CLIENT NEWS BRIEF

Supreme Court to Law Enforcement: No Warrant, No Cell Phone Search!

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The United States Supreme Court has concluded that a police officer may not search an arrested person's cell phone data without first obtaining a search warrant. While officers are permitted to conduct limited searches of lawfully arrested persons without first obtaining a warrant, such searches should not include the data content of the arrested person's cell phone.

Riley v. California (June 25, 2014) 573 U.S. ___, involved two cases where the evidence and criminal convictions were obtained as a result of warrantless cell phone searches.

The Fourth Amendment of the United States Constitution protects the public from unreasonable searches and seizures by the government. In general, the Fourth Amendment's "reasonableness" requirement requires officers to obtain a warrant before conducting searches, unless an exception to the warrant requirement applies. One exception permits warrantless searches conducted in the course of a lawful arrest.

In a prior case, *Chimel v. California* (1969) 395 U.S. 752, the Court determined that an officer, without a warrant, may search an arrested person and the area within the arrested person's immediate control, in order to remove any weapons that the arrestee might use to resist arrest or escape. The officer could also search for and seize any evidence on the arrested person to prevent its concealment or destruction. The *Chimel* rule is intended to provide for immediate protection of evidence and the parties involved in the arrest.

In *Riley*, the Court had to determine whether the exception set forth in *Chimel* also permits an officer to search the data content of a cell phone found on the arrested person. To answer this, the Court conducted a "balancing of interests" test and weighed the degree of intrusion upon the arrested person's privacy against the degree to which the search is needed to promote a legitimate governmental interest, such as safety.

The Court determined that the government interest in a warrantless search of an arrested person's cell phone data is minimal because the justifications for searches incident to an arrest are not implicated by cell phone data. The Court found that cell phone data cannot itself be a weapon to harm an officer or a tool to effectuate an escape or resist arrest. The Court also concluded that there is little to no increased risk of evidence being destroyed if an officer is first required to obtain a warrant before searching cell phone data because the officer can take possession of the cell phone without searching its data and a warrantless search does not remove the risk of the arrested person deleting data immediately prior to an anticipated arrest. Therefore, a warrantless search provides no significant government benefit.

Further, the Court ruled that an arrested person's privacy interests demanded procedural protections. While an arrestee has a decreased expectation of privacy by virtue of being lawfully arrested, the Court found that cell phone data includes an extremely broad and private array of information. The Court

William P. Curley III
Senior Counsel
Los Angeles Office
wcurley@lozanosmith.com

Tyler B. Dockins
Associate
Monterey Office
tdockins@lozanosmith.com

Lozano Smith
ATTORNEYS AT LAW

recognized that the immense quality and quantity of information stored by most people on their cell phones was probably far greater than what they keep in their homes, and certainly greater than the few personal effects that may be kept on a person that have up until now been allowed to be subject to warrantless searches, such as a wallet or address book.

Because the arrested person's privacy interest surpassed the government's limited interest in a warrantless search, a warrantless search of cell phone data is not reasonable within the requirements of the Fourth Amendment. The Court, bowing to the realities of technology and the substantial societal changes that the use of cell phones have brought about, embraced and protected this nearly universal piece of hardware that often contains a full chronicle of ones life, including significantly private matters.

The Court's decision does *not* directly address searches and seizures of student cell phones by school officials on school ground or during school-related activities. However, proponents of student privacy are likely to view the Court's discussion of cell phone privacy as an arrow in their quiver and may turn to the *Riley* opinion to support a ban or limits on student cell phone searches by school officials. Generally, public school officials may search student cell phones when there is a reasonable suspicion of wrongdoing, although the scope of any search must be reasonably limited to discovering evidence of that wrongdoing. Even though *Riley* does not apply directly to the student cell phone-school context, the Court's emphasis on the privacy interest in cell phone data makes it important to narrowly tailor student cell phone searches, restricting such searches to discovery of the suspected wrongdoing that justifies the search at its inception.

For more information on this ruling, municipal searches and seizures, or the search and seizure of student cell phones, please contact one of our eight offices located statewide. You can also visit our website, follow us on Facebook or Twitter, or download our Client News Brief App.