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Police Officers May Not Search the Cell Phone of a Suspect without a Warrant

In the recent case of *Riley v. California*, 537 U.S. __ (2014), the United States Supreme Court addressed the question of whether a law enforcement officer may search the information contained on a cell phone seized from a suspect at the time of arrest. The Court held that an officer will generally need to obtain a warrant before conducting such a search.

The facts in the case are as follows: David Riley was arrested for driving with a suspended license. An officer searched Riley incident to the arrest and discovered a cell phone in his pants pocket. The officer examined the contents of the phone and found videos, photographs, and contact information that connected Riley to an unsolved gang-related shooting. When Riley was charged with the shooting, he moved for suppression of the evidence found on the phone, on the grounds that the search violated his rights under the Fourth Amendment to the U.S. Constitution.

The Fourth Amendment provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The amendment is understood to be a safeguard against governmental intrusion into the privacy of individuals. It establishes the general rule that a search warrant is required whenever a law enforcement officer conducts a search of a person or a place. The warrant process ensures that the decision of whether to search is objectively made by a neutral judge or magistrate.

Court cases have created exceptions to the general warrant rule when there is a justifiable need to intrude on an individual's privacy for legitimate governmental interests. For instance, warrantless searches are allowed when a person is arrested and taken into custody. In these instances, the governmental interest is heightened by the need to protect police officers from the use of weapons that are being carried by the suspect and the need to ensure that the suspect will not destroy evidence in his or her possession. Therefore, the law allows an officer to search through the arrestee's clothing and personal effects without obtaining a warrant.

In the *Riley* case, the Court found that there was less need to immediately search through the digital information stored on a cell phone than there was to search other items found in the pockets or purses of those arrested. Unlike tangible items, the contents of a cell phone are not dangerous or easily destructible. The destruction of evidence contained within the phone can be prevented by taking the phone into police custody during the time it takes to obtain a search

warrant.[1] Any concern for officer safety can be alleviated by a cursory examination of the cell phone to ensure that the phone case does not conceal a weapon.

Another reason that the Court used to justify the different standard for cell phones is that information stored in phones is qualitatively and quantitatively different from information kept in pockets and purses. Phones often contain an aggregate of sensitive personal information – including financial, personal, and medical information – that one would never and could never carry on one's person. Moreover, a search of a cell phone allows access to information stored remotely. These factors make the invasion of the arrestee's privacy exponentially greater when his or her phone is searched than when his or her pockets or purse are searched.

Ironically, it is the ability of the cell phone to aggregate data that makes the phone an invaluable asset in criminal investigations. The decision in *Ryan*, therefore, creates an impediment in the efficient and effective investigation of crime. The Court acknowledged as such, writing:

> We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime. Cell phones have become important tools in facilitating coordination and communication among members of criminal enterprises, and can provide valuable incriminating information about dangerous criminals. (*Id.* at p.25.)

However, the Court found that such an impediment is necessary to protect the privacy rights guaranteed by the Fourth Amendment. "Privacy comes at a cost." *Id*. In criminal investigations, the cost will be measured in the delay and uncertainty in obtaining a search warrant.

It is important to note that while a search of a cell phone now generally requires a warrant, there are exceptions to that rule, such as when "exigent circumstances" are present. Exigent circumstances include rendering emergency assistance to an injured person, preventing an imminent injury, pursuing a fleeing suspect, and preventing the imminent destruction of evidence. As the Court recognized, "the Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others." *Id* at 12.

The decision is archived at http://www.supremecourt.gov/opinions/13pdf/13-132_8l9c.pdf

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[1] The Court dismissed the risks of automatic data encryption and remote wiping of information.