

United States Supreme Court Invalidates Use Of Evidence From Cell Phone Data Obtained Without A Search Warrant

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ATTORNEYS

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Police now generally must obtain a warrant before searching through data in an arrestee's cell phone. In a decision issued last week, the United States Supreme Court broadly interpreted the Fourth Amendment's prohibition on "unreasonable searches and seizures"

In *Riley v. California*, two arrestees challenged the use of evidence obtained from warrantless searches of their cell phones. One case arose when police officers in California searched a cell phone incident to a lawful arrest for possession of concealed firearms. The phone contained numerous street gang references that later became evidence supporting the arrestee's conviction for attempted murder. A separate case arose when police officers in Massachusetts searched a cell phone incident to a lawful arrest for drug selling. The search revealed information that led to the arrestee's conviction for drug and firearms possession.

The Supreme Court held that, in both cases, the officers' actions violated the Fourth Amendment's ban on unreasonable searches. While police have traditionally been permitted to search through items in an arrestee's immediate possession (e.g., a wallet or purse), the Court reasoned that cell phones and smart phones in particular are categorically different: Because they often contain emails, photos, videos, geographical-tracking data, health information, and financial records, the Court emphasized that cell phones have a storage capacity more like an office building than a wallet. Thus, just as police would need a warrant to search through an office building, in most circumstances police now must obtain a warrant to search through an arrestee's cell phone.

Significantly, the Court's opinion does authorize warrantless searches of an arrestee's cell phone when there are "exigent" circumstances necessitating immediate action. For example, police may search a cell phone without a warrant if they believe an arrestee may have texted an accomplice preparing to detonate a bomb, or that an arrestee's cell phone contains the location of an

abducted minor. The Court further noted that a search warrant is not required for police to examine a cell phone for some kind of weapon, or to seize and disable it by removing the battery or turning it off to prevent a third party from remotely tampering with the its data.

For advice concerning the effect of this decision or law enforcement policies in general, please contact D. Craig Fox, or any member of the Firm's Police Practices Group.