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**FLORIDA CASE LAW UPDATE 17-01**

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**Case:** State v. Stahl, 41 Fla. L. Weekly D2706 (Fla. 2<sup>nd</sup> DCA)

**Date:** December 7, 2016

**Subject:** Cell Phone Owner can be Compelled to Provide Password to Execute Search Warrant

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**FACTS:** Stahl was charged with video voyeurism, contrary to section 810.145(2)(c), F.S., after allegedly using his cell phone to record footage by placing it under a female's skirt while she was shopping. The victim noticed a man crouching down with what appeared to be a cellphone in his hand, holding the cell phone out and under her skirt. When the victim confronted Stahl, he said he dropped the phone and fled the store before the victim could summon assistance. Store surveillance footage showed a man crouching down holding an illuminated item toward the victim's skirt. Law enforcement was able to identify Stahl as the suspect after viewing inside and outside store video surveillance and researching his vehicle and DL information using his license plate number. During a post-arrest interview, Stahl admitted to being in the store, but denied using his phone inappropriately. Stahl initially consented to a search of his Apple iPhone 5, but he later withdrew his consent. Investigators obtained a search warrant to search the contents of Stahl's phone; however, they were unable to search its contents because the iPhone was protected by a passcode. Stahl refused to provide investigators with the passcode. The State did not know what operating system (iOS) was present on the phone and knew that depending on the iOS, certain attempts to unlock the phone could erase the phone's contents. Additionally, depending on the iOS, Apple would not be able to perform extractions because the phone's files would be protected by an encryption key tied to the user's passcode. The State filed a motion to compel Stahl to provide the password to investigators, which the trial court denied. In denying the motion, the trial court found that compelling the Defendant to provide his password would be a violation of his Fifth Amendment privilege against self-incrimination. In its ruling, the trial court held that forcing the defendant to disclose his cell phone password was testimonial and that the State had not shown any applicable exceptions to Stahl's Fifth Amendment privilege against self-incrimination.

**RULING:** The Second District Court of Appeal disagreed with the trial court, instead holding that requiring Stahl to provide the passcode to his iPhone did not violate his Fifth Amendment right against self-incrimination. The Second District Court of Appeal found that because the passcode combination was sought only for its content, and would not require Stahl to acknowledge that the phone contained evidence of video voyeurism, the passcode did not rise to the level of testimony within the protection of the Fifth Amendment.

**DISCUSSION:** The Second District discussed the fact that in order for a suspect to properly invoke his/her Fifth Amendment privilege, he/she must establish three things: 1. compulsion; 2. a testimonial communication or act; and 3. incrimination. Only the second prong, whether the passcode was the type of incriminating testimony that was protected by the Fifth Amendment, was at issue in this case. The Second District pointed out the fact that Stahl was being asked to provide the passcode to his phone—not the photographs or videos on the phone. The Second District stated that although the passcode allows the State to access the phone, and any potential evidence therein, the State already had a warrant to search the phone, which was known to be involved in the incident. The Second District found no legal distinction between whether an individual used a passcode or a fingerprint to lock a phone, stating, "[W]e are not inclined to believe that the Fifth Amendment should provide greater protection to individuals who passcode protect their iPhones with letter and number combinations than to individuals who use their fingerprint as a passcode. Compelling an individual to place his finger on the iPhone...[is] not unlike being compelled to provide a blood sample or provide a handwriting exemplar." Accordingly, the Second District held that the trial court departed from the requirements of law and quashed the trial court's order denying the State's motion to compel Stahl's iPhone password.

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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.**