Written by **Bob Adelmann** on April 28, 2014

Supreme Court to Hear Critical Fourth Amendment Appeals

David Leon Riley was driving through a residential area of San Diego in August of 2009 when he was stopped for having expired license tags on his car. A so-called routine search of his vehicle turned up a couple of handguns, whereupon he was arrested. The police took his smartphone and examined it down at the station house, discovering e-mails, text messages, and videos implicating him in a gang-war drive-by shooting two weeks earlier. He was charged with and convicted of shooting at an occupied vehicle, attempted murder, and assault with a deadly weapon, along with other gang-related crimes, and sentenced to 15 years in jail.

Riley's attorneys tried without success to have the evidence from his smartphone suppressed, claiming that the police didn't secure a search warrant first. But on appeal his case will be heard by the Supreme Court on Tuesday.

Brima Wurie was arrested by Boston police in September 2007 for doing a drug deal, and they took from him cash, keys, and two cellphones, including a now-ancient flip-style phone. Wurie gave them a false address, but their search of his flip-phone revealed his real address. The police then secured a search warrant and entered his apartment, finding more drugs and cash along with a gun and ammunition.

Like Riley, Wurie was charged with various crimes, convicted, and sentenced to 20 years in jail. Unlike Riley, however, Wurie had his original sentence reduced by 22 months when an appeals court overturned his conviction on two counts resulting from the unwarranted search of his flip-phone. The First Circuit Court referred to a previous Supreme Court case — *Chimel v. California*, where the "search-incident-to-arrest" exception to the Fourth Amendment was created — claiming that in the Wurie case the exception didn't apply.

Upon appeal, the Supreme Court will also hear the Wurie case on Tuesday, right after hearing Riley's. On the surface the cases appear to involve similar circumstances, but with differing outcomes and potentially significant rulings on how the Fourth Amendment applies today in the digital high-tech smartphone world.

As a refresher, here is the language of the Fourth Amendment to the U.S. Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Courts has wrestled with this for years, defining the meaning of "effects," "places to be searched," and "things" to be seized. In the *Chimel v. California* case, the Supreme Court established the "Chimel rule," where police arresting a person in his home could not search the entire house without a search warrant but were allowed to search the area "within immediate reach" of the suspect. The high court ruled that such searches were "incident to the arrest" and were limited to the immediate area, to keep the suspect from obtaining a weapon which could endanger an officer, or reaching for and destroying evidence.

Justice Potter Stewart wrote:

> 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 arrestee later might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated.
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> 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, of course, be governed by a similar 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.
>
> There is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control" — construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.
>
> There is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs — or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself.
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> Such searches, in the absence of well recognized exceptions, may be made only under the authority of a search warrant. The "adherence to judicial processes" mandated by the Fourth Amendment requires no less.

The only problem is that that ruling was made in 1969, 45 long years ago, and technology today allows that much of the information that might prove useful to police in an investigation formerly to be found in "desk drawers" is now likely to found on a person's smartphone. Where is the bright line between privacy and safety today? That's what the Supreme Court will be dealing with starting Tuesday.

The First Circuit Court laid down a hard and fast rule in the *Wurie* case, holding that the Chimel rule didn't apply, as the search had nothing to do with officer safety or preservation of evidence. They held that the police, if they had probable cause, had plenty of time to find a judge and persuade him to issue a warrant.

The Riley appeal is based on the vast difference in the amount of information contained in today's smartphones compared to, say, a diary or a notebook carried on a person under arrest. Such phones contain "exponentially greater amounts and types of sensitive personal information than any physical item an arrestee could carry on his person.… [This information is] profoundly expressive … [revealing] the thoughts, wonders and concerns of a phone's owner."

That is precisely why the Justice Department is supporting California in the *Riley* case: The amount of such information is a potential digital treasure trove juicy enough to ignore the Fourth Amendment and

continue to ride the Chimel rule to its ultimate destination: All searches are legal, regardless of Fourth Amendment claims to the contrary.

The DOJ contends that with the arrest comes the loss of privacy and that it is "crucial" for the police to obtain all this otherwise privileged and private information "during the period immediately following an arrest." Besides, holds the DOJ in its brief, cellphones aren't really that much different from other containers of information such as wallets, purses, briefcases, and address books that police have been allowed to take and examine without first being required to go to the trouble of getting a search warrant.

As the First Circuit noted:

> Warrantless cellphone data searches strike us as a convenient way for the police to obtain information related to a defendant's crime … or other as yet undiscovered crimes … without having to secure a warrant.

Professor Orin Kerr of the George Washington University College of Law noted that this is the first venture into the digital universe for the Supreme Court:

> Computer search and seizure is the new frontier. These [appeals by Riley and Wurie] are the first of many that the Supreme Court will decide in the area, so they'll be very important for the future of the law.

The Supreme Court won't be making any decision in either case before June, and there is speculation that there may be separate rulings for each case. In any event, they will be scrutinized carefully for evidence that the high court favors police convenience over precious personal rights to privacy, or vice versa. The Fourth Amendment has withstood many attacks since its adoption in March, 1792, but none more important than these. It is hoped that the court will lean against the wind and secure and confirm the precious rights of the citizens against the convenience of the state.

A graduate of Cornell University and a former investment advisor, Bob is a regular contributor to The New American *magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics. He can be reached at badelmann@thenewamerican.com*