

SIXTH CIRCUIT: NO REASONABLE EXPECTATION OF PRIVACY IN CREDIT CARD MAGNETIC STRIPS

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There is no reasonable expectation of privacy in the information stored in magnetic strips on the backs of credit, debit and gift cards, the Sixth Circuit recently held.

On May 23, 2013, police arrested driver Mamadou Bah for driving on a suspended license. They detained Bah's passenger and searched Bah's rental vehicle without a warrant. That search uncovered 72 credit, debit, and gift cards.

One officer used a magnetic card reader, called a "skimmer," to read the information encoded on the magnetic strips of 18 of those cards, revealing that a "majority, if not all" of the magnetic strips had been re-encoded so that the financial information they contained did not match the information printed on the front and backs of their respective cards. Later analysis of the cards from Bah's vehicle revealed the re-encoded account numbers had been either stolen or compromised, and a number of the associated accounts already had incurred fraudulent charges.

Bah was charged with production, use or trafficking in counterfeit access devices, and later indicted. He lost a motion to suppress the card evidence in his district court proceeding, entered a conditional guilty plea, and appealed to the U.S. Court of Appeals for the Sixth Circuit, contending, in part, that the warrantless search of the cards violated his Fourth Amendment right against "unreasonable searches and seizures."

The Sixth Circuit explained the scans of the magnetic strips on the cards found in Bah's vehicle was reasonable, and thus not prohibited by the Fourth Amendment, for two primary reasons. First, the scans did not involve any physical intrusion or penetration. Second, Bah did not hold a *reasonable* expectation of privacy in the magnetic strips, as the information on those strips largely mirrors the information printed on the front and back of the cards and the strips are routinely read by private parties at points of sale. Thus, the court held, "such expectation of privacy is not one that society is prepared to consider reasonable."

In analyzing whether a reasonable expectation of privacy in the magnetic strips exist, the court concluded that, "[t]he question presented here lies at the intersection between the principle that there is no legitimate privacy interest in already-known information, and no legitimate privacy interest in contraband." Thus, "when law enforcement has lawful physical possession of the credit, debit and gift cards...there is no separate privacy interest in the magnetic strip beyond that in the cards themselves."

Read the full case: [U.S. v. Bah](#)

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