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ADVANCE SHEET HEADNOTE
April 11, 2022

2022 CO 16

No. 22SA10, *People v. Ramos* – Criminal Procedure – Fourth Amendment.

The People bring this interlocutory appeal from a trial court order suppressing certain evidence found on a cell phone, arguing that they were not on notice that the seizure of defendant's cell phone was at issue. Because the record demonstrates that the People had ample notice regarding defendant's motion to suppress evidence obtained from his cell phone, the supreme court affirms the trial court.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2022 CO 16

Supreme Court Case No. 22SA10
Interlocutory Appeal from the District Court
Weld County District Court Case No. 20CR1319
Honorable Marcelo Kopcow, Judge

Plaintiff-Appellant:

The People of the State of Colorado,

v.

Defendant-Appellee:

Joe Lewis Ramos.

Order Affirmed

en banc

April 11, 2022

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PER CURIAM.

¶1 We can—and do—dispense with this interlocutory appeal in short order. The People ask us to reverse the trial court’s suppression order and remand the case to allow them to make additional arguments supporting the warrantless seizure of Joe Ramos’s cell phone on the theory that they did not have specific notice that the seizure of the phone was at issue. Because the record belies this assertion, we affirm the trial court’s order.

¶2 On July 8, 2019, the Greeley Police Department received an anonymous tip that Ramos possessed child pornography on his cell phone. After finding two unrelated outstanding warrants for Ramos, the police went to his residence to execute those warrants and follow up on the anonymous tip. While they did not make contact with Ramos himself, the officers observed cell phones on a table in the backyard. One of the detectives called the number that the tipster said was associated with Ramos’s phone. When one of the phones on the table rang, the officers seized the phone and took it into custody. The officers did not have a warrant to seize the phone.

¶3 Ramos was ultimately arrested and charged with numerous counts, including possession of child pornography. During pretrial proceedings, he filed various motions to suppress evidence taken from his phone. Relevant here is Defense Motion #6: Motion to Suppress Evidence, Observations, and Statements Obtained from Warrantless Search and Seizure, which alleged that the officers had

“unlawfully seized” Ramos’s cell phone and that “all statements, observations and evidence obtained as a result of the unlawful seizure must be suppressed.”

¶4 The trial court held two days of hearings on the various pretrial motions, one on November 22, 2021, and the second on December 14, 2021. At the December 14 hearing, the court directed the parties, in the interest of time, to file simultaneous briefing on any outstanding issues. Both the parties and the court referenced suppression of evidence as an outstanding issue. The People now contend, however, that they were not on sufficient notice that they should have briefed the question of whether the warrantless seizure of the phone was justified.

¶5 This contention cannot withstand the weight of the record. Ramos’s pretrial motion specifically referenced the warrantless seizure of the phone. During the December 14 hearing, defense counsel questioned one of the detectives about the fact that the phone had been seized without a warrant. And at the close of that hearing, the court stated that “the biggest issue that I have is the seizure of the cellphone. Everything else I—I could probably rule on today. I’m just not sure what the Prosecution’s theory is for obtaining the cellphone . . . I’m not sure exactly what the argument is going to be.” The People responded, “that’s the one thing that we would *definitely* need to provide written argument on.” (Emphasis added.)

¶6 The United States and Colorado constitutions protect individuals from unreasonable searches and seizures. U.S. Const., amends. IV, XIV; Colo. Const. art. II, § 7. A search or seizure without a warrant is presumptively unreasonable and, thus, unconstitutional, unless an exception to the warrant requirement applies. *People v. Allen*, 2019 CO 88, ¶ 15, 450 P.3d 724, 728. Generally, if officers conduct a warrantless search or seizure, “the People bear the burden of establishing that the search [or seizure] ‘is supported by probable cause and is justified under one of the narrowly defined exceptions to the warrant requirement.’” *People v. Pappan*, 2018 CO 71, ¶ 8, 425 P.3d 273, 276 (quoting *People v. Winpigler*, 8 P.3d 439, 443 (Colo. 1999)).

¶7 Here, given Ramos’s motions to suppress, the evidence presented at the two hearings, and the trial court’s comments at the close of those hearings, the People plainly had notice that they needed to make arguments to meet this burden as to the warrantless seizure of Ramos’s cell phone. Indeed, six days after the court stated that it did not understand the People’s theory for obtaining the cell phone, the People submitted a brief addressing Ramos’s motions to suppress. That brief specifically discussed the seizure of Ramos’s cell phone, contending that it was justified based on the informant’s tip and the officers’ lawful presence in Ramos’s backyard. The People, thus, had an opportunity to raise any relevant

arguments – including plain view, exigency, independent source, and good faith reliance – to avoid suppression of the relevant cell phone evidence.

¶8 In ruling on the motions to suppress, the court found that the People failed to establish probable cause and “offered no credible evidence” to show that an exception to the warrant requirement authorized the seizure of Ramos’s cell phone. The court thus suppressed the evidence obtained as a result of the warrantless seizure of the phone.

¶9 The People had ample notice that, if probable cause and a valid exception to the warrant requirement applied here, they needed to demonstrate that fact. Similarly, they had notice that they needed to demonstrate why suppression was not the appropriate remedy. We will not reverse and remand to the trial court to allow the People to make additional arguments that they declined to make when initially asked by the court. We affirm.