DPS Legal Review

June 2014 Legal Services (404) 624-7423 Volume 13 No. 6

US SUPREME COURT: WARRANTLESS CELLPHONE SEARCH

The Court addressed the question (using the facts of two different cases) of whether the police may, without a warrant, search digital information on a cell phone seized from an individual who had been arrested. In the first case, a police officer stopped the defendant for driving with expired registration tags. During the traffic stop, the officer learned the defendant's license was suspended. The defendant's car was impounded and another officer conducted an inventory search of the car. The officer found two handguns under the car's hood. The defendant was arrested for possession of concealed and loaded firearms. The officer searched the defendant's person and found items associated with the "Bloods" street gang. The officer seized the defendant's "smartphone" cell phone from the defendant's pants pocket. The officer accessed the phone's information and noticed words relating to the street gang. Two hours after the defendant's arrest, a detective specializing in gangs further examined the defendant's phone and found photographs of the defendant standing in front of a car law enforcement suspected had been involved in a shooting a few weeks earlier. The defendant was charged with firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder and subsequently, convicted on all three counts. The defendant filed a motion to suppress the evidence contending that the searches of his phone violated the Fourth Amendment.

In the second case, a police officer performing routine surveillance observed the defendant make an apparent drug sale from a car. The officer arrested the defendant and two cell phones were seized from him at the police station. Five to ten minutes after arriving at the station, officers noticed the phone was repeatedly receiving calls from a source identified as "my house" on the phone's screen. The officers opened the phone and pressed a button to access its call log to determine the phone number associated with "my house." The officers used an online phone directory to trace the phone number to an apartment building. The officers went to the building and located the defendant's apartment. The officers obtained a search warrant and searched the apartment. 215 grams of crack cocaine, marijuana, drug paraphernalia, a firearm and ammunition, and cash were discovered at and seized from the defendant's apartment. The defendant was charged with distributing crack cocaine, possessing crack cocaine with intent to distribute, and being a felon in possession of a firearm and ammunition. The defendant filed a motion to suppress the evidence arguing that it was the fruit of an unconstitutional search of his cell phone.

HOLDING: The Court held that, under the Fourth Amendment, the police generally may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested as incident to arrest.

At issue is the reasonableness of the searches under the Fourth Amendment and the Court recognized that a warrantless search is reasonable only if it falls within a specific exception to the Fourth Amendment's warrant requirement. The Court makes the determination whether to exempt a given type of search from the warrant requirement "by assessing […] the degree to which it intrudes upon an individual's privacy, and […] the degree to which it is needed for the promotion of legitimate government interests." The Court relied on three of its cases to analyze the reasonableness of the cell phone searches. In Chimel v. California, the Court held that a search incident to arrest must be limited to the area within the arrestee's immediate control, where it is justified by the interests of officer safety and in preventing evidence destruction; in United States v. Robinson, the Court held that the interests in officer safety and in preventing evidence destruction from Chimel are present in all custodial arrests; and finally, in Arizona v. Gant, the Court held the risks in Chimel could authorize the police to search a vehicle "only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search."

Based on the facts in the two cases, the Court reasoned that digital data on a cell phone cannot be used as a weapon that would hinder an officer's safety and that once an individual is arrested there is no longer any risk that the arrestee will be able to destroy any evidence. The Court extensively discussed the intrusion of privacy concerns that the search of digital data on a cell phone implicates based upon its storage capacity, duration of storage, and remote storage capabilities.

The Court noted that its ruling did not make information on a cell phone immune from search as

there may be situations in which exigent circumstances may still justify a warrantless search of a particular phone. In analyzing the exigent circumstances exception, a court would be required to examine whether an emergency justified a warrantless search in each particular case. Such exigencies could include the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury. Riley v. California, ---S.Ct.---, 2014 WL 2864483 (U.S.).

ALS DECISION AS EVIDENCE IN CRIMINAL TRIAL

On July 11, 2009, a police officer observed a black Lincoln Mark LT make a turn and cross halfway across the double yellow line before drifting back to the right and crossing the white line. The officer followed the vehicle and observed other instances of slow weaving. The officer initiated a traffic stop. When the officer approached the defendant's vehicle, he detected a "moderate" odor of alcohol coming from the vehicle and observed the defendant's eyes were "glassy and droopy." The defendant admitted that he had consumed two to three beers that evening. Based on the totality of the circumstances, including the tests conducted by and the observations of the officer, the defendant was arrested for driving under the influence of alcohol.

Upon the defendant's arrest, the officer read him the Georgia Implied Consent Notice. The defendant refused to consent to a state-administered test of his breath. Subsequently, the defendant had an administrative license suspension (ALS) hearing at which, in exchange for pleading guilty to the DUI charge, the defendant would be permitted to keep his license. The final decision provided: "This withdrawal is based on an agreement between the arresting officer and [defendant]. In exchange for the arresting officer's withdrawal of this sworn report, [defendant] shall enter a plea of guilty to the underlying charge of violating O.C.G.A. § 40–6–391. The parties agree that a copy of this final decision may be admitted into any subsequent legal proceeding involving the charge as an admission by [defendant] of [defendant's] guilt or nolo contendere in exchange for the rescission of the administrative license suspension. The parties further agree that if [defendant] fails to enter the required plea, this order may be voided and the sworn report refiled with the [Department of Driver Services]."

The ALS final decision was signed by the officer and the defendant's attorney. At trial for his charge, the State admitted the officer's video of the stop and, over the defendant's objection, the final decision from the ALS suspension hearing. The defendant was convicted of driving under the influence of alcohol less safe and failure to maintain lane. The evidence was sufficient to authorize a rational trier of fact to find the defendant guilty beyond a reasonable doubt of the crimes for which the defendant was convicted. The defendant appealed arguing that the trial court erred in allowing the State to introduce the ALS final decision into evidence at his criminal jury trial.

HOLDING: The Court held the ALS decision was properly allowed at the defendant's criminal jury trial. The defendant argued that the courts have a long-standing prohibition against introducing evidence from an ALS hearing and that the decision was extremely suggestive and prejudicial. The Court dismissed the defendant's first argument by applying general law regarding a party's admissions and stipulations in criminal proceedings. "The general rule as to stipulations is that once made in the course of judicial proceedings an estoppel results unless the complaining party can show fraud or mistake." In this case, the defendant did not claim either fraud or mistake or repudiate his counsel's authority to make the stipulation and he accepted the benefit of the stipulation.

The Court applied the new Georgia Rules of Evidence to dismiss the defendant's second argument. O.C.G.A. §24-4-403 provides that "relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence." The Court concluded that the ALS final decision was properly allowed as evidence as the final decision was not introduced by the State for the sake of its prejudicial effect. Flading v. State, 2014 WL 2119086 (Ga.App.).

ALS REMINDERS

- If a petitioner enters into an agreement at the ALS hearing whereby the petitioner agrees to plead guilty to DUI in exchange for withdrawal of the ALS proceeding and then fails to abide by the ALS plea agreement by requesting a trial, take a copy of the agreement with you to the trial. A copy of the final decision on the ALS case can be obtained from the OSAH website at www.osah.ga.gov. You will need the docket number, the petitioner's zip code, and you will need to know if the petitioner was represented by an attorney. You may also contact Dee to obtain a copy of the final ALS decision.

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