

U.S. v. Cobb

(4th Cir. 2020) 970 F.3d 319

Issue

Did a warrant to search a computer adequately describe the files that could be searched?

Facts

James Cobb and his cousin, Paul Wilson, got into a fight at the home of Cobb's parents in West Virginia. During the fight, Cobb put Wilson in a choke hold and "put his knee in Wilson's chest." While this was happening, Cobb's mother or father called 911 but, when officers arrived, Wilson was dead. Cobb was arrested and, within 48 hours of his arrest, he phoned his father from the jail. In a recording of their conversation, Cobb asked his father to remove a laptop computer on his bed, put it somewhere "safe," and "wipe down" the computer because it had "some shit on it." Based on this information, officers obtained a warrant to search the house for a Gateway laptop, which they seized.

About two weeks later, the officers obtained a warrant to search the laptop for "any material associated with the murder of Paul Dean Wilson stored internally on a Gateway laptop computer serial number [omitted]." During the search, officers found child pornography and, as the result, Cobb was charged, in addition to murder, with possession of child pornography. When Cobb's motion to suppress the files containing child pornography was denied, he pled guilty to the charge.

One other thing: Investigators spoke with Cobb's cellmate who said that Cobb told him that he killed Wilson "because Wilson had discovered the child pornography on Cobb's computer and had threatened to turn him in to the authorities."

Discussion

It is settled that a search warrant must provide a "particular" description of the listed evidence, meaning it must impose a "meaningful restriction" on what officers may search for and seize.¹ On appeal, Cobb argued that the affidavit for the warrant to search his computer files was insufficient because the affiant "failed to explain the types of files sought, the location of the files, the timeframe or the relationship between the files and information about the murder." For the following reasons, the court disagreed.

One problem with computer searches is that officers seldom know the names of the files that contain the evidence they are seeking. To complicate things, judges who issue warrants for documents often require a more detailed description because document searches are highly intrusive and there are usually ways to describe documents. As the Second Circuit explained in *U.S. v. Ulbricht*, "Where the property to be searched is a computer hard drive, the particularity requirement assumes even greater importance."²

¹ See *People v. Tockgo* (1983) 145 Cal.App.3d 635, 640 ["meaningful restriction"]; *U.S. v. SDI Future Health, Inc.* (9th Cir. 2009) 568 F.3d 684, 702 ["Particularity means that the warrant must make clear to the executing officer exactly what it is that he or she is authorized to search for and seize."].

² (2nd Cir. 2017) 858 F.3d 71, 99. Also see *U.S. v. Walser* (10th Cir. 2001) 275 F.3d 981, 986 ["Officers must be clear as to what it is they are seeking on the computer and conduct the search in a way that avoids searching files of types not identified in the warrant."]

Nevertheless, the courts have consistently ruled that “[s]earch warrants covering digital data may contain some ambiguity so long as law enforcement agents have done the best that could reasonably be expected under the circumstances, have acquired all the descriptive facts which a reasonable investigation could be expected to cover.”³

Consequently, the court ruled that the description of the searchable files in Cobb’s computer (i.e., files containing evidence of Wilson’s murder) was sufficient because that was the only descriptive information that the officers had or could have obtained with reasonable effort. Accordingly, the court affirmed Cobb’s conviction for possession of child pornography. POV

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³ *U.S. v. Ulbricht* (2nd Cir. 2017) 858 F.3d 71, 100. Also see *U.S. v. Phillips* (4th Cir. 2009) 588 F.3d 218, 225 [“A warrant need not—and in most cases, cannot—scrupulously list and delineate each and every item to be seized. Frequently, it is simply impossible for law enforcement officers to know in advance exactly what business records the defendant maintains.”].