

Warrantless Searches of Cell Phones by the Police

無令狀搜索被捕者手機內容

此篇英文原文是摘錄自美國最高法院判決

David Leon Riley v. California, 573 U.S. 1; 134 S.Ct. 247 (2014).

I 原文

These two cases 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.

In the first case, petitioner David Riley was stopped by a police officer for driving with expired registration tags. In the course of the stop, the officer also learned that Riley’s license had been suspended. The officer impounded Riley’s car, pursuant to department policy, and another officer conducted an inventory search of the car. Riley was arrested for possession of concealed and loaded firearms when that search turned up two handguns under the car’s hood.

An officer searched Riley incident to the arrest and found items associated with the “Bloods” street gang. He also seized a cell phone from Riley’s pants pocket. According to Riley’s uncontradicted assertion, the phone was a “smart phone,” a cell phone with a broad range of other functions based on advanced computing capability, large storage capacity, and Internet connectivity. The officer accessed information on the phone and noticed that some words (presumably in text messages or a contacts list) were preceded

by the letters “CK”—a label that, he believed, stood for “Crip Killers,” a slang term for members of the Bloods gang.

At the police station about two hours after the arrest, a detective specializing in gangs further examined the contents of the phone. The detective testified that he “went through” Riley’s phone “looking for evidence, because gang members will often video themselves with guns or take pictures of themselves with the guns.” Although there was “a lot of stuff” on the phone, particular files that “caught the detective’s eye” included videos of young men sparring while someone yelled encouragement using the moniker “Blood.” The police also found photographs of Riley standing in front of a car they suspected had been involved in a shooting a few weeks earlier.

Riley was ultimately charged, in connection with that earlier shooting, with firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder. The State alleged that Riley had committed those crimes for the benefit of a criminal street gang, an aggravating factor that carries an enhanced sentence. Prior to trial, Riley moved to suppress all evidence that the police had obtained from his cell phone. He contended that the searches of his phone violated the Fourth Amendment, because they had been performed without a warrant and were not otherwise justified by exigent circumstances. The trial court rejected that argument. At Riley’s trial, police officers testified about the photographs and videos found on the phone, and some of the photographs were admitted into evidence. Riley was convicted on all three counts and received an enhanced sentence of 15 years to life in prison.

The California Court of Appeal affirmed. The court relied on the California Supreme Court’s decision in *People v. Diaz*, which held that the Fourth Amendment permits a warrantless search of cell phone data incident to an arrest, so long as the cell phone was immediately associated with the arrestee’s person.

Revolution itself. In 1761, the patriot James Otis delivered a speech in Boston denouncing the use of writs of assistance. A young John Adams was there, and he would later write that “every man of a crowded audience appeared to me to go away, as I did, ready to take arms against writs of assistance.” According to Adams, Otis’s speech was “the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born.”

Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans “the privacies of life”. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.

We reverse the judgment of the California Court of Appeal in No. 13-132 and remand the case for further proceedings not inconsistent with this opinion. We affirm the judgment of the First Circuit in No. 13-212.

II 法學英文生字

1. **warrant** (n.) 逮捕令，搜索令；拘票
arrest warrant 逮捕令，拘捕令
search warrant 搜索令
warrantless (adj.) 無逮捕令或搜索令的
warrantless arrest 無逮捕令的逮捕
warrantless search 無搜索令的搜索
2. digital information 數位資訊
3. **seize** (v.) 扣押，沒收
seize assets 扣押資產

- seized** (adj.) 被扣押的，被沒收的
- seizure** (n.) 扣押，沒收
- seizure of contraband 沒收違禁品
- seizure of goods 沒收貨品
- seizure of property 扣押財產
- search and seizure 搜索與扣押
4. expired registration tags 過期車牌
5. **license** (n.) 執照
- license fee 執照費
- license tax 執照稅
- license to practice 開業執照
- marriage license 結婚執照
- license** (v.) 發給執照
6. **suspend** (v.) 中止，停止
- suspension** (n.) 中止，停止
- suspension of a right 停止某權利
- suspension of action 訴訟中止
- suspension of business 停止營業
- suspension of execution 執行中止
- suspension of license 吊銷執照
- suspension of payment 停止支付
- suspension of proceedings 訴訟程序中止
7. **impound** (v.) 扣押，沒收；充公
- impoundment** (n.) 總統對國會撥款的扣押
8. inventory search 盤點搜索
9. **possession** (n.) 占有；擁有，持有；所有權，所有物
- actual possession 實際占有；實際持有
- constructive possession 推定占有；推定持有
- criminal possession 非法持有
- notorious possession 公然占有；公然持有

summary proceedings 即決訴訟程序

process of criminal proceedings 刑事訴訟程序

III 原文翻譯

這兩個案件提出一個共同的問題：是否警方可在沒有搜索令的情況下，搜索警方從被逮捕者扣押之手機上的數位資訊。

在第一個案件，上訴人大衛·萊利駕駛車牌過期的車被警察攔下。在攔下的過程中，警察知悉萊利的駕照被吊銷。該名警察依據警察部門的政策扣押萊利的車，另一名警察對萊利的車進行清查搜索。警察在萊利的車引擎蓋下搜出兩把手槍，萊利因涉嫌藏匿上膛武器被逮捕。

警察根據合法逮捕的附帶搜索，對萊利進行搜索，發現與「血」街頭幫派有關的東西。警察還從萊利褲子口袋裡扣押了萊利的手機。據萊利說，他的手機是一個「智慧型手機」，基於先進的計算能力、存儲容量大，和網路連線等，具有廣泛功能。該名警察近用手机上的資訊，發現有些短信或聯絡人清單前加字母「CK」，他認為此一稱號是指「美國黑幫殺手」，乃是「血」街頭幫派成員的俗稱。

大約在逮捕後兩小時，一個熟悉街頭幫派的探員在警局進一步檢查萊利手機上的內容。探員作證說，他搜索萊利的電話尋找證據，因為幫派成員會經常拍攝自己與槍的影片或照片。雖然萊利手機上有「很多東西」，特別吸引探員目光的是年輕人打鬥而有人大喊「濺血」以煽動打鬥的影片。探員還發現萊利站在一輛幾個星期前涉嫌參與槍擊之車前的照片。

萊利最終被控，與早期槍擊事件，從車上射擊、半自動槍械攻擊，以及謀殺未遂等這些罪名。加州檢方主張，萊利以街頭幫派為名犯下這些罪行，為加重刑罰因素。在審判前，萊利要求法院排除警方從他手機取得的所有證據。他主張警方對他手機的搜索違反美國憲法增修條文第四條，因為警方搜索他手機沒有搜索令也沒有正當化搜索的緊急情況。加州地方法院拒絕萊利的主張。在萊利的審判，警察對萊利手機上找到

IV 生字測驗

authorize	warrantless search
content	privacy interest
authority	exigent circumstances
safeguard	immediate control
boundary	destructible evidence
justification	possession of a weapon
concealment	geographic and temporal limitation
certiorari	the search-incident-to-arrest exception

1. Regarding whether the police, after seizing a cell phone from an individual's person as part of his lawful arrest, can search the phone's data without a warrant, such a search exceeds the _____ of the Fourth Amendment search-incident-to-arrest exception.
2. A warrantless search is per se unreasonable under the Fourth Amendment, unless one of a few specifically established and well-delineated exceptions applies. One of those exceptions allows the police, when they make a lawful arrest, to search the arrestee's person and the area within his _____.
3. The police have the _____ to conduct a full search of the person incident to a lawful arrest.
4. In the context of _____, once it becomes apparent that the items of clothing might contain destructible evidence of a crime, the police are entitled to take, examine, and preserve them for use as evidence.

5. The justifications for the search-incident-to-arrest exception are the need for the arresting officer to _____ himself and others and to prevent the loss of evidence.
6. The search-incident-to-arrest doctrine describes a class of searches that are only reasonable in the Fourth Amendment sense because they are potentially necessary to preserve _____ or protect police officers.
7. Arresting officers can inspect a cell phone to ensure that it is not actually a weapon, but the court has no reason to believe that officer safety would require a further intrusion into the phone's _____.
8. The search-incident-to-arrest exception does not _____ the warrantless search of data on a cell phone seized from an arrestee's person.
9. The scope of a permissible search incident to an arrest is not limited to the arrestee's person, but includes the area from within which he might gain _____ or destructible evidence.
10. If a search is first done in a police station and not done contemporaneously with an arrest, a search warrant must be obtained for the protection of the individual's _____.
11. When a search is not contemporaneous, a defendant's expectation of privacy in the container survives the _____ justifying a warrantless search.
12. Like other warrantless searches, a search incident to arrest must be limited in scope to that which is justified by the particular purposes served by the exception. Searches incident to arrest have both a _____.

13. It is entirely reasonable for an arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its _____ or destruction.
14. Police officers may conduct a _____ of a suspect's person after an arrest to remove weapons that could be used to resist arrest or to escape.
15. Although ample _____ supports a search of the arrestee's person and the area within his immediate control, no justification exists for routinely searching any room other than that in which an arrest occurs, or even for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant.

V 翻譯練習

1. When there has been a lawful custodial arrest of an occupant of an automobile, the officer making the arrest may, contemporaneously with the arrest, search the passenger compartment thereof, including containers found in it.
2. During an arrest, an arrestee may attempt to secure a weapon to help him resist the arrest or escape, or he may conceal or destroy evidence of the offense that prompted the arrest. In such a situation if the officer delays the search to first secure a warrant, the purpose of the search--to protect the safety of the officer or to prevent the loss of evidence--would be frustrated. It is reasonable under the Fourth Amendment for the officer to conduct a warrantless search incident to arrest to gain control over the weapon or destroyable evidence of the offense prompting the arrest when those risks are present. But the scope of this

search is narrowly tailored to the necessities that justify it -- officer safety and the preservation of evidence of the crime prompting arrest. Thus, an officer may conduct a search incident to arrest of the arrestee's person and the area within his or her immediate control.

VI 生字測驗解答

1. boundaries
2. immediate control
3. authority
4. the search-incident-to-arrest exception
5. safeguard
6. destructible evidence
7. contents
8. authorize
9. possession of a weapon
10. privacy interest
11. exigent circumstances
12. geographic and temporal limitation
13. concealment
14. warrantless search
15. justification

VII 翻譯練習解答

1. 當警方合法羈押與逮捕汽車裡的乘客時，進行逮捕的警方可於逮捕同時搜索乘客車廂，包括在車廂找到的容器。
2. 在逮捕過程中，被逮捕者可能試圖取得幫助自身抵抗逮捕或逃逸的武器，或者可能隱匿或銷毀引起逮捕行動的犯罪證據。在此情況下，假如員警為了先取得搜索令而延遲搜索，為了保護員警安全或

防止證據滅失之搜索之目的，將會無法實現。依據美國憲法增修條文第四條，當存在掌控武器或銷毀引起逮捕行動的犯罪證據之風險時，員警逮捕後進行無令狀附帶搜索是合理的。但是搜索範圍必須嚴格侷限在保護員警人身安全和保全證據的必要範圍，因此員警可在合法逮捕後附帶搜索被逮捕者的身體和「處於其立即控制」的周圍區域。