

# Recent Case Report

Date posted: June 25, 2012

## People v. Rangel

(2012) \_\_ Cal.App.4th \_\_ [2012 WL 2149779]

### Issue

If a search warrant authorizes a search for indicia of gang activity, does it impliedly authorize a search of smartphones on the premises?

### Facts

In the course of an investigation into a felony assault in a local park, San Mateo police investigators developed probable cause to believe that the perpetrator was Eric Rangel, and that the crime was gang-related. Accordingly, they obtained a warrant to search Rangel's home for, among other things, "gang indicia"; i.e., items that would help prove that Rangel belonged to a certain gang. The warrant identified such items as including "graffiti, notebooks, photographs, sketches, poetry, and red clothing"; and it said such gang indicia might be found in "newspapers, artwork, compact disks, audio and videocassette, cameras, undeveloped film, address books, telephone lists . . ."

While searching Rangel's bedroom, officers seized a "smartphone," which the court described as "a cellular phone that has the ability to store data, photographs, and videos." Later at the police station, an investigator searched the phone and found text messages that linked Rangel to the assault. When Rangel's motion to suppress the text messages was denied, he pled no contest.

### Discussion

On appeal, Rangel argued that the search of his smartphone was unlawful because the warrant did not expressly authorize a search of such devices. He also contended that, even if the warrant could be interpreted as authorizing the seizure of his phone, the officers could not search it unless they had obtained a second warrant that expressly authorized the search. The court disagreed with both arguments.

**SEARCH OF THE SMARTPHONE:** Officers who are executing a search warrant may search for the listed evidence in any place or thing on the premises in which the evidence might reasonably be found.<sup>1</sup> It was therefore apparent—and the court so ruled—that the search

---

<sup>1</sup> See *Warden v. Hayden* (1967) 387 U.S. 294, 299-300 [search for gun: OK to search inside a washing machine]; *People v. Kraft* (2000) 23 Cal.4th 978, 1043-45 [search for shell casings, bullets, fiber: OK to search the vehicle's trunk, under the seat covers, a binder]; *People v. Gallegos* (2002) 96 Cal.App.4th 612, 626 [""It is not unusual for documents to be stored in drawers or closets, on shelves, in containers, including the Tupperware and wooden boxes searched here, or even in duffle bags.""]; *People v. Superior Court (Meyers)* (1979) 25 Cal.3d 67, 77 ["The warrant itself authorized a search which would explore into every corner and cranny which might conceal items as small as a jewelry pin."]; *People v. Smith* (1994) 21 Cal.App.4th 942, 950 ["Officer Giese testified that cocaine 'can be hidden anywhere.'"]; *People v. Kibblewhite* (1986) 178 Cal.App.3d 783, 785 ["A search of the residence authorizes the search of all areas of the residence, including containers therein, which could hold the contraband described in the warrant."]; *U.S. v. Gomez-Soto* (9th Cir. 1983) 723 F.2d 649, 655.

of Rangel's phone was lawful because gang indicia could logically be found in it. Said the court:

A smartphone such as appellant's is akin to a personal computer because it has the capacity to store people's names, telephone numbers and other contact information, as well as music, photographs, artwork, and communications in the form of emails and messages—all of which may amount to gang indicia, depending on their content.

**WAS A SECOND WARRANT REQUIRED?** The court also rejected Rangel's argument that, even if the investigator could have lawfully seized the smartphone, he could not search it for text messages unless he obtained a second warrant that expressly authorized such a search. As the court explained, officers need not obtain a second warrant to search something if it was searchable under the terms of the first warrant. And because the first warrant impliedly authorized a search of the smartphone, a second warrant was unnecessary. "Federal cases have recognized," said the court, "that a second warrant to search a properly seized computer is not necessary where the evidence obtained in the search did not exceed the probable cause articulated in the original warrant."<sup>2</sup>

Accordingly, the court ruled that Rangel's motion to suppress the information in his smartphone was properly denied. POV

---

<sup>2</sup> Citing *U.S. v. Evers* (6th Cir. 2012) 669 F.3d 645, 652; *U.S. v. Upham* (1st Cir. 1999) 168 F.3d 532, 535; *U.S. v. Gregoire* (8th Cir. 2011) 638 F.3d 962, 967-68.