20-14 - Searching a Cell Phone Weeks After Consent Given United States v. Butler II

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services

SEARCHING A CELL PHONE WEEKS AFTER CONSENT GIVEN

UNITED STATES v. BUTLER II

The purpose of this newsletter is to inform personnel of the recent Supreme Court ruling (US v. Butler II) related to searching a cell phone for evidence weeks after consent was given.

CASE SUMMARY

James Thomas Butler II., was arrested for child pornography charges on May 2, 2018, and he gave consent to search his cell phone at that time. The actual search and recovery of evidence from his phone did not take place until June 26, 2018, and August 15, 2018.

In the Fourth Amendment, it is listed that a search should be “reasonable,” therefore probable cause must be presented to, and granted by a judge or magistrate, whenever a place is to be searched or persons or things to be seized. A warrant is needed for most search and seizure activities, but the court has determined a series of exceptions for consent searches, motor vehicle searches, evidence in plain view, and exigent circumstances.

Unlike other objects seized, cell phones require separate authorization to search its contents. The Supreme Court found that because of the magnitude of personal information stored on cell phones, law enforcement would be required to obtain a warrant to search a cell phone in a lawfully-seized incident to arrest (Riley v. California). However, consent to search a cell phone can be given. In Butler’s case, he gave the FBI consent and never attempted to withdraw his consent. This consequently made the FBI’s search legal and Butler’s motion to suppress denied.

Butler argued that the FBI waited too long to conduct a search of his cell phone; the court determined that the delay was not so unreasonable as to violate the Fourth Amendment. Butler never revoked his consent to the search, and the government had a legitimate interest in searching the cell phone since Butler admitted to using the cell phone to view pornography.

Conclusion

Butler gave consent to search his cell phone which made the search reasonable. However, the Supreme Court recommends getting a warrant whenever a time lapse will occur and exigency does not exist. Absent a warrant, law enforcement may have to provide satisfactory probable cause and explanation for a delay in conducting a forensic examination. Based on the facts in this case, obtaining a warrant to search the contents of a cell phone would not have been problematic or affect the evidence in any way.

If you have any questions, please call or email Field Operations Support Services at [REDACTED TEXT].