8th Circuit â?? Cell Phone Search â?? United States v. Suellentrop

Description

It should come as no surprise to any of you that a citizenâ??s protection against unreasonable searches under the 4th Amendment extends to his or her cell phone. Over 5 years ago in *Riley v California*, the US Supreme Court determined that the modern cell phone â??has several interrelated consequences for privacyâ?•. As you probably remember, in the *Riley* case officers searched information on Rileyâ??s cell phone during a traffic stop. Information gleaned from the cell phone without the aid of a search warrant led to Rileyâ??s arrest for a gang-related shooting. The California Appellate Court ruled that the police could conduct a warrantless search of the cell phone incident to an arrest. SCOTUS disagreed, determining that the privacy interest inherent in the large volumes of information stored on our phones requires officers to get a warrant.

Todayâ??s case deals with an incident where the police are not responsible for the initial search of the defendantâ??s phone; rather, the defendantâ??s friend was using the phone, with permission, and came upon some child pornography. The question today then becomes *is the evidence admissible when the initial warrantless search is conducted by a private citizen as opposed to a government actor?* Letâ??s see what the 8th Circuit had to say.

FACTS

The defendant lived in his parentsâ?? Missouri home with his girlfriend and infant daughter. A friend, Paul Donnelly, lived in a trailer behind the house. At trial Donnelly testified that he â??freely accessedâ?• the house and occasionally used the defendantâ??s cell phone.

One morning Donnelly entered the house, went in to the defendantâ??s bedroom and removed the defendantâ??s cell phone. Donnelly made several calls on the phone and then checked several Facebook accounts. As Donnelly scrolled through the phone, he found a number of pornographic images involving the infant daughter and immediately informed the police.

Deputy Roberts arrived at the home and Donnelly showed the officer one photograph. Roberts turned off the phone and put it into his pocket. The Deputy interviewed the defendant, who admitted to having methamphetamine in the house, but did not admit to any photographs. A detective arrived on scene and contacted the local prosecutor for assistance with securing a search warrant for the phone and residence.

The officers secured drug paraphernalia at the home but found no additional pornographic images in the house. Several weeks later a forensic examination of the phone uncovered a number of images of child pornography. Federal agents joined the case, secured a federal warrant for the phone, and conducted their own forensic examination which uncovered additional images.

Suellentrop was indicted on seven counts of child pornography and, prior to trial, the defendant filed a motion to suppress the photos claiming the initial search and seizure of the phone violated his 4th Amendment protections. The motion was denied, the defendant entered a conditional guilty plea, and was sentenced to 120 years. This appeal followed.

Eighth Circuit Findings

On appeal, Suellentrop agreed that he had allowed Donnelly to use his phone in the past and that he did not dispute that Donnelly was acting on his own when he used the phone on the morning in question. However, the defendant claims that once Donnelly opened the phone and showed the image to the Deputy he was acting as an agent of the state and, therefore, the viewing violated his 4th Amendment protections.

The 8th Circuit disagreed, finding that Donnellyâ??s initial viewing of the images had already occurred and the subsequent viewing by the officer was limited to those images already viewed by Donnelly. Citing prior 8th Circuit cases, the court found that â??the Fourth Amendment does not forbid the government to reexamine the same materials as long as agents go no further than the private search.â•

Next Suellentrop argued that the phone had already been seized at the point the warrant was issued and therefore did not fall under the purview of things to be seized under the warrant. The warrant authorized investigators to search for â??DVDs, CDs, video cassettes, mass storage devices (i.e., hard drives, computers, jump drives, etc) and photographs of victim(s)â• at Suellentropâ??s residence. Investigators also were directed â??to search the computers, cameras, storage devices, and electronic devices seized by you, including any files that are password-protected or encrypted,â• for evidence of child pornography. The court determined this to be an â??honest mistakeâ• noting that the detective had conferred with the prosecutor and understood the phone to be within the scope of the warrant.

The court noted that â??while the warrant was not a model of clarityâ• it was reasonable for the officers to believe the search of the phone was within the scope of the warrant and the trial court judgment was affirmed.

Takeaways

It is important that officers understand their agency policies with respect to the seizure and storage of electronic devices. Suspects involved in child pornography and other electronically-driven crimes are known to build special programs into their devices that can erase images or apps. In this case the officer turned the phone off and put it in his pocket. Just the action of turning off the phone or even the static charge that comes with carrying the phone in your pocket may cause the loss of important evidence.

It is also important, as this case tells us, to be sure to document exactly how you come upon evidence given to you by a private citizen. This will prevent any later claim that the citizen was acting at your behest.

Date Created
01/26/2021