Supreme Court Holds Officers Need Warrant To Search Cell Phones Incident To Arrest

By Adam J. Sheppard

As cell phone evidence becomes increasingly commonplace, practitioners must remain acutely aware of *Riley v. California*, 134 S. Ct. 2473 (2014) together with the consolidated case of *United States v. Wurie*, No. 13-212. The Supreme Court decided *Riley* and *Wurie* in June of 2014. In a unanimous opinion delivered by Chief Justice Roberts, the Court held that officers may not, without a warrant, search digital information on a cell phone they seize from an arrestee's person.

Officers arrested petitioner Riley on weapons charges, seized a cell phone from his person, and accessed the phone's messages, videos and photographs. That evidence connected Riley to a gang shooting that occurred weeks earlier. He was tried and convicted of that earlier shooting.

Respondent Wurie was arrested for participating in an apparent drug sale and officers seized his phone from his pocket. Officers noticed that the phone was receiving a call from the label, "my house." The officers opened the phone and traced that number to Wurie's apartment. Officers then used that information to obtain a warrant to search Wurie's apartment. The search revealed contraband.

The question for the Supreme Court was whether those searches were justified under the "search-incident-to-arrest" doctrine. Under Supreme Court precedent (*Chimel/Robinson/Gant*), officers, without a warrant, could search an arrestee's person and the area within his immediate control. Officers could also open objects they came across during those searches. Thus, an officer could look through an arrestee's purse incident to an arrest, the theory being that officers could search those items to ensure the arrestee is not armed and to prevent the destruction of evidence.

Riley held the justifications for the search-incident rule are less compelling in cell phone cases. The data in cell phones doesn't pose an immediate risk to officers. Additionally, even if a cell phone contains relevant evidence, once an officer seizes the phone, arrestees cannot readily delete the information stored on them.

Moreover, *Riley* recognized that a cell phone search is substantially more intrusive than a search of other objects we might carry on our person. "Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person."

The Court noted that, in today's era, cell phones might just as easily be called "cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers." Furthermore, the Court stressed a phone's "immense storage capacity."

The Court noted that officers could still apply for a warrant to search a cell phone that was seized incident to arrest. The "exigent circumstances" exception, which allows for warrantless searches in emergency circumstances, would also still apply to cell phone searches. Thus, the Court reasoned that law enforcement interests are not unreasonably constrained by this ruling.

Riley is a prime example of Fourth Amendment jurisprudence adapting to "keep pace with the inexorable march of technological progress." See *United States v. Warshak*, 632 F.3d 266, 281 (6th Cir. 2010). With its stunning 9-0 decision in *Riley*, the Roberts Court has apparently signaled it will vigilantly protect cell phone privacy interests in the digital age. Accordingly, it is incumbent on practitioners to carefully scrutinize all cell phone searches, particularly those made without a warrant.

About the Author: Adam J. Sheppard is a partner at Sheppard Law Firm, P.C., which concentrates in defense of criminal cases. Mr. Sheppard is a Decalogue member and serves on the CBA editorial board as well as on several committees of the CBA's Young Lawyers Section, including criminal law. He also serves as a "panel" attorney in federal court pursuant to the Criminal Justice Act. Mr. Sheppard is a member of NACDL, IACDL, ISBA, and the ABA.

President's Column *(continued from page 4)*

In applying for citizenship in the U.S. in 2004, she concealed both her conviction and her PFLP association. On November 10, 2014, Odeh was convicted of immigration fraud.

We were outraged that DePaul University would allow a fundraiser for a murderer and terrorist. It is highly insensitive to its Jewish students and puts them in an even more hostile environment. On January 29th, I sent a letter to Reverend Fr. Dennis Holtschneider, the President of DePaul University, requesting that he not allow this event. Much thanks to Michael Rothmann, Chair of our Committee on Anti-Semitism, for his research and input. We will keep you advised of the status and outcome of what we hope will be a non-event.

Finally, my door is open and I welcome your suggestions to make Decalogue the bar association you want it to be. Call me (312/782-8888), e-mail me (jchupack@h-and-k.com), or meet me for coffee (my treat). Thank you.

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