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**An Oregon woman's nude cellphone photos ended up the talk of town. She tracked it back to the DA**

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The appellate court blasted Grant County District Attorney Jim Carpenter's claim that his actions comported with longstanding practices of electronic data sharing between law enforcement agencies, calling it "devoid of any supporting authority." TNS



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By [Maxine Bernstein | The Oregonian/OregonLive](#)

An Oregon woman's nude photos ended up the topic of conversation in her small town after a prosecutor looked through her sensitive cellphone data and told the county sheriff what he found despite no warrant, no consent and no suspicion that she had committed a crime.

But the district attorney involved won't face legal consequences under a federal appeals court ruling released Monday.

A three-judge panel of the 9th U.S. Circuit Court of Appeals [ruled 2-to-1](#) that Grant County District Attorney Jim Carpenter's actions amounted to "a troubling example of the intrusion on Fourth Amendment rights" against illegal searches.

But all three judges upheld a lower court's decision to grant Carpenter qualified immunity and dismiss the woman's lawsuit.

Under qualified immunity, government officials can be held accountable for violating someone's rights only if a court has previously ruled that it was "clearly established" those precise actions were unconstitutional.

Carpenter declined to comment on the ruling.

A lawyer for the woman said the decision, while disappointing because it allows no remedy for her client, still shines a light on the improper behavior by law enforcement officials and will help others.

The ruling puts prosecutors and police on notice that similar actions in the future would violate the Constitution and they could face liability, said attorney Nadia Dahab.

"Opinions like this are important for the development of the law and for people who suffer harms like she did in the future to be able to hold public officials accountable," Dahab said. "This makes it harder for officials to engage in this kind of conduct and to raise a qualified immunity defense down the road."

Qualified immunity has faced widespread criticism from victims who argue that it protects police and government officials from civil liability when they violate an individual's constitutional rights. Victims of police misconduct and their families often spend years in court to seek justice only for officers to be shielded by qualified immunity, their lawyers have argued.

Dahab represents Haley Olson, who runs a marijuana dispensary store in John Day, population 1,660.

Olson's case began when she was pulled over and arrested in Jerome County, Idaho, on Jan. 22, 2019, and charged with possessing marijuana.

Recreational marijuana use is legal in Oregon but not in Idaho.

Olson told the Idaho State Police trooper during the stop that her boyfriend was a sheriff's deputy and police also found a business card for Grant County sheriff's Deputy Tyler Smith in Olson's car, according to the appellate opinion.

Olson signed a form, giving Idaho police consent to search her cellphone. They extracted and copied the contents of her phone for review. Idaho authorities later dropped charges against her.

But Glenn Palmer, the Grant County sheriff at the time, had called the Idaho trooper who handled Olson's case shortly after her arrest. Palmer had apparently heard about the arrest from another sheriff's office employee and was "curious" about whether Olson's phone might reveal misconduct on Smith's part, the appellate court wrote.

Palmer learned during the conversation that the deputy's card had been discovered in Olson's car and asked the Idaho trooper to share the contents of Olson's phone, but Idaho authorities rejected his request, according to the opinion.

Palmer then asked the district attorney to request the contents of Olson's cellphone from Idaho police and review the material.

Palmer was allegedly concerned that his deputy "might be involved in illegal activities with Olson" that would require an internal investigation, the ruling said.

Carpenter wrote to a prosecutor in the Jerome County District Attorney's Office, saying the phone extraction "will be used only for internal purposes" and wouldn't be disseminated to another agency or third party, according to the ruling.

An Idaho prosecutor then shared a flash drive containing the contents of Olson's phone with Carpenter.

Carpenter immediately violated his pledge to Idaho police and asked detectives from two outside agencies, the Oregon State Police and the Deschutes County Sheriff's Office, to review the flash drive material, according to the appellate opinion.

Both agencies declined, because it wasn't tied to a criminal investigation, the opinion said.

Carpenter reviewed the phone contents himself in April 2019, found nude photos of both Olson and Smith and contacted the sheriff to tell him that the phone showed evidence of an intimate relationship between Smith and Olson, the ruling said.

But Carpenter added in his letter to the sheriff that he found no evidence of misconduct by Smith on the phone, according to court records.

Olson argued in her lawsuit that the district attorney shared the nude photos with the sheriff, but both Carpenter and Palmer denied those allegations.

Yet Palmer testified in his deposition that Carpenter twice offered him a copy of the thumb drive and told him, "There were things on the cell phone that, 'once you see them, you can't unsee them,'" according to the ruling.

Olson said she started hearing gossip regarding her arrest, the examination of her phone, her relationship with Smith and the nude photos -- "all seemingly originating from the sheriff's office," the opinion said.

Olson said a Grant County deputy whom she didn't know came into her marijuana store and told her that he had heard "there's some pretty smokin' pictures of you going around the sheriff's office," the appeals court wrote

Another witness reported observing two sheriff's employees looking at nude photos of Olson on a phone, according to the opinion.

One of Olson's customers asked her, "What happened to ya out in Idaho? Palmer told me you got arrested" and later said he had heard something about the contents on her phone, according to court records.

Olson sued Palmer, Carpenter and Grant County in federal court, alleging violation of her Fourth Amendment right to be free from an unreasonable search and 14th Amendment right to privacy.

U.S. District Judge Karin J. Immergut of Portland threw out the case, finding that Carpenter was entitled to qualified immunity and that Palmer had no "supervisory liability" because she found no evidence that the sheriff had reviewed the cellphone material or supervised Carpenter.

But 9th Circuit Judge M. Margaret McKeown determined Carpenter's review of the cellphone material was an unreasonable search, considering it was done "without consent, without a warrant and without even a suspicion of further criminal activity by Olson or even Smith."

McKeown, writing for the majority, said the Idaho State Police consent form that Olson signed didn't extend to a search of the phone by a different law enforcement agency "in another state, for evidence of her boyfriend's theoretical misdeeds."

Although Palmer denied seeing or sharing the contents of Olson's phone with members of the public, Olson's allegations that strangers made derogatory comments to her regarding the circulation of her nude photos "also support the claim that Olson's private information was shared far beyond the scope of her original consent," McKeown wrote.

"Palmer was 'curious' about whether Olson's phone might reveal misconduct on Smith's part, and Carpenter was interested in reviewing the phone for possible Brady material in cases where Smith might testify," the opinion said.

Under the landmark 1963 U.S. Supreme Court ruling in *Brady v. Maryland*, police must inform prosecutors about an officer's potential credibility problems on the witness stand or the need to turn over information that might be favorable to defense attorneys in a case.

"But neither Palmer's curiosity nor Carpenter's improbable search for Brady material for some hypothetical future investigation justifies expanding the consent form's express scope," McKeown wrote.

McKeown found Carpenter's explanation for his search of the phone material unbelievable.

"It defies common sense to hypothesize a potential Brady complication when there has been no prosecution, no investigation, nor even a whiff of criminal activity," she wrote.

The 9th Circuit panel also blasted Carpenter's claim that his actions comported with longstanding practices of electronic data sharing between law enforcement agencies, calling it "devoid of any supporting authority."

Jill Conbere, the Oregon Justice Department lawyer who defended Carpenter in the case, argued that information sharing between law enforcement agencies "is standard practice in many contexts."

Conbere said Carpenter wasn't required to get a warrant before accessing the phone data because Olson had given Idaho State Police consent to search her phone.

Yet the 9th Circuit's majority ruling noted, "At every turn, Carpenter and Palmer were stymied by other law enforcement personnel or agencies in both Idaho and Oregon that refused to aid them. The Idaho state trooper declined to give Palmer the extraction of Olson's phone, and the other criminal investigation agencies in Oregon declined to review the data when asked by Carpenter, because there were no allegations of a crime, and therefore nothing for them to investigate."

In a separate concurring 9th Circuit opinion, Circuit Judge Daniel A. Bress agreed that the court should uphold the trial court's granting of immunity and dismissal of the claims. But he wrote that the panel should have simply affirmed the lower court ruling and not gone on to find a constitutional violation.

It's unclear, Bress wrote, whether Idaho authorities are more at fault, for example. "In my respectful view, prudence here dictated that we decide only what we needed to decide," he wrote.

Later in 2019 in an unrelated case, Smith was fired from the sheriff's office after his arrest on alleged assault and sex abuse complaints.

He was acquitted of all charges in 2022, and argued in a federal whistleblower complaint that Palmer retaliated against him for reporting misconduct involving another sheriff's deputy, who was the wife of Palmer's undersheriff. Smith obtained more than \$1.3 million from Grant County and the state of Oregon in a series of settlements after challenging his firing in the whistleblower complaint, the [Blue Mountain Eagle](#) reported. Smith now works as a private investigator.

Palmer lost re-election as sheriff in 2020

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