July 17, 2018

White Collar Roundup - July 2018

Cell Phone Evidence Legally Searched in Basketball Corruption Case

In the prosecution of a corruption case in the Southern District of New York, U.S. District Judge Lewis A. Kaplan rejected a motion to suppress cell phone evidence based on a purportedly illegal seizure. The case involves the alleged bribery by Merl Code, who worked for an athletic-apparel company, and Christian Dawkins, who "was an aspiring business manager for professional athletes." The allegations are that Code and Dawkins paid bribes to certain high school basketball players bound for NCAA Division I universities or their families in exchange for commitments to attend certain schools and to retain Dawkins. At the time of their arrests, Code and Dawkins each had two cell phones. The arresting officers seized the cell phones incident to the respective arrests and subsequently applied for warrants to search the seized phones. The defendants filed motions to dismiss, arguing "that the warrants (1) did not establish probable cause to seize and search defendants' cell phones and, in the alternative, (2) were facially overbroad because they did not limit the scope of the searches to the locations of data for which there was probable cause to search." Relying on traditional concepts of Fourth Amendment law, Judge Kaplan rejected both challenges. As to the first, he concluded that the government need only establish probable cause to obtain a warrant to search a cell phone, which was satisfied in the case. As to the second, he concluded that the warrants met the particularity requirements because they listed the charged offenses, described the places to be searched and described "the types of content that fell within the scope of the warrant." And for good measure, he noted that even had his conclusions been otherwise, the good faith exception would preclude suppression.

New York City Bar Revises Ethics Opinion Regarding Border Searches

The New York City Bar Association's Committee on Professional Ethics issued a revised Formal Opinion on "An Attorney's Ethical Duties Regarding U.S. Border Searches of Electronic Devices Containing Clients' Confidential Information." The revision came as a result of the January 2018 directive "Border Search of Electronic Devices" from U.S. Customs and Border Protection (CBP). The Formal Opinion describes what attorneys should do to comply with their "ethical obligations with regard to the protection of confidential information prior to crossing a U.S. border, during border searches and thereafter." The Formal Opinion advises attorneys to determine prior to the border crossing whether they should even have confidential information on any electronic devices they plan to carry across the border. If an attorney determines she cannot remove all confidential material from her electronic device, the Formal Opinion advises the attorney should be prepared, if asked, to press the CBP agents about searching her device. Specifically, the attorney should consider "informing the border agent that the subject devices or files contain privileged or confidential materials, requesting that such materials not be searched or copied, asking to speak to a superior officer and making any other reasonably available efforts to protect the confidential information from disclosure." And the attorney should carry a bar card "or in the very least a business card" and "should know the relevant law and practices and should consider bringing a printed copy of a given customs agency's policies or guidelines regarding searches of privileged information." Finally, if a search occurs, the Formal Opinion notes the attorney must advise her clients as required by Rule 1.4.

Massive Healthcare Fraud Takedown Focused on Illegal Opioid Scripts

According to this press release, U.S. Attorney General Jeff Sessions and Department of Health and Human Services (HHS) Secretary Alex M. Azar III announced "the largest ever health care fraud enforcement action involving 601 charged defendants across 58 federal districts, including 165 doctors, nurses and other licensed medical professionals, for their alleged participation in health care fraud schemes involving more than $2 billion in false billings." The operation targeted schemes to bill Medicare, Medicaid, TRICARE and private insurance for medically unnecessary prescription drugs. Many of

the defendants are accused of "contributing to the opioid epidemic," and the arrests focused on "medical professionals involved in the unlawful distribution of opioids and other prescription narcotics." "This year's Takedown Day is a significant accomplishment for the American people, and every public servant involved should be proud of their work," said HHS Secretary Azar. Sessions also held a press conference about the takedown. To read his prepared remarks, click here.

California Enters the Digital Privacy Protection Arena

As explained here, California has passed a digital privacy law that gives consumers more control over the use of their personal data online. The law creates one of the most significant regulations overseeing data collection by technology companies. "The new law grants consumers the right to know what information companies are collecting about them, why they are collecting that data and with whom they are sharing it. It gives consumers the right to tell companies to delete their information as well as to not sell or share their data. Businesses must still give consumers who opt out the same quality of service." The law also makes it more difficult to share or sell data on children who are under the age of 16. While the law is not as expansive as the General Data Protection Regulation (GDPR) that recently went into effect in the European Union, it sweeps much more broadly than any other legislation in the United States. Because of California's substantial population, the protections that technology companies implement in response to the new law might just become the standard for customers more widely.

Authors



Helen Harris
Partner

Stamford, CT | (203) 977-7418

hharris@daypitney.com



Stanley A. Twardy, Jr.
Of Counsel

Stamford, CT | (203) 977-7368

satwardy@daypitney.com