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MEMORANDUM

TO: OAKLAND COUNTY POLICE CHIEFS

FROM: JESSICA R. COOPER
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SUBJECT: *Riley v California*
Warrant Searches of Cell Phones

DATE: June 25, 2014

Today, the US Supreme Court issued a major search and seizure opinion. In a unanimous decision in *Riley v California*, and the companion case of *United States v Wurie*, the Supreme Court held that a police officer must secure a search warrant before searching digital information on a cell phone pursuant to an arrest.

While my Office has always counseled, i.e. that a search warrant is necessary before police conduct a search of a cell phone's content, the Supreme Court's opinion affirmatively holds that this is a **constitutional** requirement.

"Our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest.

The critical point is that, unlike the search incident to arrest exception, the exigent circumstances exception requires a court to examine whether an emergency justified a warrantless search in each particular case." P-26-27.

The hypotheticals the Court gave as exigent circumstances were extremely limited. One example was a child abductor who may have information about the child's location on the cell phone, where finding the child was paramount and the immediate

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search of the phone would be necessary for the safety of the child. The other hypothetical was to avert an eminent terrorist attack.

The Court particularly stressed that cell phones are different than papers, because cell phones contain far more information of a personal nature, and that the traditional justifications for searches incident to arrest – to see if the person has any weapons and to prevent the destruction of evidence – do not apply. Whether or not the contents of the cell phone are password protected is irrelevant.

One argument the government made in these cases was that if the phone is not searched immediately, its contents can be erased by a distant signal, hence destroying possible evidence. The Court suggested that the police officer could remove the batteries from a phone, or put the phones in a “Faraday bag” (a lightweight aluminum bag that makes it more difficult for a distant signal to reach the phone). The Court also said that the search of a cell phone by warrant would be permissible – but of course that would require probable cause to believe evidence would be found on the cell phone, something that could be established in many cases but certainly not all.

Bottom line is: (1) if your officers are routinely opening up cell phones and searching them incident to arrest, they should be told to stop immediately; and (2) cell phones can be seized and a determination later made if there is probable cause to obtain a search warrant for the cell phone contents.

Cc Paul Walton