Appellate Court Decisions - Week of 5/20/13

First Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

Nothing New.

First Circuit Court of Appeals

***United States v. Wurie*, No. 11-1792, 2013 WL 2129119 (C.A.1 (Mass.))**

Fourth Amendment: Search and Seizure: Warrants: Cell Phones

Full Decision: http://media.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=11-1792P.01A

A search of an individual's cell phone data as part of a lawful arrest, but without a warrant, exceeds the boundaries of the Fourth Amendment's search-incident-to-arrest exception.

Brima Wurie stopped in a parking lot of a convenience store and picked up a man named Fred Wade. A Police Detective performing routine surveillance the area saw Wurie and Wade engage in what he believed to be a drug sale in the car. The detective and another officer stopped Wade and found two baggies of crack cocaine in his pocket. Wade told the officers he bought the crack from "B," who was the man driving the car.

The detective notified a third officer who followed the car. After Wurie parked the car, the officer arrested him for distributing crack cocaine, read him *Miranda* warnings, and took him to the police station. At the station, police seized two cell phones, a set of keys, and $1,275 in cash from Wurie. Five to 10 minutes after Wurie arrived at the station, but before he was booked, two more officers noticed Wurrie was receiving repeated calls from the "my house" contact on his phone. Another five minutes passed, then the officers opened the phone to look at Wurie's call log.

Upon opening the phone, the officers saw a picture of a woman holding a baby as the background image on the phone's screen. Another button press allowed the officers to view Wurie's call log. Another button press allowed the officers to determine the number associated with the "my house" contact." An internet search allowed the police to determine the address associated with the "my house" number and that it was associated with a Manny Cristal.

At that point, the Detective gave Wurie the *Miranda* warnings again and then questioned him. Wurie, among other things, said he lived on a different street in a

different part of town from that discovered by the police, and denied stopping at the convenience store, having given anyone a ride, and having sold crack cocaine. The Detective suspected Wurie was a drug dealer and that he was lying, so he took Wurie's keys, and along with other officers, he went to the address associated with the "my house" cell phone contact. One of the mailboxes at the address had Wurie's and Cristal's names on it.

The police looked through a first-floor window and saw a woman who looked like the woman in the background photo of Wurie's phone. The officers entered the apartment to "freeze" it while they waited to obtain a search warrant. Inside the apartment, they found a child who resembled the child in the cell phone background photo. After getting the warrant, police found 215 grams of crack cocaine, a gun, ammo, four bags of marijuana, drug paraphernalia, and $250 in cash. Wurie was charged with possessing with intent to distribute and distributing cocaine base, and with being a felon in possession of a firearm and ammunition. His motion to suppress the evidence obtained as a result of the warrantless search of his cell phone was denied. He was found guilty on all counts and sentenced to 262 months in prison.

The First Circuit Court of Appeals held that "the search-incident-to-arrest exception does not authorize the warrantless search of data on a cell phone seized from an arrestee's person, because the government has not convinced us that such a search is ever necessary to protect arresting officers or preserve destructible evidence. [*See Chimel v. California*, 295 U.S. 752, 763 (1969).] Instead, warrantless cell phone data searches strike us as a convenient way for the police to obtain information related to a defendant's crime of arrest – or other, as yet undiscovered crimes – without having to secure a warrant. We find nothing in the Supreme Court's search-incident-to-arrest jurisprudence that sanctions such a 'general evidence-gathering search. (citation omitted)." The First Circuit, however, did leave the door open for exigent-circumstances searches of cell phone data.

The Supreme Court of Ohio also addressed this issue in *State v. Smith*, 920 N.E.2d 949 (Ohio 2009). It distinguished cell phones from other "closed containers" that have been found searchable incident to an arrest. It concluded that, because individuals have a high expectation of privacy in their cell phone contents, any search thereof must be conducted pursuant to a warrant. *Id.* at 955.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.