

10-01: Obtaining Historical Cell Site Information Under Florida Law

Case: Mitchell v. State, 35 Fla. L. Weekly D63a (Fla. 4th DCA)

Date: December 30, 2009

Subject: Obtaining Historical Cell Site Information Under Florida Law

FACTS: The crime in this matter was a home invasion robbery of an elderly couple. The male robbery victim was taken to the hospital, and the female robbery victim suffered a heart attack later on the same date. The defendant was arrested after his daughter called police and indicated he had admitted his crime. The State issued a subpoena to obtain historical cell site information, to see if defendant's cellular telephone had communicated with cell site towers near the robbery location around the time of the crime. The defendant moved to suppress the evidence obtained by subpoena, arguing it did not comply with Florida Statute 934.23, which mandates the use of a court order. The trial court suppressed the subpoena, but found that the language in Florida Statute 934.23(4)(a) was virtually the same as language in 18 U.S.C. §§ 2701 et seq., and allowed the State to obtain and introduce the records by court order. The defendant argued on appeal that the trial court improperly let the State introduce the records, because they were first obtained contrary to Florida Statute 934.23. He also argued that search and seizure of the records was improper, as no probable cause search warrant was obtained.

RULING: Since Florida Statute 934.23, dealing with access to customer communication records, is so similar to 18 United States Code 2703, the Florida 4th DCA adopted the reasoning of a Massachusetts court which, when faced with a similar issue, held that historical cell site information was obtainable through a court order issued per 2703(c)(1)(B) and (d) of 18 U.S.C.

The 4th DCA found that historical cell site data is contemplated by F.S. 934.23 and obtainable by court order, because it does not reveal communications content, and cell phone users have no expectation of privacy in such records. The data shows past location(s), not a current private location and does not implicate Fourth Amendment protections. The court found no harm in allowing the State a second chance to comply with the statute. The case establishes that the threshold for such a cell site court order is the "specific and articulable facts" standard found in F.S. 934.23(5), rather than the higher probable cause search warrant standard.

NOTE: This case involved an area of law that is rapidly evolving. Existing statutes do not always clearly address such new technology-related issues. This was a case of first impression in the Florida. In this case, the required court order was allowed to be obtained after suppression of the insufficient subpoena; this is not always legally possible and another judge might not allow the state the option to "correct" its actions. This case may help to establish the Florida standard for obtaining historical cell site data; however, be aware that other courts have come to different conclusions with similar facts. The topic area, possible changes in federal or state law to clarify standards, as well as future analysis by Florida courts bear watching.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.