

SUPREME COURT

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Case decided March 26, 2026.

State of Oregon v. Randall De Witt Simons (CC 19CR43543) (CA A177032) (SC S070787)

On review from the Court of Appeals in an appeal from the Lane County Circuit Court, Karrie K. McIntyre, Judge. 329 Or App 506, 540 P3d 1130 (2023). The decision of the Court of Appeals is reversed in part. The judgment of the circuit court is reversed, and the case is remanded to the circuit court for further proceedings. Opinion of the Court by Justice Bronson D. James. Justice Stephen K. Bushong concurred in part and dissented in part and filed an opinion.

Today, the Oregon Supreme Court held that Article I, section 9, of the Oregon Constitution recognizes a right to privacy in one's internet browsing activities and, further, that the right is not extinguished by the fact that a person uses a publicly accessible wireless (Wi-Fi) network, even where that access is conditioned on their acceptance of a terms-of-service provision indicating that the provider may monitor activity and cooperate with law enforcement.

Defendant accessed the internet using a public Wi-Fi network operated by a local business for the benefit of its visitors. Use of that network required users to acknowledge a terms-of-service provision that the business owner might monitor activity and cooperate with law enforcement. When the business owner discovered suspicious activity by a particular user on the network, the owner reported the same to law enforcement. The investigating officer rejected the owner's offer to exclude the user from the network and, instead, instructed him to continue tracking the user's internet activities to determine his location. For over a year, and without ever securing a warrant, law enforcement directed the business to track, log, and report to the investigating officer all of the user's internet activity. Relying in part on information obtained over that time, law enforcement eventually sought and obtained a warrant to search the laptop in defendant's home. Defendant was thereafter arrested and charged with multiple counts of encouraging child sexual abuse. Defendant moved to controvert the warrant and to suppress the evidence obtained, arguing that the business was a state actor for purposes of

Article I, section 9, and that its year-long warrantless surveillance was an unconstitutional, warrantless search attributable to the state. The trial court denied defendant's motion and, following a stipulated facts trial, convicted defendant as charged. The Court of Appeals affirmed in part, reasoning that defendant had no cognizable privacy interest in his internet activities performed on a third-party network. It nevertheless reversed the trial court, in part, on a separate ground to which the state had conceded error.

In an opinion by Justice Bronson D. James, the Supreme Court reversed in part. The Court first explained that the focus of Article I, section 9, is not on individual expectations of privacy but, rather, on the expectations that society sets for government conduct. Acknowledging the practical reality that internet access necessarily involves some risk of third-party disclosure to one's internet service provider, the Court reasoned that the mere fact that a person accesses the internet through a public network does not eliminate their Article I, section 9, right to privacy in their online activities. That is so, the Court explained, even when access is expressly conditioned on a user's acceptance of terms-of-service provisions purporting to alert the user that the provider may monitor activity and cooperate with law enforcement.

The Court held that the state's year-long warrantless surveillance of defendant's internet activities was a "search" for purposes of Article I, section 9. Accordingly, the Court concluded that the trial court erred in denying defendant's motion to suppress, and the Court of Appeals erred in affirming that ruling. The Court therefore reversed that aspect of the Court of Appeals' decision, reversed the judgment of the circuit court, and remanded the case to the circuit court for further proceedings.

Justice Stephen K. Bushong concurred in part and dissented in part. Justice Bushong disagreed with the majority's conclusion that defendant had a constitutionally protected privacy right to use the business' Wi-Fi network under the Court's "traditional" analytical approach for determining when a search has occurred under Article I, section 9. He would have affirmed the Court of Appeals using that approach. He suggested, however, that the Court should reconsider its approach -- in an appropriate future case -- to what constitutes a "search" under Article I, section 9. Applying a new approach for determining what constitutes a search, he agreed with the majority's ultimate conclusion that the police's year-long surveillance of defendant's internet activities without a warrant violated Article I, section 9, of the Oregon Constitution.