

12-04: Search of Suspect's Cellphone Incident to Arrest

Case: State v. Glasco, 37 Fla. L. Weekly D1414 (Fla. 5th DCA 2012).

Date: June 15, 2012

Subject: Search of a suspect's cellphone incident to arrest

FACTS: The defendant was lawfully arrested at his home on felony drug charges. After the defendant was handcuffed, but before he arrived at the jail, police found a cellphone on the defendant's person. After the defendant arrived at the police station, the officers examined the phone and read the defendant's text messages.

The officers did not have a search warrant for the phone. In addition, the officers admitted that they had no probable cause to believe that any contraband would be found on the phone and indicated that at the time they searched the phone, they were not afraid that the defendant would erase or destroy its contents.

The defendant moved to suppress the cellphone evidence, arguing that the police could not search the phone without a search warrant, consent, or at least probable cause to believe that relevant evidence would be found on the phone. The trial court agreed with the defense and suppressed the evidence. However, the appellate court reversed.

RULING: When a suspect is lawfully arrested some place other than a vehicle, police are allowed to seize and search a cellphone found on the suspect during the arrest. In those circumstances, the officers do not need a search warrant, consent, or any other justification for the search as it is a type of "search incident to a lawful arrest."

DISCUSSION: For almost forty years, the Supreme Court has held that officers, when making any lawful arrest, have the right to search any containers found on the arrestee. ("Search incident to a lawful arrest") A cellphone is like a briefcase or a notebook, and the law is clear that those items can be examined without a warrant when they are found on a person who is lawfully arrested. Although the Supreme Court recently placed some restrictions on searches of vehicles, those issues do not apply in this case because the phone was found on the suspect's person while he was at home. Unfortunately, this case does not indicate whether officers can search a cellphone found on arrestees if the person arrested was the occupant of a car.

NOTE: The Florida Supreme Court is currently reviewing the issue of warrantless cellphone searches incident to a lawful arrest. Until the Florida Supreme Court reaches a ruling, the law in Glasco is valid and binding across the state. However, the law on this topic is in flux, and could be changed at any time.

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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.