



What You Need To Know About the Cell Phone Privacy Arguments at the Supreme Court Today

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April 29, 2014

On Tuesday, the Supreme Court will hear a pair of cases, back-to-back, on cell phone privacy. At 10 a.m., the court takes up *Riley v. California*. And at 11 a.m., the court hears *United States v. Wurie*. In both cases, the justices will be asked to consider the constitutionality of warrantless cell phone searches by law enforcement officers during an arrest.

What's at stake?

Although the cases examine different circumstances, and even different phones (a "flip" style phone and a "smart" phone), they'll post ask the same basic question: during an arrest, can law enforcement examine the contents of your cell phone without a warrant? In both cases before the Supreme Court, officers did just that. And in both cases, the person arrested was convicted at least partially based on evidence directly or indirectly obtained through an examination of his cell phone. The ever-wonderful [SCOTUSblog](#) has some good context on why this is a question at all:

Although the Court has made clear that the Fourth Amendment was written for people, it also extends — sometimes — to their “effects,” or items of property. But the constitutional privacy of property may depend upon where it is found and how it is used. In fact, if it turns up in a police station, it is not entirely clear how private it remains.

Before cell phones existed, as [National Journal](#) explained Monday, the court granted law enforcement officers a very narrow authority, "from incident to arrest," to search suspects along “the area into which he might reach.” It's intended to prevent a suspect from destroying evidence at the last minute, and to protect officers from a possibly hidden weapon. But given how much information — including private information — typically sits on a cell phone these days, that means cell phone searches allow law enforcement officers to access vast amounts of information without a warrant.

Why is the Supreme Court taking up this question?

The lower courts conflict on the question of whether these searches are constitutional or not, meaning that the important question doesn't have a clear answer at the moment. Let's look case by case.

The first case the courts will hear Tuesday is *Riley v. California*. In 2009, police looked at the contents of David Leon Riley's smartphone twice, after arrest but before obtaining a warrant. A court found that the evidence obtained from those searches — including photographic evidence of gang involvement — was admissible during the trial. He was eventually given a sentence of 15 years to life, a lengthened sentence because of the gang involvement evidence. That sentence (and the use of the cell phone evidence) was upheld by a state appeals court.

The second case is *United States v. Wurie*. And in this one, it's the federal government opting to challenge a decision by the First Circuit Court of Appeals *against* these warrantless searches. Brima Wurie's cell phones were confiscated during an arrest stemming from a 2007 drug deal in Boston. Police examined his phone without a warrant, and from there determined his home address, despite Wurie's denial that it was where he lived. They eventually searched his home with a warrant, identifying it from the information gleaned from his phone. He was convicted in court based in part on the evidence from the search of his home, despite a failed attempt from his legal team to have that evidence thrown out. On appeal, the First Circuit overturned two counts of his conviction on the grounds that the Fourth Amendment does not authorize a warrantless cell phone search upon arrest. His sentence was reduced from 262 months to 240 months in prison.

Who's interested in the outcome of this decision?

Arguably, every single person who has a cell phone should be very interested in this case. Barring that, a number of organizations have weighed in on the cases.

The National Press Photographer's association and 13 media organizations — including the Online News Association, the E.W. Scripps company, and the *New York Times* — [filed a friend of the court brief](#) urging the justices to protect arrestees from warrantless cell phone searches. "Smart phones could not have been in the minds of the Framers when they wrote the Fourth Amendment to protect 'persons, houses, papers, and effects, against unreasonable searches and seizures,'" the brief reads, "but the information contained in these devices falls squarely within the amendment's purpose." A number of other organizations have also filed briefs in support of Riley, including the [Electronic Privacy Information Center](#), the [ACLU](#), the [Cato Institute](#), and the [American Library Association](#).

Meanwhile, California and the federal government are arguing that these searches are legal. In its brief on Riley, [California wrote that the state](#) "recognizes the remarkable advances that have been, and continue to be, made in communications, storage, and networking technology," adding, "the facts of this case, however, provide no basis for departure from long-standing Fourth Amendment standards." The brief concludes:

A reasonable person in petitioner's position would have anticipated at least this level of intrusion into his privacy interests based on the fact of his lawful arrest. Indeed, the course of events in this

case reflects only solid, traditional, effective police work, leading to a just conviction. The circumstances here suggest no occasion for any change in Fourth Amendment law.

Similarly, the Justice Department would like the Supreme Court to reverse the appeals court decision against these searches, arguing that they're essential to the work of law enforcement. From the brief:

In today's world, cell phones are particularly likely to contain evidence of unlawful activity and to help law-enforcement officers identify suspects they have apprehended. And unlike other containers, their contents can be destroyed or concealed after the suspect is taken into custody, making it impossible or impracticable for the police ever to retrieve critical evidence. Searches of cell phones at the scene of arrest, moreover, can quickly alert officers that confederates or others are coming to the scene, helping them avoid potentially dangerous encounters. Although cell phones can contain a great deal of personal information, so can many other items that officers have long had authority to search, and the search of a cell phone is no more intrusive than other actions that the police may take once a person has been lawfully arrested.