

WARRANTLESS SEARCH OF CELL PHONE FOLLOWING ARREST FOUND UNLAWFUL

The U.S. Supreme Court has just visited the question of the authority of law enforcement to conduct a warrantless search of a cell phone, incident to an arrest. In its opinion in *Riley v. California*, issued on June 25, 2014, the Court reviewed the police actions in the warrantless searches of cell phones following arrests (one following a traffic violation and the other a drug sale). In both instances, when the officer went through the cell phone, further information was discovered related to criminal activities, and the officers attempted to rely on that information to pursue a warrant or further charges of misconduct. The Court unanimously found that the police lack lawful authority, incident to an arrest, to conduct such warrantless searches of an electronic device.

Existing authority for warrantless searches. Warrantless searches of property found on or near an arrestee have previously been found lawful and justified once a custodial arrest is made, if for the purpose of ensuring an officer's safety or to ensure the prevention of the destruction of evidence and when limited to the area within the arrestee's immediate control, even when there is no specific concern about safety or evidence destruction (e.g. lawful to search cigarette pack found on arrestee's person, person's pockets or the passenger compartment of car which arrestee has access to).

Not applicable to a cell phone. The Court in *Riley* found that the digital data stored on cell phones does not present either of these risks. The data itself cannot be used to harm police officers, and there are several simple ways for police officers to ensure that the data cannot be remotely wiped from the cell phone. Additionally, the Court concluded that inspecting the contents of a phone is substantially different than inspecting the contents of an arrestee's pockets because of the sheer volume of personal and private information that can be kept on a cell phone. Also, because of "cloud technology," not all information accessible on cell phones is actually stored on them. Therefore, it is likely that the search

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would extend well beyond the papers and effects in the physical proximity of an arrestee.

Privacy Interests Significant/Governmental Interests Not. The Supreme Court determined these circumstances authorizing warrantless searches following an arrest did not apply to data found on cell phones “by assessing, on the one hand, the degree to which [the search] intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.” *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999). The significance of the privacy interests involved in the search of a cell phone and the lack of a legitimate governmental interest in such a warrantless search resulted in the Court’s conclusion in *Riley* that such a warrantless search of the cell phone of an arrestee is unlawful.

Riley v. California, No. 13-132, slip op. (U.S., June 25, 2014)

For a full copy of the Supreme Court decision:

[Riley v. California](#)



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