



# Supreme Court to Protect Information on Cell Phones

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The digital age has created a world in which over-sharing is the norm and electronic devices are capable of storing significant amounts of one's personal information. However, in an important step to protect the privacy of U.S. citizens, the Supreme Court has declared information on cell phones and smart phones off-limits for warrantless searches.

In a unanimous decision in *Riley v. California*, the Supreme Court has ruled that, without a warrant, police cannot search through cell phones and smart phones of people they arrest. Before this ruling, any person taken into custody was subject to a search of everything on their person, including the contents of their cell phone or smart phone.

In *Riley*, a California man, David Leon Riley, was convicted of gang-related crimes including shooting at an occupied vehicle, attempted murder, and assault with a semi-automatic weapon. However, Riley was not arrested for these crimes until he was later pulled over for driving with an expired license and taken into custody for carrying concealed weapons.

Police searched through Riley's phone twice without a warrant and found pictures, videos, calls and more connecting Riley to a gang and to the shooting incident. While Riley was not positively identified by anyone, the evidence found on his phone was used to convict him before a jury.

The reason that police search the possessions found on a person taken into custody is to assure that the person does not have anything that could cause harm to officers or himself, and to prevent the destruction of any evidence. Riley's attorney argued, "[t]he digital contents of a smart phone are categorically incapable of threatening officer safety."

Regarding the decision, Chief Justice John Roberts wrote for the Court, "[m]odern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet or a purse." Thus, the extensive amount of information that can be stored on smart phones and cell phones, from photos and videos to social networking pages, emails and bank accounts, make treating them like any other form of physical evidence impossible.

Still, members of the federal and state police as well as other supporters of the search of cell phones argue that the vast amounts of information stored on cell phones is precisely why police should be able to search them.

They argue that the presence of photos, videos, texts and social media posts that either display or describe a crime have become ubiquitous, and finding this evidence while a person is in custody allows police to arrest criminals for serious offenses that have been committed and could have been continued by the offender if this evidence had not been discovered. In response to these arguments, Chief Justice Roberts stated, "We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime. Privacy comes at a cost."

Thus, while law enforcement officials will no longer be able to search through the contents of a person's cell phone upon taking that individual into custody, they are permitted to do so if they obtain a warrant. However, this case is only the beginning. With the development of new technology and devices with seemingly unlimited capabilities, the boundaries of this new ruling are sure to be tested and expanded in years to come.

If you or your company has any questions or concerns regarding e-discovery related issues, please email James G. Ryan at [jryan@cullenanddykman.com](mailto:jryan@cullenanddykman.com) or call him at 516-357-3750.

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