

Locked iPhone issue in drug case Usually suspects consent to device searches, but not this time - Usually suspects consent to device searches, but not this time

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TAMPA — More than 2,000 miles from San Bernardino, California, and the FBI's battle to search a terrorist's iPhone, another iPhone could hold important evidence in a large-scale drug investigation, authorities say.

The Tampa iPhone belonged to Julio Alvarez, described by officials as the leader of a highly organized syndicate of marijuana grow houses in three Florida counties. The device is now at the Florida Department of Law Enforcement, which is tasked with gaining access to the contents, according to court documents and Assistant State Attorney Darrell Dirks.

Smartphones, nearly ubiquitous tools of everyday life, also commonly factor into law enforcement investigations because they can contain important information, including potentially incriminating photographs and text communications.

Advances in security aimed at protecting personal information have now placed the ability to access the contents of the phones on the cutting edge of law enforcement's technical challenges.

FDLE, which has Alvarez's phone, refused to comment on its investigative techniques regarding smartphone searches.

But the FBI, which dropped its court battle after announcing it had gotten help from a third party to search the San Bernardino iPhone, has offered to help local law enforcement agencies across the country with what it has learned, according to a document published by the website BuzzFeed.

Contacted by The Tampa Tribune, the FBI issued a statement saying it has received requests

from state and local law enforcement to provide technical assistance on more than 500 cellphones over a four-month period, beginning Oct. 1.

"These requests involved a wide variety of cellphone forensic services addressing locked phones, deleted data, encrypted content, damaged hardware, and other challenges," the statement continued. "The FBI responds to these requests on a case-by-case basis, using known forensic tools to assist when appropriate, consistent with our legal and privacy constraints. The FBI is not always able to accommodate the requested assistance."

Capt. Frank Losat, who heads the Hillsborough sheriff's Investigations Division, said his agency often gets evidence from smartphones.

"Depending how we get the phones, sometimes we get consent from the owner and they give us the password or the combination to get into the phone," Losat said. "Obviously there's no issue when you have consent from them."

Otherwise, detectives seek search warrants and consult with other agencies on how to gain access to the phones' contents, Losat said.

That's what happened with Alvarez's phone.

According to the warrant, filed in Hillsborough Circuit Court, Alvarez was under investigation since last June. Over the course of nine months, detectives conducted surveillance of Alvarez, seeing him several times with his white and gold iPhone 6. Starting Feb. 1, investigators obtained court authorization to intercept calls to and from Alvarez's two cellphone numbers, including the one for his iPhone. On March 8, Alvarez was arrested during a traffic stop at Bearss Avenue West and Crisis Center Plaza. Deputies seized the iPhone from inside Alvarez's pickup. Inside an Ehrlich Road house investigators said was part of the marijuana grow operation and tied to Alvarez, investigators found 13.5 pounds of marijuana, electrical ballasts, sodium vapor light bulbs, fertilizer and large growing pots, according to the search warrant affidavit. Altogether, 18 people were arrested in Hillsborough County and four outside the county in an investigation dubbed "Operation Hydro Hustlers," officials said. Three more suspects fled to Cuba.

The organization rented houses in Hillsborough, Hernando, and Suwanee counties and outfitted them with grow equipment, including sophisticated electrical circuit boxes that disguised the use of power so as not to draw attention.

"The court documents and the arguments made at the bond hearings have revealed that Julio Alvarez was one of the major players, if you will, in this organization," Dirks said. "His iPhone was being tapped. Therefore, the other contents of his iPhone, which do not involve live audio, could be very important to the case. But we just don't know what's in it."

Until now, Dirks said, law enforcement hasn't had problems searching seized smartphones, at least not on the level encountered by the FBI in San Bernardino.

"If it's happened before and there was a problem, I wasn't aware of it," he said. "My understanding is the iPhone 6 is now a different animal where it's potentially a lot more difficult to get into the iPhone 6. ... I don't know if extra security features will now create a problem that hadn't existed before. It's potentially brand new, a brand new issue that may be emerging."

Defense lawyer Ralph Fernandez, who represents Alvarez, said he, too, thinks this might be a first, as far as the technological challenges for investigators locally. "I don't have the details, other than it raised an eyebrow," he said, "because the last thing I want is for this to be a lead criminal case on the cutting edge issue that the nation has been monitoring." Chris Watson, the felony bureau chief for the Hillsborough Public Defender's Office, said a majority of times, law enforcement officers wanting to search the contents of smartphones are able to persuade the owners to consent to the searches and give police their pass codes. "Most of the time it doesn't involve a search warrant because most of the time the police try to talk people into giving things up," Watson said. "It's somewhat easy to talk to some people into just about anything. ... If it doesn't reveal anything, it might not even cause the officer to put a line in his police report that it occurred."

Even when police need a warrant, Watson said, they don't usually encounter problems getting what they need.

"This is my 30-something year of practicing criminal law in Hillsborough County," he said. "I couldn't tell you of a case where they wanted to get into a phone and they were unable to. So far, most of the time, when they need to get information, they're able to get into it."

But the iPhone technical issues may still be daunting, in spite of the FBI's announced success in getting the contents of the San Bernardino terrorist's phone. The Justice Department notified a Brooklyn federal judge on Friday that it still requires assistance from Apple in its efforts to search an iPhone in a drug case there.

In that case, the government argued, in part, that Apple has previously agreed to help get information from iPhones, including in a Naples drug case out of the Middle District of Florida in 2014.

The Naples case involved the drug methylene shipped to Florida from China and was investigated by the Department of Homeland Security. The defendants were a brother and sister.

"After approximately five months, Apple extracted the data from the iPhone and provided that data to law enforcement agents on a flash drive," federal prosecutors wrote in a brief. "The case went to trial and the parties entered into a stipulation regarding the data extraction so that Apple would not be required to testify. The defendant was convicted at trial and sentenced to five years' imprisonment."

According to the search warrant in that case, the phone at issue was an iPhone 5s, which experts say doesn't present the same kind of technical issues as the newer iPhones. Similarly, phones using the Android operating system pose less of a challenge for law enforcement and are less likely to be encrypted.

One of Alvarez's two phones seized by investigators was a Kyocera flip phone. The sheriff's office also obtained a warrant to search the contents of that phone.

In the past month, law enforcement have obtained about half a dozen warrants in Hillsborough County to search suspects' phones, in cases from drugs to child pornography to aggravated assault. Alvarez's was the only one involving an iPhone.

Losat said the sheriff's office has years of experience with all kinds of cellphone technology, including flip phones, which can contain evidence of text conversations.

"We have success stories all the time," Losat said. "Whether we have them in pending court cases or cases that have already gone to be resolved in court, it's very common for all the electronic communication nowadays to be introduced into evidence. There's probably not many cases that don't have some type of electronic communication introduced into evidence."

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