



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 372  
June 28, 2014

**BEFORE SEARCHING A CELL PHONE SEIZED AS AN INCIDENT  
TO ARREST POLICE MUST FIRST OBTAIN A WARRANT**

**Reference:**

David Leon Riley

United States Supreme Court  
573 U.S. \_\_\_\_\_ (2014)  
June 25, 2014

v

California

This U.S. Supreme Court opinion addresses two cases involving the same issue where lower courts had opposite results. In U.S. v Wuire, (13-212) the First Circuit Court ruled police were required to obtain a search warrant prior to searching the data located within a cell phone seized incident to arrest. In the Riley case, the California Supreme Court ruled police did not need a warrant, and that the search of the data within the cell phone was justified as an incident to arrest. The U.S. Supreme Court accepted these cases to provide law enforcement with clear guidance on Fourth Amendment requirements regarding the search of cell phones for electronically stored data. This bulletin will address the Riley case.

**FACTS:**

A police officer stopped Riley for driving with expired registration tags. The officer also learned Riley's license was suspended. Pursuant to department policy, Riley's vehicle was impounded. During the inventory search of the vehicle, several handguns were found under the seat. Riley was arrested and, during the search incident to the arrest, police seized a cell phone from Riley's pant pocket.

During the search of Riley, police also found items associated with the "Bloods" street gang. At the police station, about two hours after the arrest, a detective specializing in gangs further examined Riley's "smart phone." During this search a number of photos were observed, one of which depicted Riley standing in front of a car the police suspected of being involved in a shooting several weeks earlier. As a result of the data found within the phone, Riley was charged and ultimately convicted of the earlier shooting.

Riley argued that because the police had not obtained a warrant all of the evidence found within the phone should be suppressed. Prosecutors argued a warrant was not needed because the cell phone was seized incident to arrest.

**ISSUE:**

Before searching a cell phone that has been seized incident to arrest, must police first obtain a search warrant?

**HELD:**

Yes. Cell phones are distinct from other physical possessions that may be searched incident to arrest without a warrant because of the amount of personal data cell phones contain and the negligible threat they pose to law enforcement interests.

**REASONING:**

1. Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Officers may examine the phone's physical aspects to ensure it will not be used as a weapon (hidden razor etc.), but the data on the phone can endanger no one.

2. A cell phone search would typically expose to the government far more than the most exhaustive search of a house: Such a search would be like finding a key in a suspect's pocket and arguing that it allowed law enforcement to unlock and search a house.

3. The holdings of the court is not that the information on a cell phone is immune from search; it is instead that a warrant is generally (absent exigent circumstances e.g. kidnapping, or used to detonate a bomb) required before such a search, even when a cell phone is seized incident to arrest.

4. It is undisputed that officers could have secured their (Riley & Wuire's) cell phones to prevent the destruction of evidence while seeking a warrant. (emphasis added) (See Illinois v McArthur, bulletin no 245 where, based on probable cause there were drugs in the residence, police seized the house not permitting the owner to enter unless he was escorted by police. Warrant was issued and search resulted in seizure of drugs.)

**NOTES:**

The Court cited a number of cases on which we submitted previous bulletins: **Arizona v Gant, Bulletin no. 338** search of vehicle incident to arrest allowable only if arrestee might have access; **Wyoming v Houghton, bulletin no. 232** search of passenger compartment of vehicle upheld as incident to arrest; **Illinois v McArthur, bulletin no.** seizure of residence while applying for warrant upheld; **Michigan v Summers, bulletin no 47** pre-arrest seizure of person while executing a search warrant; just to name a few.

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