

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Warrantless Search of Cell Phone Violates 4th Amendment

A case in Ohio's Supreme Court recently set forth a framework for protection against the unlawful search & seizure of a suspect's cell phone. The case hopefully signifies a legal trend that should will across the country, including Albuquerque and the remainder of New Mexico.

The case of *State v. Antwuan Smith* established a warrant requirement prior to the search of person's cell phone. This marks the first time that the Supreme Court of any state has addressed this issue.

It is well established that searches conducted without a warrant are presumed unreasonable. There are exceptions related to officer safety and preservation of evidence which allow the officer to search the area within the arrestee's immediate control. If there is no issue of officer safety or preservation of evidence, then the exception no longer applies. It is equally well established that an officer may search any containers or articles on the defendant' person such as purses. Law enforcement have attempted to equate a person's cell phone to a purse or in the alternative to argue that search of a cell phone is necessary for the preservation of evidence. The Supreme Court of Ohio has refuted these arguments.

The Court's analysis rested upon the classification of a cell phone. A 5th Circuit Court of Appeals case analogized a cell phone to a closed container in the possession of the accused. However, this ruling partly arose as a result of the defendant's legal theory which in part conceded the analogy. The United States District Court for Northern California suppressed the warrantless search of a cell phone. The court reasoned that cell phones are far more than communication devices. Instead, they store immense volumes of personal information and the court said they were more akin to laptop computers which have far greater privacy protections than do purses.

The Ohio court took the latter position. As a result, the evidence seized from the warrantless search of the cell phone was ordered suppressed. The court's ruling recognized that the defendant's phone was not a smart phone but rather a less sophisticated model with phone, texting and camera capabilities.

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The Ohio court stated that the 4th Amendment serves to protect the reasonable and justifiable expectations of privacy. The court found that citizens have reasonable expectation of the privacy of their cell phones. Moreover, there is no issue of officer safety or preservation of evidence that would suggest a warrantless search of a cell phone.

The law often trails behind the development of technology. The Ohio Supreme Court serves notice to law enforcement its own state as well those in other states that the warrantless search of cell phone which has become routine in criminal investigations will likely be challenged under the 4th Amendment. The issue is likely to become even more prevalent as many individuals now possess a variety of devices such as I-Pods, flash drives, and other devices capable of voluminous data storage.

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