

Just turning your phone on qualifies as searching it, court rules

Enlarge / A close-up of the PIN entry form on a smartphone's unlock screen.

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Smartphones are a rich data trove not only for marketers but also for law enforcement. Police and federal investigators love to get their hands on all that juicy personal information during an investigation. But thanks to the Fourth Amendment of the US Constitution and all the case law built upon it, police generally need a warrant to search your phone—and that includes just looking at the lock screen, a judge has ruled (PDF).

Usually when the topic of a phone search comes up in court, the question has to do with unlocking. Generally, courts have held that law enforcement can compel you to use your body, such as your fingerprint (or your face), to unlock a phone but that they cannot compel you to share knowledge, such as a PIN. In this recent case, however, the FBI did not unlock the phone. Instead, they only looked at the phone's lock screen for evidence.

A man from Washington state was arrested in May 2019 and was indicted on several charges related to robbery and assault. The suspect, Joseph Sam, was using an unspecified Motorola

smartphone. When he was arrested, he says, one of the officers present hit the power button to bring up the phone's lock screen. The filing does not say that any officer present attempted to unlock the phone or make the suspect do so at the time.

In February 2020, the FBI also turned the phone on to take a photograph of the phone's lock screen, which displayed the name "Streezy" on it. Sam's lawyer filed a motion arguing that this evidence should not have been sought without a warrant and should therefore be suppressed.

Two issues

District Judge John Coughenour of the US District Court in Seattle agreed. In his ruling, the judge determined that the police looking at the phone at the time of the arrest and the FBI looking at it again after the fact are two separate issues. Police are allowed to conduct searches without search warrant under special circumstances, Coughenour wrote, and looking at the phone's lock screen may have been permissible as it "took place either incident to a lawful arrest or as part of the police's efforts to inventory the personal effects" of the person arrested. Coughenour was unable to determine how, specifically, the police acted, and he ordered clarification to see if their search of the phone fell within those boundaries.

But where the police actions were unclear, the FBI's were both crystal clear and counter to the defendant's Fourth Amendment rights, Coughenour ruled. "Here, the FBI physically intruded on Mr. Sam's personal effect when the FBI powered on his phone to take a picture of the phone's lock screen." That qualifies as a "search" under the terms of the Fourth Amendment, he found, and since the FBI did not have a warrant for that search, it was unconstitutional.

Attorneys for the government argued that Sam should have had

no expectation of privacy on his lock screen—that is, after all, what everyone who isn't you is meant to see when they try to access the phone. Instead of determining whether the lock screen is private or not, though, Coughenour found that it doesn't matter. "When the Government gains evidence by physically intruding on a constitutionally protected area—as the FBI did here—it is 'unnecessary to consider' whether the government also violated the defendant's reasonable expectation of privacy," he wrote.

Basically, he ruled, the FBI pushing the button on the phone to activate the lock screen qualified as a search, regardless of the lock screen's nature.

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