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March 2025

Who Gets to Search a Cell Phone After Consent is Given?

Olson v. County of Grant, 127 F.4th 1193 (9Cir. 2025)

Background:

In 2019, Haley Olson, an Oregon resident, was pulled over and arrested in Idaho for marijuana possession. During the search of her car, officers found the business card of a Grant County, Oregon Deputy Sheriff.

Upon her arrest, Olson signed a consent form authorizing Idaho police to search her cell phone and the Idaho officers subsequently extracted the data based on her consent.

Grant County Sheriff, Glenn Palmer, heard about the arrest and, out of "curiosity" that the Deputy may have been involved in criminal activity, he sought Olson's extracted cell data from the Idaho agency.

Sheriff Palmer was denied access to the data, so he asked Grant County Prosecutor, Jim Carpenter, to get the extracted cell data from the Idaho police. Carpenter agreed and contacted the Idaho Prosecutor that was handling Olson's case and asked for the extracted data "to make sure there was no *Brady* material" that would need to be disclosed about the Deputy. The Prosecutor obliged and provided Carpenter with a full copy.

Carpenter reviewed the data and, while no evidence of criminal activity was found, there was evidence that Olson and the Deputy were engaged in an affair – including nude photos of both parties. Carpenter relayed this information to Sheriff Palmer and then testified that he deleted the data.

However, Olson became the subject of gossip regarding her arrest and her relationship with the Deputy, including the nude photos "all seemingly originating from the sheriff's office."

Olson sued Sheriff Palmer, Carpenter, and Grant County for violating her Fourth Amendment rights. The District Court granted summary judgment for the defendants holding that Olson did not have a claim against the parties.

Olson then filed this appeal in the Ninth Circuit Court of Appeals. Although the Ninth Circuit found that Olson's rights were indeed violated, because the law was not clearly established at the time, the Court upheld the lower court's decision.

Fourth Amendment Violation:

The Fourth Amendment prohibits unreasonable searches and seizures. In assessing whether government intrusion is a search, courts consider whether a person seeks to preserve something as private, and that expectation of privacy is one that society recognizes as reasonable.

The United State's Supreme Court answered this question in the case *Riley v. California* (2014), where it determined that reviewing the contents of a cell phone was a "search" under the Fourth Amendment and thus requires a warrant unless an exception, such as consent, applies.

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In this case, the Ninth Circuit determined the extracted data is "typically an exact replica of the data contained on a cell phone at the time of the extraction [and is] easily searchable and reviewable by law enforcement." Meaning – searching the phone and reviewing the data after its extracted are the same and "treating the two differently would introduce a gaping loophole in *Riley*'s warrant requirement."

Thus, Carpenter's review of Olson's extracted cell data was a Fourth Amendment search.

Olson's Consent to Search:

Carpenter argued there was no violation because Olson consented to the search. The Ninth Circuit disagreed. Relying on *United States v. Ward*, (9th Cir.1978), the Court emphasized the boundary of consent noting that "when the basis for the search is consent, the government must conform its examination to the limits of the consent."

In this case, Olson's consent was limited to the form she signed when she was arrested in Idaho. The consent form was titled "Idaho State Police Voluntary Consent to Search" and only authorized "Idaho State Police or its agent to conduct the search." The form did not authorize Idah police to share cell data with other law enforcement agencies for purposes unrelated to any criminal investigation and neither Carpenter nor Sheriff Palmer were acting as agents for Idaho police.

Additionally, Sheriff Palmer was "curious" about whether the phone might reveal the Deputy engaging in criminal activity and Carpenter was interested in reviewing for possible *Brady* material – neither justified expanding the scope of the consent form.

Therefore, Olson's voluntary consent to Idaho police did not extend to Carpenter or Sheriff Palmer.

Bottom Line:

In *Riley*, the Supreme Court held that because of "all they contain and all they may reveal" cell phones hold "the privacies of life" and therefore require a warrant before searching.

Although this case involves sharing extracted data among two different agencies, the Concurring Opinion noted there could be "questions about when law enforcement agencies may share information among themselves" as it pertains to searches under the Fourth Amendment.

Use your best judgment when seeking to review cell phone data. Get consent – or get a warrant!

Stay Safe and Informed!