Recent Case Report

United States v. Arnold

(C.D. Cal. 2006) __ F.Supp.2d __ [2006 WL 2861592]

ISSUE

Are warrantless searches of computers so unusually intrusive that they should not be permitted at international borders without some level of suspicion?

FACTS

Michael Arnold arrived at LAX on a flight from the Philippines. After retrieving his luggage and passing through the primary customs checkpoint, he was selected by a customs agent for a secondary inspection. During a search of Arnold's luggage, an agent found a laptop computer, an external hard drive, a computer memory stick ("flash" drive), and six CD's. At the agent's request, Arnold booted up the computer.

Among the folders initially displayed were two labeled "Kodak." When the agent clicked on one of them, he saw a photo of "two nude women." At this point, Immigration and Customs Enforcement agents were notified. They conducted a more thorough search of the computer and found files containing child pornography. Although they eventually released Arnold, they kept his computer and external storage devices, which they searched a few weeks later after obtaining a warrant. As the result of the search, Arnold was charged with transportation and possession of child pornography.

DISCUSSION

Arnold claimed that the initial search of his computer was unlawful and, therefore, the photographic evidence should have been suppressed. Specifically, he contended that searches of computers and their storage devices are much more intrusive than most physical searches; and, for this reason, warrantless customs' searches of computers should not be permitted unless agents have some specific reason to believe the search will result in the discovery of evidence. In a published opinion, the United States District Court agreed.

At the outset, the court noted that run-of-the-mill border searches can be conducted without any level of suspicion for at least three reasons: they are relatively unintrusive; there is obviously a strong need for them; and international travelers know they may be searched and, therefore, have a "lessened expectation of privacy."

Still, per Ninth Circuit law, some level of suspicion is required if a border search is unusually intrusive.[1] Strip searches fall into this category. But do computer searches?

[1] See *U.S.* v. *Aman* (9th Cir. 1980) 624 F.2d 911. 912-3.

At the outset, the court noted that the issue has not yet been decided and, furthermore, it is "ripe for determination." This is because many travelers today carry laptop computers; and also because computer searches are, by their very nature, highly intrusive. As the court pointed out, "[E]lectronic storage devices function as an extension of our own memory. They are capable of storing our thoughts, ranging from the most whimsical to the most profound." For example, the court noted that people store "all types" of personal information on computers, including "diaries, personal letters, medical information, photos and financial records."

Consequently, the court ruled that border searches of computers should not be permitted as a matter of routine. The question, then, is what level of suspicion should be required. The court decided that the lowest level of suspicion—"reasonable suspicion"—would suffice.[2] Said the court, "In the case of non-routine, invasive searches that implicate personal privacy and dignity, customs agents must possess a reasonable suspicion."

Accordingly, because there were no objective circumstances indicating that Arnold was transporting contraband or otherwise violating the law, the court ruled the search of his computer equipment was unlawful. The evidence was suppressed.

COMMENT

While we do not ordinarily report on published opinions of the U.S. District Courts, this case was noteworthy because the court's analysis may provide officers and prosecutors with an idea as to how this issue may eventually be resolved by the appellate courts. And it is an important issue because, more and more, patrol officers and investigators are finding computers and storage devices while conducting warrantless searches; e.g., parole and probation searches, consent searches, and car searches.

So they need to know whether the law views these devices as just another type of binder, file cabinet, or container that can be searched along with everything else; or whether, as the court in *Arnold* concluded, warrantless computer searches are somewhat more intrusive and, therefore, require some additional justification. As the court in *Arnold* observed, this issue is "ripe for determination." POV

[2] See *United States* v. *Sokolow* (1989) 490 U.S. 1, 7 ["[Reasonable suspicion] is considerably less than proof of wrongdoing by a preponderance of the evidence."]; *Illinois* v. *Wardlow* (2000) 528 U.S. 119, 123 ["'[R]easonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence."].