

U.S. v. Lara

(9th Cir. 2016) __ F.3d __ [2016 WL 828100]

Issue

May officers search a probationer's cell phone based on a probation search condition that authorizes searches of the probationer's "property"?

Facts

Paulo Lara was convicted in federal court of possession for sale and transportation of methamphetamine. As a condition of probation he was required to submit to warrantless searches of "his person and property, including any residence, premises, container or vehicle under his control." When Lara failed to meet with a probation officer as required, two probation officers went to his home to conduct a probation search. When Lara answered the door, the officers entered and saw a cell phone on a table next to the couch. After confirming that the phone belonged to Lara, an officer opened it and found three photos of a semiautomatic handgun. The officer also found messages indicating that Lara was trying to sell the gun. (For example, one interested buyer asked if the gun "was clean" and Lara replied, "Yup".) The officers then searched the entire house but did not find a handgun. They did, however, find an illegal knife, so they arrested Lara and took his cell phone to the Orange County Regional Computer Forensics Lab. The reason they wanted to search the phone was, as one of them testified, "drug traffickers commonly use cell phones to arrange narcotics sales."

During a search of the cell phone, technicians discovered that GPS data had been embedded in the photos of the gun, and this enabled them to determine that it had been photographed at Lara's mother's home. Officers then went to the house and, with the permission of Lara's mother, retrieved the weapon. Lara was subsequently charged with being a felon in possession of a firearm. He filed a motion to suppress the gun and the data found in the cellphone but the motion was denied. He then pled guilty but preserved his right to appeal the suppression ruling.

Discussion

IS A CELL PHONE "PROPERTY"?: Although the terms of Lara's probation expressly authorized a search of his "property," and although a telephone constitutes "property" as the term is commonly used, a three-judge panel of the Ninth Circuit ruled that the term "property" is insufficient to identify a cell phone in a search warrant because it does not do so "clearly and unambiguously." The panel also ruled that cell phone data does not constitute "property" because it often consists of massive amounts of personal information, and is therefore deserving of more privacy protection than ordinary personal property.

Actually, the panel went much further than that and said the amount of personal information contained in cell phones is so great that a search of a person's cell phone is more intrusive than a search of his entire home. Here are the panel's precise words: "*A cell phone search would typically expose to the government far more than the most exhaustive search of a house.*" This is a remarkable statement because it is so obviously false. It does, however, serve to demonstrate that, in the minds of this panel (and also in the mind of Apple Computer's CEO), a forensic search of a person's cell phone constitutes a greater invasion of privacy than the forcible occupancy of the person's home by a

throng of police officers who conduct an intensive search of, among other things, bedrooms, closets, drawers, desks, cabinets, notebooks, and sometimes every document on the premises.

METH TRAFFICKING IS NOT A “SERIOUS” CRIME: This was not a typo. The panel actually ruled that the search of Lara’s cell phone was illegal because methamphetamine trafficking is not a serious crime, and therefore the search of Lara’s cell phone was unnecessary. In the words of the court, meth trafficking is not “a particularly serious and intimate offense,” that it is a “low level” and “nonviolent” crime, and that meth traffickers are not “violent felons.” It would serve no purpose to discuss the foolishness of these statements because it will be apparent to all that this panel is grossly unaware of the monstrous consequences of meth use and the deadly violence associated with meth trafficking.

Comment

Lara is such a bizarre opinion that it is unlikely to have much persuasive force. In any event, it should have little effect in California because, as the result of the state’s new Electronic Communications Privacy Act, it appears that cell phone searches can no longer be conducted pursuant to the terms of probation; i.e., a warrant will usually be required.

POV

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