**The Constitutionality of Cell Phone Searches Incident to an Arrest:**

**Riley v. California and United States v. Wurie**

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Abstract

In its 2013 term, the U.S. Supreme Court elaborated on law enforcement procedures in their decision in *Riley v. California* (2014) and *United States v. Wurie* (2014) by examining whether a search of digital data stored on cell phones were authorized in a search incident to a lawful arrest situation. Officers in both cases searched the contents of the arrestees’ cell phone and found further incriminating information that resulted in both defendants being charged with additional crimes. The Court unanimously held that police officers are not justified in conducting a warrantless search of cell phone data incident to an arrest. Prior decisions have identified that the search incident to a lawful arrest exemption to the warrant requirement is necessary in situations where officer safety could be threatened, evidence could be destroyed, or to prevent the suspect from escaping. In review of *Riley* and *Wurie,* the Court determined these three justifications were not present to justify the search of digital data stored on cell phones under the search incident to a lawful arrest exemption.

Key Words: cell phone searches, warrantless searches, searches incident to a lawful arrest, searches of digital data

Introduction

The overarching goal of the Fourth Amendment is to protect the fundamental rights of citizens from governmental intrusion and essential to this tenet is the right to be free from unreasonable searches of the individual, his home, papers, and effects. The amendment outlines the preference for warrants to be issued by a neutral magistrate after the establishment of probable cause by the requesting government agent who makes such request under oath. The requirement of allowing a magistrate to determine the existence of probable cause creates a safeguard to ensure the Constitutional rights afforded to every U.S. citizen against unreasonable searches are upheld. When warrants are issued, they should be very specific in identifying the exact location, place, or person to be searched as well as specifying the incriminating items to be seized.

The expectation of obtaining a warrant prior to a search is idealistic and often disjointed from real-world situations. The Court has recognized this impractical and frustrating process (Sutton, 1986). As a result, the Court has identified five exceptions to the search warrant requirement contained in the United States Constitution:

* Searches incident to arrest
* Consent searches
* Vehicle searches
* Container searches
* Emergency or exigent circumstances searches

These exemptions are very restrictive and were not designed to give law enforcement officers free reign to conduct warrantless searches and seizures haphazardly. U.S. Supreme Court Justice Felix Frankfurter referred to the restrictive nature of these exemptions by stating, “with minor and severely confined exceptions, every search is unreasonable when made without a magistrate’s authority expressed through a validly issued warrant” (*Harris v. U.S.,* 1947, 162). This statement demonstrates the will of the Court was not to create broad categories whereby officers could conduct warrantless searches. Instead, Justice Frankfurter alluded to the fact that the exemptions to the warrant requirement must have strict and confining requirements that must be met to justify officers to conduct warrantless searches in conformity to these exceptions.

While the Court’s preference for obtaining a warrant prior to a search is clear, customary police practices consistently reveal that warrantless searches far exceed those conducted with warrants. Of the warrantless searches, a vast majority are conducted either as a search incident to an arrest or in accordance to the automobile search exemption (Bradley, 1985). Of these, searches incident to an arrest are arguably the most complex. This particular exemption allows officers to conduct a search of the arrestee and his/her immediate area of control, without a warrant, as long as the search is incident and contemporaneous to a lawful arrest. While seemingly simple, debate has arose as to what constitutes the terms “incident” and “contemporaneous” in this context as both terms are vague in nature. To add increased confusion, the general scope of these searches has been a source of contention as the boundaries are in continual evolution and are difficult to identify.

The ability to execute a search incident to an arrest is as old as the act of placing an individual under arrest (Taylor, 1969). In executing a lawful arrest, an officer must first have probable cause before placing a suspect in custody. After making the arrest, the historical perception has been that the seizure of the person is adequate grounds to conduct a warrantless search of the arrestee. The Supreme Court has identified the necessity of searches incident to an arrest as being threefold:

* Protection of the officer from the suspect
* Preventing the possibility of escape by the suspect
* Preservation of evidence that might be damaged or destroyed by the suspect

It is common for criminals to have in their possession, items that may pose a threat to the arresting officer or others. As a result, it is reasonable for the officer to search the arrestee in order to find and confiscate any harmful objects that could be used as weapons. These items could also be used to assist the arrestee in formulating an escape which would pose a threat not only to the officer but to society.

Although these three justifications are valid officer and societal concerns regardless of time, the elevated sophistication of criminal acts coupled with the increased availability and use of emerging technologies in the commission of crime pose new challenges for officers in the performance of their sworn duties. A specific, key challenge would be whether a search incident to a lawful arrest would justify officers to search the digital contents of these devices. One particular technology being used more commonly in the perpetration of crime is cell phones. Although incriminating information deemed beneficial to the case by officers could be stored on cell phones, there must be an examination as to whether such search would fall within the parameters of a search incident to an arrest. The central question surrounding this hinges on the perception as to whether the search is necessary for the preservation of evidence, or whether it is needed to prevent the arrestee from escaping, or if information contained on the phone presents a risk to officer safety.

Background of Searches Incident to Arrest

The Supreme Court has frequently addressed law enforcement practices arising from the Fourth Amendment to provide guidance to police officers on circumstances of search and seizure, surveillance, frisks, and use of force (Ross & Knowles, 2011). In *Riley v. California* (2014) and *United States v. Wurie* (2014), the Court took occasion to further address police procedures in accordance with the Fourth Amendment, which impacts the process of evidence collection by examining whether warrantless searches of cell phone data would fall within the scope of a search incident to an arrest. In order to understand the Court’s decision in *Riley* and *Wurie,* a brief overview of the historical evolution of searches incident to a lawful arrest is necessary.

The original foundation to the modern-day doctrine of searches incident to a lawful arrest was established in *Chimel v. California* (1969). Chimel was accused of burglarizing a local coin shop. Upon warrants being issued, officers placed Chimel under arrest inside his home. Officers then proceeded to search the entire house without a search warrant and without Chimel’s consent. The search was detailed and took approximately an hour (Foley, 2012) with additional incriminating evidence being found. After conviction, Chimel appealed on the grounds that the search was illegal and that all evidence obtained should be suppressed.

Ruling in favor of California, the Court upheld the warrantless search of Chimel’s home and subsequently established the framework for our current search incident to a lawful arrest exception by stating:

When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or affect his escape. Otherwise, the officer’s safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, or course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. (p. 762-763)

This exception allows officers to search the arrestee’s person and the area within his immediate access and reach. It is within these areas that the Court reasoned a suspect might gain possession of a weapon or destroy evidence. The underlying principle behind the Court’s rationale in *Chimel* was for officer safety and the preservation of evidence. To be valid and to fall within the auspices of this exemption, the Court reaffirmed that the search must be contemporaneous to the arrest. Although no definition for “contemporaneous to the arrest” was offered by the Court, it has become widely recognized that the more time transpiring between the arrest and the search, the less likely the search can be justified as necessary to ensure officer safety or preserve evidence (Foley, 2012).

Four years later, the Court provided further clarification on the search incident to a lawful arrest exception in *United States v. Robinson* (1973). Robinson was arrested for a driving license violation and was subsequently frisked. During the frisk, the officer discovered an unidentifiable object in the breast pocket of Robinson’s shirt. Upon removing the item, the object was found to be a “crumpled up cigarette package”. The officer then proceeded to open the cigarette container and discovered heroin. After conviction, Robinson filed an appeal claiming that the search of the cigarette container fell beyond the legal scope established in *Chimel.* The Court upheld the search by ruling that in conducting a lawful arrest, the officer is authorized to inspect containers found on the arrestee’s person. If a search of the container reveals evidence of another, unrelated crime from which the subject is being arrested, the officer may seize it and additional charges can be levied against the arrestee. The *Robinson* case established a bright-line rule allowing officers to conduct a search of the arrestee’s person, including any container found on their person, after every lawful custodial arrest. Although this ruling broadened the scope of these searches, the *Robinson* decision only applied to containers found on the arrestee’s person. The ruling did not authorize the search of containers found near the arrestee.

In *United States v. Chadwick* (1977), federal narcotics agents placed Chadwick, Machado, and Leary under arrest as they were placing a footlocker inside the trunk of a parked car. An hour and a half later, the agents opened the footlocker at their headquarters without the consent of the arrestees and without a search warrant. The search revealed a large quantity of marijuana which resulted in additional charges. Chadwick appealed and argued that the search of the footlocker was unconstitutional. The Court ruled in favor of Chadwick. Specifically, the Court determined the justifications for a search incident to an arrest were not present to authorize the officer in opening and examining the contents of the footlocker. It was further reasoned that with the suspects under arrest and the footlocker in police custody, officers should have obtained a valid warrant prior to the search.

In *New York v. Belton* (1981), the question of whether police could search the entire passenger compartment of a vehicle incident to the law arrest of one of the occupants was examined by the Court. Belton was stopped for speeding. Upon approaching Belton’s vehicle, the officer detected the scent of marijuana and instructed the occupants to exit the vehicle. After placing the occupants under arrest for possession of marijuana, the officer returned to the vehicle and conducted a search of the entire passenger compartment. Upon noticing a jacket in the backseat, the officer proceeded to unzip one of the jacket pockets where a quantity of cocaine was discovered. Further charges were filed based on the discovery of drug material. Belton challenged that the search of the passenger compartment was illegal and moved for the evidence to be suppressed. The Court ruled to uphold the search by determining the search to be valid as it conformed to the requirements of the search incident to a lawful arrest exemption. In the concurring opinion, the Court found:

While the *Chimel* case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of “the area within the immediate control of the arrestee” when that area arguably includes the interior of an automobile and the arrestee is its recent occupant. Our reading of the cases suggests the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within “the area into which an arrestee might reach in order to grab a weapon or evidentiary item.” (p. 459-460)

By its decision, the Court established that officers were justified in searching the passenger compartment of a vehicle every time that an occupant was lawfully arrested.

After the rulings in *Robinson* and *Belton*, officers had tremendous authority to conduct searches of offenders and their surrounding areas contemporaneous to an arrest. For thirteen years, the rules established in these two cases were left unchallenged. In *Thornton v. United States* (2004), the Court was able to re-examine the bright-line rule established in *Belton.* In *Thornton,* officers became suspicious when they noticed Thornton veer his vehicle into a parking lot. Recognizing that Thornton’s car tag had expired, the officers followed him into the parking lot. Having already exited the vehicle, Thornton was approached by the officers who began to question him. After receiving consent, officers began to frisk Thornton and detected a bulge in the suspect’s coat that Thornton confessed was drugs. Thornton was placed under arrest and was put in the patrol car while officers conducted a search of his vehicle. During the search, officers found a firearm which resulted in Thornton being subsequently charged with possession of a firearm by a convicted felon.

It had already been determined in *Belton* that officers were justified in conducting searches of the passenger compartment of a vehicle as long as an occupant had been placed under custodial arrest. The question that arose in *Thornton* was whether the ability to conduct a vehicle search still existed if the offender had already exited the vehicle prior to police contact. The Court ruled that *Belton’s* bright-line rule governing vehicle searches incident to an arrest still justified the search of Thornton’s vehicle. The rationale for this decision was elaborated by the Court:

To be sure, not all contraband in the passenger compartment is likely to be readily accessible to a “recent occupant.” It is unlikely in this case that petitioner could have reached under the driver’s seat for his gun once he was outside of his automobile. But the firearm and the passenger compartment in general were no more inaccessible than were the contraband and the passenger compartment in *Belton*… Once an officer determines that there is probable cause to make an arrest, it is reasonable to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment. (p. 622-623)

The precedent established in *Belton* and reaffirmed in *Thornton* faced another challenge five years later in *Arizona v. Gant* (2009). In *Gant,* officers had received information regarding the whereabouts of a drug house and proceeded to the home to talk to the owner of the property. Rodney Gant was a house guest at the location and subsequently opened the door for the officers upon their arrival. With the owner (and intended target of the investigation) absent, the officers left the property. Shortly thereafter, a background check revealed that Gant had outstanding warrants for driving on a suspended license. Officers returned to the location later that night and set up surveillance to locate Gant. When Gant was observed pulling into the driveway of the home, officers approached and placed him under arrest for the outstanding warrant. After Gant had been handcuffed and put in the patrol car, the officers returned to Gant’s vehicle and conducted a search of the passenger compartment. During the search, officers found a firearm inside the car and a quantity of cocaine found in Gant’s jacket pocket. Gant was subsequently charged.

In his motion to suppress, Gant argued that the vehicle search was unconstitutional due to no threat being presented to the officers after he was handcuffed and placed in the patrol car. Since he was arrested for a traffic offense, Gant further asserted that no related evidence could be found within his vehicle to support the traffic charge. Upon review, the U.S. Supreme Court agreed with Gant and overturned the conviction and the precedent that had been in effect since the *Belton* decision in 1981*.*

While *Gant* appears to present many of the same circumstances as *Belton* and *Thornton*, there are some fundamental differences. In *Belton,* the scent of marijuana emanating from within the passenger compartment of the vehicle provided the officer with probable cause to believe that further drug related evidence would be found within the vehicle. In other words, the search of the vehicle was lawful since the target of the search was related to the charge issued against Belton. The situation in *Thornton* was different as the driver had already exited the vehicle when he was approached by the police. Upon conducting a frisk which resulted in the discovery of illegal drugs, Thornton was placed under arrest. The Court deemed it justifiable to search the vehicle as Thornton had recently exited the vehicle and it was reasonable to believe that further drug material or evidence would still be inside the automobile. The resulting search in both cases was conducted to look for evidence supporting the original charge. In comparison, the circumstances in *Gant* were drastically different as no evidence could have been found in the vehicle related to the original suspended license charge.

The decision in *Gant* effectively erased the previous ruling in *Thornton* while severely restricting the bright-line rule established in *Belton.* Prior to *Gant,* officers had tremendous latitude in searching the passenger compartment of automobiles and any containers found therein. As a result of the *Gant* decision, only the area and containers within the occupant’s reaching distance inside the passenger compartment of a vehicle could be searched incident to the individual’s arrest. This would only apply to situations where officers approach a suspect while he or she is still within the automobile or is in the process of exiting the vehicle. In situations where the suspect has already exited the vehicle prior to coming into contact with the officer, the officer would not be justified in searching the vehicle as the contents are no longer within the immediate reaching distance of the offender. The Court also stated that any search of a vehicle incident to a lawful arrest is legal only if the intended target of the search is related to the arresting charge. Both factors apply to Gant’s situation since he was not within reaching distance of the contents of his vehicle and a search of his car would not have revealed any evidence related to the warrant for driving on a suspended license.

Facts of Riley

A police officer initiated a traffic stop of a vehicle driven by David Riley for driving with an expired registration tag. Riley was placed under arrest when the officer determined that Riley was driving on a suspended license. Pursuant to departmental policy, Riley’s vehicle was impounded and an inventory search was conducted. During the inventory search, two handguns hidden under the car’s hood were discovered which resulted in additional charges being filed against Riley.

In conducting a search incident to the arrest of Riley’s person, items associated with the “Bloods” street gang was discovered. The officer also confiscated a cell phone from Riley’s pants pocket. The phone was identified as a “smart phone”, a cell phone with a broad range of advanced computing capabilities, large storage capacity, and Internet connectivity. Upon looking through the digital data on the phone, the officer found information (presumably text messages or contacts) that were preceded by the letters “CK”. Based on the experience of the officer, the letters were assumed to stand for “Crip Killers”, a slang term for members of the Bloods gang.

Two hours after the arrest, a detective specializing in gangs further examined the cell phone at the police station. The detective was able to find additional information (videos, pictures, etc.,) related to suspected gang activity stored on the phone. One particular item of interest were photographs of Riley standing in front of a car that police suspected had been involved in a recent gang shooting. Based on this information, Riley was charged with the gang-related shooting, firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder. It was further alleged that Riley had committed the offenses for the benefit of a criminal street gang which carried an aggravated extension to the charges that would result in a more severe and lengthy sentence.

At trial, Riley moved to suppress all evidence that was obtained from the cell phone search on the grounds that the search infringed on his Fourth Amendment rights since no search warrant or exigent circumstances were present to justify the search. The trial court rejected the argument and Riley was convicted on all three counts and received a sentence of 15 years to life in prison. Upon appeal, the California Court of Appeals affirmed the trial court’s decision based on an earlier ruling that permitted officers to conduct warrantless searches of cell phones incident to an arrest as long as the phone is immediately associated with the arrestee’s person (*People v. Diaz*, 2011).

Facts of Wurie

Officers conducting surveillance observed Brima Wurie purchase illegal drugs from a vehicle. As a result, Wurie was placed under arrest and transported to the police station for processing. At the police station, officers seized two cell phones from Wurie’s person. One phone was recognized as a “flip phone”, a cell phone that is flipped open for use and has a smaller range of functions than a “smart phone”. The officers noticed the “flip phone” repeatedly received calls from a source identified on the external screen of the phone as “my house”. Upon searching the phone’s contact list, the officers were able to determine the address of the frequent caller.

Upon arriving at the address of the caller identified as “my house”, officers saw Wurie’s name on the mailbox and observed a woman through the window of the home. The female in the home resembled the woman in a picture on the “wallpaper” of Wurie’s phone. The officers proceeded to secure the apartment while obtaining a search warrant. In executing the warrant, officers found and seized 215 grams of crack cocaine, marijuana, drug paraphernalia, a firearm, ammunition, and cash. As a result, Wurie faced additional charges of distributing crack cocaine, possessing crack cocaine with intent to distribute, and possession of a firearm and ammunition by a convicted felon.

During the trial, Wurie filed a motion to suppress the evidence found at his home claiming that the material was the product (or fruit) of an unconstitutional search of his cell phone. The district court denied the motion and Wurie was subsequently convicted on all three counts and was sentenced to 262 months in prison. On appeal, a divided panel of the First Circuit Court of Appeals reversed the decision and vacated the conviction for possession with intent to distribute and possession of a firearm and ammunition by a convicted felon.

Arguments of California and the United States

California asserted that the precedent established in *Diaz* (2011) provided an explanation of the *Robinson* standard as it related to the search of cell phones incident to a lawful arrest. In *Diaz*, the California Supreme Court ruled that cell phone searches conformed to the precedent established by the U.S. Supreme Court in justifying officers to search objects under the control of a suspect in a lawful arrest situation without the presence of a warrant or consent. In *Riley,* California argued that the cell phone was immediately associated with Riley’s person and was thus subject to being searched without consent, exigent circumstances, or a warrant based on the *Diaz* decision. Additionally, any incriminating evidence detected in this search would justify additional charges against Riley.

In *Wurie*, the application of the plain view doctrine enabled officers to examine the source of incoming calls displayed on the external screen of Wurie’s phone. Since cell phones have been found to be a common tool used in the distribution of illegal substances and with Wurie being charged with a drug offense, the claim was made that the search was justifiable as the phone was a component and extension of the crime. As such, it was reasoned that the phone could contain evidence (suppliers, buyers, etc.) related to the original crime that would be beneficial to the police in their efforts to keep drugs out of their community.

Both *Riley* and *Wurie* have two overarching themes supporting their stance on the search of cell phones based on the Court’s decision in *Chimel* (1969): officer safety and the preservation of evidence. The United States and California both assert that a search of cell phone data could help to protect against indirect threats towards officer safety. Most notably, this type of search could alert officers to other confederates of the arrestee who may be headed to the scene of the arrest. In attempting to satisfy the justification to preserve evidence, it was argued that cell phone digital data is vulnerable to two types of evidence destruction – remote wiping and data encryption. Remote wiping occurs when a signal that erases data is sent through a wireless network to a phone. This type of data destruction is normally encountered when the signal is sent by a third party or when the phone enters or leaves a certain geographic area. Encryption is a common feature of many modern cell phones that allows phones to be locked through the use of passwords to prevent others from gaining access to the device. The United States and California both claim the examination of cell phone data in a search incident to an arrest situation to be legal and justifiable in order to ensure officer safety and in the preservation of evidence.

Court Decision and Rationale

The Court granted certiorari for the purposes of examining the scope of searches incident to a lawful arrest as it relates to cell phone data. Writing the majority opinion, Chief Justice John Roberts stated “these two cases (Riley and Wurie) raise a common question: whether the police may, without a warrant, search digital information on a cell phone seized from an individual who has been arrested” (p. 1). While the justifications for the searches in both cases are based on the procedures established in *Chimel* (1969) and *Robinson* (1973), they involve technology that was inconceivable at that time. With the proliferation of cell phones into the daily life of American society a national interest was created in both cases.

The guideline for determining the legality of searches and seizure rests with the Fourth Amendment and the requirement of “reasonableness” when infringing on the rights of individuals (*Brigham City v. Stuart*, 2006). While the term reasonableness has generally required officers to obtain a judicial warrant (*Vernonia School Dist. 47J v. Acton,* 1995), the Court recognized that warrantless searches incident to an arrest occur more frequently than searches conducted under the authorization of a warrant. In its decision in *Robinson* (1973), the Court reasoned that a custodial arrest based on probable cause is a reasonable intrusion under the Fourth Amendment and that a subsequent search incident to an arrest requires no additional justification. Writing for the majority, Chief Justice Roberts opined that,

While Robinson’s categorical rule strikes the appropriate balance in the context of physical objects, neither of its rationales have much force with respect to digital content on cell phones. On the government interest side, Robinson concluded that the two risks identified in Chimel – harm to officers and destruction of evidence – are present in all custodial arrests. There are no comparable risks when the search is of digital data (p. 9).

The increase in popularity and availability of digital devices, like cell phones, create a unique dilemma as to whether the precedent established in the *Robinson* decision can be extended to justify a search of these devices in a search incident to an arrest situation. The underlying question behind this challenge is whether a search of the digital data would be reasonable in the context of both *Riley* and *Wurie*.

The focus of determining the reasonableness of a search incident to an arrest must be based on whether the warrantless search is authorized by the presence of at least one of the three justifications for this exemption: safety of the officer, preservation of evidence, or to prevent the arrestee from escaping. Without these justifications, the search is unreasonable if conducted without a warrant, consent, or any other exigent circumstances. Individuals placed under arrest must still be afforded some of their protections found within the Fourth Amendment although the Court has recognized that these privacy interests are diminished upon arrest. By stating that not every search “is acceptable solely because a person is in custody” (*Maryland v. King*, 2013), the Court clearly established the reduced privacy rights afforded to those under arrest. While it has become routine for officers to search individuals after they have been placed under arrest, it is clear that every arrest situation may not warrant or justify a contemporaneous search of other items found on or near the suspect.

While the argument can be made that the examination of cell phone data is similar to examining the contents of a package, such as a cigarette container, there are fundamental differences between the two items. In *Robinson,* the search of the cigarette container was not based on preservation of evidence. Once the suspect was under arrest and the cigarette container was in the possession of the police, no damage could have been caused to the contents. Instead, the Court determined the subsequent search of the cigarette container to be justified in order to ensure officer safety since the officer was unable to determine what may have been inside the package without further examination. It was reasoned that without opening the package, officers had no way of knowing whether the contents posed a risk to their safety.

In *Riley* and *Wurie*, California and the United States argued that the search of the cell phone data was constitutional on the grounds of ensuring officer safety even though neither provided any corroborating evidence to substantiate this claim. While cell phones could be viewed as a type of container, much like the cigarette package in *Robinson*, Justice Roberts mentioned that they “differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee’s person” (p. 17). Justice Roberts further asserted that the term “cell phone” is misleading as the functionality of these devices cause them to more closely resemble minicomputers instead of phones. In comparison to the circumstances of *Robinson,* digital data stored on cell phones do not present the same potential threat to the officer as an unknown item within a container found either on a suspect or within his access and control. Specifically, an unknown physical object stored in a container could be used as a weapon against the officer or others if left unexamined. Digital data contained on electronic devices, such as cell phones, could not be used in an assaultive manner.

The storage capacity of modern cell phones creates three primary, interrelated concerns surrounding privacy. First, the many functions of cell phones enable the user to collect and store, in one location, many types of information, such as addresses, prescriptions, bank statements, videos, etc. Secondly, the storage capacity allows the user to construct a summary of their private life through the collection of photographs and videos with dates, locations, and descriptions. This ability far exceeds the previous collection of a few photographs in an individual’s wallet or purse. Third, the data on a phone can date back to the date the phone was purchased or earlier. While this may appear insignificant, this capability allows an individual to preserve notes and other seemingly minor forms of information that was generally discarded quickly when it was stored on paper. These concerns signify that a search of cell phone data would cause a greater degree of infringement into the personal life of the arrestee compared to an examination of other items or containers found on or near the arrestee’s person. In recognition of this, Justice Roberts stated:

a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form. (p. 20 -21)

Much of the data mentioned would not be related to criminal activity. In this case, the reasonableness of and justification for this type of search must be questioned and placed under scrutiny.

Another item of debate in this situation involves the meaning of the term “content”. In *Robinson*, the Court extended to officers the authority to inspect the content of packages and containers found on the arrestee’s person or within their area of access and control. These searches, at the time of *Robinson*, were limited to the actual, physical contents of a container. The creation of new technologies challenges the previously understood definition of contents, especially if cell phones are construed to be a type of container. Many computers and modern cell phones utilize “cloud computing” technologies. This feature enables Internet-connected devices to create and store data on remote servers rather than on the device itself. Any data stored on the “cloud” can be viewed or accessed from the cell phone device. Any search of the digital data stored on a cell phone would not be restricted to the device itself but would also involve the examination of data stored on the “cloud”. The legal challenge created by this stems from the inability, during a search, to differentiate between data stored on the cell phone and that which is stored on the cloud. Additionally, it can be argued that any data stored on the “cloud” would be inadmissible in court as the data was not stored in the actual container (cell phone) found on the arrestee’s person. With this perspective, the situations behind *Riley* and *Wurie* would arguably not conform to the guidelines established in past cases by the Court in regards to container searches.

Upon examination of *Riley* and *Wurie*, the Court ruled the search of cell phone data incident to an arrest situation was unconstitutional. While the data stored on a cell phone was found to be outside the scope of a search incident to an arrest, the Court did not state the device was free from any search. Specifically, the Court found it reasonable, in a lawful arrest, to examine the physical aspects of a phone to ensure that it could not be used as a weapon. This inspection is limited to the outward, physical appearance of the phone to ensure that no modifications have been made to hide weapons (i.e., razors) on the device and does not extend to information contained or stored on the phone. Writing for the majority, Justice Roberts opined that “once an officer has secured a phone and eliminated any potential physical threats…data on the phone can endanger no one” (p. 10-11). By securing the phone upon arrest, officers would need consent, a search warrant, or other exigent circumstance in order to search through the phone’s digital data.

Conclusions

The Court’s ruling in *Riley* and *Wurie* has a dramatic impact on current police practices. It is important to note that the Court’s ruling did not change or modify the underlying justifications for searches incident to an arrest. Instead, the decision is critical to what has become standard procedure for many officers in an arrest situation – to have the ability to practically search everything within the arrestee’s area of access and control. As a result of *Riley* and *Wurie,* the scope of officer searches incident to an arrest can no longer be extended to the examination of digital data on electronic devices. In order to stay within the parameters established by the Court’s decision, officers will now have to navigate other avenues to conduct searches of digital data. These methods will generally involve the issuance of a valid search warrant, obtaining consent, or being able to develop and articulate other exigent circumstances that would justify a thorough search of the digital content of these devices in lieu of a warrant.

Like others, officers pursue the path of least resistance in order to simplify their life and work. The practice of conducting cell phone searches incident to a lawful arrest has been the equivalent to a path of least resistance in what has become rather routine police protocol. The process of obtaining a search warrant is often perceived as an unnecessary and cumbersome cycle that officers try to avoid. The procedure of obtaining a warrant commonly results in frustration as a result of two separate items: completing the necessary paperwork to establish probable cause and obtaining a judge’s signature in a timely fashion. Both items are generally viewed as counterproductive to the officer’s desire to execute the search expeditiously. The Court’s decision highlights the understanding that police practices should not and should never been centered on what makes an officer’s job easier. Instead, the focus should always be on the search for the truth while ensuring that the Constitutional rights of each individual are upheld without unnecessary governmental infringement. Without this central focus, justice cannot be guaranteed.

Another option would be for officers to obtain consent to search the digital data stored on cell phones. Gaining consent generally takes less time than going through the process of obtaining a search warrant although it can also be viewed by officers as a rather difficult task. The ability to gain consent depends on several factors that range from the officer-offender relationship immediately prior to, during, and immediately after the arrest. Much of this relationship is determined by the communication skills, degree of communication, and perceived demonstration of respect between both, the officer and the arrestee. In situations where the offender perceives that he has been treated with respect and where the officer has provided effective communication, the offender would generally be more willing to grant consent to any further searches. Any demonstration of arrogance or overtly authoritative acts displayed by the officer could be counterproductive to the process of obtaining consent. To obtain consent more effectively and efficiently, officers must be more cognizant of how they interact with potential suspects while demonstrating an increased willingness to communicate, as opposed to giving orders, with the offender. To facilitate this, police agencies will need to place greater emphasis on the communication skills of officers. This will inevitably lead to increased training opportunities for officers to effectively master this trait.

In addition to obtaining a warrant or gaining consent, officers would still be able to search the digital data contained on cell phones if exigent circumstances are present to necessitate the examination. The determination of exigent circumstances would be established by the officer at the scene based on his or her experience, training, as well as the unique factors associated with the arresting situation. The definition of exigent circumstances fairly clear although the factors that constitute exigency is subjective and can vary from case-to-case. This subjectivity creates a problematic situation and affords the potential for abuse. This subjective nature creates a situation where the development of extenuating circumstances could be based on what the individual officer perceives to be, instead of what actually is, exigent. False or inaccurate perceptions could lead even the most noble of officers to unintentionally take part in unconstitutional actions that may result in additional charges against the suspect. While these type instances may be few, efforts should be made to definitively identify what factors constitute exigency. In addition, training opportunities should be presented to officers to better develop their ability to determine the existence of exigent circumstances. Future research should be conducted to determine whether any increase in cell phone searches as a result of exigent circumstances are experienced as opposed to consent searches or those conducted with warrants.

Law enforcement officers must be cognizant of the reasons for warrantless searches incident to an arrest. Placing an individual under arrest does not remove all constitutional protections from the suspect and does not give officers grounds to conduct a full search of everything on and near the offender. Any search conducted incident to an arrest must be based on the necessity to preserve evident, to protect the officer, or to prevent the offender from escaping. Without these justifications, any search conducted under the purported authority of the search incident to arrest exemption will be unconstitutional.

*Riley* and *Wurie* have clarified the boundaries of these type searches in regards to cell phone data. This decision will most assuredly impact police practices in the search for evidence upon arresting an offender. Although the decision highlights the underlying reason and necessity for searches incident to an arrest, the most important inference drawn from this decision is the reinforcement of individual privacy rights from unreasonable searches and seizures.

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