the Court of Appeals' decision remanding for determination of whether the search warrant remained supported by probable cause after excising information obtained from the unlawful search.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Earls, Justice; Newby, Justice
JURISDICTION	North Carolina
DECIDED	August 16, 2019
DOCKET	55A18
DISPOSITION	affirmed
PROCEDURAL POSTURE	State appeal as of right based on a dissent in the Court of Appeals, together with discretionary review of additional issues, from the Court of Appeals' decision reversing in part the denial of defendant's motion to suppress.
STANDARD OF REVIEW	For a suppression ruling, whether competent evidence supports the trial court's findings of fact and whether those findings support its conclusions of law; conclusions of law are reviewed de novo. Court of Appeals decisions are reviewed for errors of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of North Carolina v. James Howard Terrell, Jr.

TOPICS

[suppression of evidence](#)[fourth amendment](#)[search and seizure](#)[warrant requirement](#)[appellate procedure](#)

PRACTICE AREAS

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether a warrantless law-enforcement search of a USB thumb drive following a private search was permissible under the private-search doctrine.
2. Whether the private opening and limited viewing of the USB thumb drive eliminated defendant's reasonable expectation of privacy in the device's entire contents.
3. Whether the Court of Appeals properly remanded for the trial court to determine probable cause after excising evidence obtained through the warrantless search.

HOLDINGS

1. A private party's limited search of a digital storage device does not automatically eliminate the owner's reasonable expectation of privacy in the device's entire contents. Under the private-search doctrine, a warrantless follow-up search is permissible only to the extent it does not exceed the scope of the private search and the officer has virtual certainty that the inspection will reveal nothing more than what the private searcher already revealed. Because the State failed to establish that limitation, the detective's warrantless search was unlawful.
2. Evidence obtained through the detective's unlawful warrantless search could not be used to support the subsequent search-warrant application.

KEY QUOTATIONS

"We cannot agree that the mere opening of a thumb drive and the viewing of as little as one file automatically renders the entirety of the device's contents "now nonprivate information" no longer afforded any protection by the Fourth Amendment." (at 669-670)

"Accordingly, the extent to which an individual's expectation of privacy in the contents of an electronic storage device is frustrated depends upon the extent of the private search and the nature of the device and its contents." (at 670-671)

"It is clear that Ms. Jones's limited search did not frustrate defendant's legitimate expectation of privacy in the entire contents of his thumb drive and that Detective Bailey's follow-up search to locate the image of Sandy was not permissible under Jacobsen because he did not possess "a virtual certainty that nothing else of significance was in the [thumb drive] and that a manual inspection of the [thumb drive] and its contents would not tell him anything more than he already had been told" by Jones." (at 671)

FACTUAL BACKGROUND

A private individual searched defendant's USB thumb drive and found an image of her partially nude nine-year-old granddaughter, then delivered the drive to law enforcement. A detective conducted a warrantless search to locate the reported image and, while navigating the drive, viewed additional incriminating images in a different folder. The detective later obtained a warrant for a forensic examination, which uncovered additional deleted

images. The trial court denied suppression, finding that the detective's search did not exceed the scope of the private search.

PROCEDURAL HISTORY

The trial court denied defendant's motion to suppress evidence obtained from a warrantless police search of his USB thumb drive and later convicted him of multiple child-sexual-exploitation offenses and a secret-peeping offense. The Court of Appeals reversed in part, holding that the warrantless search exceeded the private-search doctrine and remanding for a determination whether probable cause existed after excising the tainted evidence. The Supreme Court of North Carolina affirmed the Court of Appeals and left its remand decision undisturbed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Court of Appeals' remand remains undisturbed: the trial court must determine in the first instance whether probable cause existed to issue the search warrant after excising from the warrant application the tainted evidence obtained through the unlawful warrantless search.

CASES CITED

- United States v. Jacobsen, 466 U.S. 109 (1984)
- United States v. Runyan, 275 F.3d 449 (5th Cir. 2001)
- Rann v. Atchison, 689 F.3d 832 (7th Cir. 2012)
- United States v. Lichtenberger, 786 F.3d 478 (6th Cir. 2015)
- United States v. Sparks, 806 F.3d 1323 (11th Cir. 2015)
- United States v. Ackerman, 831 F.3d 1292 (10th Cir. 2016)
- Riley v. California, 573 U.S. 373, 134 S. Ct. 2473 (2014)
- State v. McKinney, 361 N.C. 53, 637 S.E.2d 868 (2006)
- State v. Biber, 365 N.C. 162, 712 S.E.2d 874 (2011)
- State v. Robinson, 187 N.C. App. 795, 653 S.E.2d 889 (2007)
- State v. Lowe, 369 N.C. 360, 794 S.E.2d 282 (2016)
- United States v. Karo, 468 U.S. 705 (1984)
- State v. Cooke, 306 N.C. 132, 291 S.E.2d 618 (1982)
- United States v. Ross, 456 U.S. 798 (1982)
- State v. Riggs, 328 N.C. 213, 400 S.E.2d 429 (1991)
- State v. Arrington, 311 N.C. 633, 319 S.E.2d 254 (1984)
- United States v. Walter, 447 U.S. 649 (1980)
- State v. McCollum, 334 N.C. 208, 433 S.E.2d 144 (1993)
- State v. Romano, 369 N.C. 678, 800 S.E.2d 644 (2017)

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