

13-04: Search of a Cell Phone during Lawful Arrest

FACTS: The defendant, Cedric Smallwood, was suspected of robbing a convenience store. The investigating officer obtained a valid warrant for Smallwood's arrest. The officers arrested Smallwood, and found a cellphone on or near his person. The officers seized the cellphone incident to the lawful arrest. The investigating officer then examined the phone without a search warrant. While searching the phone, the officer found pictures of cash and firearms that tended to link Smallwood to the robbery. The officer did not inform the prosecutor of the search or the pictures until a year later, when Smallwood was preparing for trial. When the prosecutor learned of the search, he immediately obtained a search warrant for the phone.

Smallwood asked the trial court to suppress the photos, arguing that the officer improperly searched his phone without a warrant. The trial judge denied the motion, and Smallwood proceeded to trial. At trial, the investigating officer testified that it is common for suspects to have incriminating pictures on their phone, and that he searched the phone to determine if any such images would be found in this case. Ultimately, Smallwood was convicted of robbery with a firearm, and the First District Court of Appeals affirmed his conviction. However, the Florida Supreme Court overturned the conviction by ruling that Smallwood's phone was illegally searched without a warrant.

RULING: During a lawful arrest, an officer can seize a cellphone from the person being arrested; however, the officer cannot examine the phone without a search warrant, unless the officer obtains the suspect's consent or a genuine exigency exists.

DISCUSSION: As a general rule, searches should not occur without a warrant. The rule contains several exceptions, one of which is a "search incident to arrest." During a lawful arrest, an officer can search the arrestee for weapons, contraband, or evidence that may be concealed. This rule enhances officer safety, and it prevents the suspect from destroying evidence. In this case, the suspect was lawfully arrested pursuant to an arrest warrant. Therefore, the officers could lawfully *seize* the suspect's phone to prevent him from erasing the data. However, a lawful arrest does not, by itself, entitle the officer to *search* or examine the phone. In most cases, a search warrant is needed before the phone can be searched.

NOTE: This opinion does not discuss or overrule the exceptions for consent or exigent circumstances. Officers can still examine a suspect's phone if the suspect voluntarily consents, or if the officer can articulate a serious exigency that prevents the officer from obtaining a warrant in time.

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