



ALERTS

Defendant's Refusal To Unlock Smartphone Upheld By Indiana Supreme Court

June 26, 2020

Highlights

Smartphones have become a major gateway to electronic personal information

Information contained or accessed by a smartphone is testimonial in nature

Absent certain narrow exceptions, unlocking a smartphone is protected as a Fifth Amendment right

The Indiana Supreme Court has ruled on whether a suspect in an ongoing investigation can be [compelled to unlock their smartphone](#) to aid authorities in their investigation. In a 3-2 decision released June 23, the court held that an individual's decision to not voluntarily unlock their smartphone is protected by the U.S. Constitution's Fifth Amendment.

This case only interprets the law in Indiana and is only controlling on courts in Indiana. However, the depth of the analysis into the federal case law on the Fifth Amendment will likely mean that this case gets cited in other jurisdictions that will have to grapple with this same issue in their own cases.

The defendant in the case, Katelin Seo, was being investigated by local

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authorities for stalking and harassment. The investigating police officers believed that Seo was using multiple texting and VoIP applications on her smartphone to conceal her identity while texting an individual identified as “D.S.” by the court.

In furtherance of their investigation, the police detectives sought and obtained two search warrants. The first permitted a forensic download of the contents of her smartphone. The second warrant compelled her to unlock the phone for purposes of allowing investigators access. Seo refused to unlock the phone and was held in contempt by the trial court.

In reaching its decision, the court relied upon the Fifth Amendment provision that protects a person from “being compelled to be a witness against himself” and which had been further elaborated upon by the U.S. Supreme Court in *Estelle v. Smith*, 451 U.S. 454, 462 (1981), which found a fundamental principle of this protection to be that “the State produce evidence against an individual through the independent labor of its officers, not by the simple, cruel expedient of forcing from his own lips.”

Despite some narrow exceptions that have been articulated in cases over the years, the Indiana Supreme Court found that compelling Seo to unlock a smartphone was tantamount to requiring her to “assist in the prosecution of her own criminal case.”

The majority opinion concludes that the compelled production of an unlocked smartphone is “testimonial” in nature and as a result is covered by the protections of the Fifth Amendment, unless the state can effectively demonstrate the application of a narrow exception known as the “foregone conclusion” exception.

The “foregone conclusion” exception was articulated in *Fisher v. United States*, 425 U.S. 391, 410 (1976). For an act to fit within this exception, the state must demonstrate that it already knows the information being sought from the defendant, and as a result, its ultimate discovery is a “foregone conclusion.” Because the state in *Fisher* made no such showing in this case, the court found that the exception did not apply and it reversed the contempt case.

The use of smartphones as an essential communication device and also as a gateway to individually maintained data and other personal information creates an interesting dilemma on just how private and just how protected our interests are in those devices. This will be an issue in other cases in the future, and this thorough review of Fifth Amendment application to electronic devices will likely be at the forefront of future case analysis.

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