

# POLICE ALERT

A Legal Bulletin for Pennsylvania Municipal Police Departments

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## **SUPREME COURT ANSWERS THE CALL ON WHETHER POLICE MAY SEARCH CELL PHONES: “GET A WARRANT”**

*By Christopher P. Gerber, Esquire*

In recent years, the Supreme Court has been criticized for being out of touch with the digital age and failing to provide clear direction on searches and seizures of personal cell phones. Well, the Court has just sent a clear message to law enforcement: a warrant is generally required before a police officer may search the contents of a person’s cell phone, even when the device is seized incident to an arrest.

In *Riley v. California*, 2014 WL 2864483 (June 25, 2014), the Court issued a rare 9-0 decision that examines the right to privacy of information stored on cell phones and when the state may access it without a warrant or the person’s consent.

In that case, David Riley was stopped by police for driving with expired registration tags. During the course of the stop, police learned that his license had been suspended. The police officer impounded his car, and another officer conducted an inventory search of the car. Riley was arrested for possession of firearms after police found two handguns concealed under the car’s hood. When police searched Riley incident to the arrest, they found items associated with the “Bloods” street gang, together with a cell phone in his pants pocket. The parties in the case acknowledged that the device was a “smart phone” with a “broad range of other functions based on advanced computing capability, large storage capacity and Internet connectivity.” The officer then accessed information on the phone that revealed words that the officer believed were associated with the Bloods gang.

About two hours after the arrest, a detective specializing in gangs conducted a more thorough search of the cell phone that revealed a photograph of Riley standing in front of a car that police suspected was involved in a prior shooting incident. Riley was later charged in connection with that shooting, convicted and sentenced to 15 years to life in prison. Riley sought to overturn his conviction on grounds that the warrantless search and seizure of his cell phone violated the Fourth Amendment. The California Court of Appeal affirmed the conviction on grounds that “the

Fourth Amendment permits a warrantless search of cell phone data incident to arrest, so long as the cell phone was immediately associated with the arrestee's person." The California Supreme Court denied Riley's petition for review, and an appeal to the U.S. Supreme Court followed.

In an opinion delivered by Justice John Roberts, the Court unanimously held that police must generally obtain a warrant before accessing information on a person's cell phone even during a search incident to arrest. Justice Roberts acknowledged that the Court has historically allowed police officers to conduct searches of a person's clothing, vehicles and certain areas within the proximity of an arrest for purposes of ensuring officer safety and preventing the destruction of evidence. However, the Court distinguished the search of cell phones, which could yield more incriminating information about an individual than "the most exhaustive search of a house..." Justice Roberts reminded that "our cases have recognized that the Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity. Opposition to such searches was in fact one of the driving forces behind the Revolution itself."

Despite the clear signal sent by the Court in this case, Justice Roberts sends another message that is sure to evoke further debate: some cases *may* justify a warrantless search of a cell phone where "the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment." While the Court does not paint a clear boundary for the exigent circumstances exception, Justice Roberts surmises, without holding, that "fact-specific threats" may justify a warrantless search of a cell phone. Some of the "more extreme hypotheticals" could include "a suspect texting an accomplice who, it is feared, is preparing to detonate a bomb, or a child abductor who may information about the child's location on his cell phone." There should be no doubt that this passage will be cited in cases yet to come.

For now, police departments should promptly implement a written policy that conforms with the Court's holding and to conduct training of their officers to ensure compliance.

The attorneys at Siana, Bellwoar & McAndrew, LLP would look forward to counseling your Police Department in this area. Please visit our website at [www.sianalaw.com](http://www.sianalaw.com) for other pertinent articles and updates.

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