



Roll Call Training Bulletin

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Warrantless Cell Phone Seizures

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ISSUE: Can police officers conduct warrantless seizures of cellular phones, from witnesses, when they (police) believe the cellular phone contains video evidence of a crime?

SHORT ANSWER: Usually, NO. However, if the underlying crime is of a serious nature **and/or** there is evidence the owner of the phone intends to modify/destroy the video evidence, police may be justified in forcibly seizing the phone without a warrant.

DISCUSSION: It is well established that police officers can detain individuals at crime scenes as part of a preliminary investigation, depending on the seriousness of the crime and other factors. It is also established officers may detain witnesses as a “special needs” detention if the purpose is to further the public interest **and** the public interest outweighs the intrusiveness of the detention. ¹ Courts have been clear that such a detention is not allowed unless the need of the detention outweighs its intrusiveness. ²

The Courts have repeatedly been of the opinion that the seriousness of the crime being investigated determines the legality of a witness detention and/or warrantless seizure of a cellular phone. “We look to the gravity of the public concerns served by the seizure.” ³ The seriousness of the offense is, “...highly determinative.” ⁴ At the same time, Courts have also been clear that such detentions / seizures are not governed by a bright line rule: “...there is no ready test for determining reasonableness other than by balancing the need to search or seize against the invasion which the search or seizure entails.” ⁵

In our current society non-involved witnesses taking video with cellular phones of crimes and police action is commonplace. The Courts have established that the totality of the circumstances on a case-by-case analysis will dictate whether a forcible detention / seizure is legal. As such, police officers should carefully consider the seriousness of the offense being investigated, the status of the individual possessing the cellular phone (e.g., victim, suspect, or witness), along with any exigency as to the destruction of the evidence. As an example, a homicide investigation would be given much more deference by the Courts than a use-of-force incident not involving serious injury or the application of deadly force.

CONCLUSION: Although scenarios exist in which it may be necessary for police officers to forcibly detain a witness and seize a cellular phone without a warrant, under most circumstances this should not be done. Alternative means to obtain the evidence should be exhausted. Obtaining consent, recording the video/photos with a body worn camera, requesting the witness forward the photos/video to law enforcement, or obtaining a search warrant should all be contemplated prior to initiating a warrantless seizure of a witness’ cellular phone.

*** It should be noted this bulletin only addresses the actual physical seizure of a cellular phone. Regardless of how a cell phone is obtained, police would need to adhere to the California Electronic Communications Privacy Act (Penal Code §1546, et seq.) prior to accessing the contents of the phone. ***

¹ *Illinois v. Lidster* (2004) 540 U.S. 419

² *Indianapolis v. Edmond* (2000) 531 U.S. 32, at 47

³ *Illinois v. Lidster* (2004) 540 U.S. 419, at 427

⁴ *People v. Profit* (1986) 183 Cal.App.3d 849, at 883

⁵ *Indianapolis v. Edmond* (2000) 531 U.S. 32, at 47