



MICHIGAN STATE POLICE LEGAL UPDATE

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CRIMINAL LAW AND PROCEDURE MANUAL

The third edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* will be available soon.

The manual is published by [Kendall Hunt Publishing Co.](http://www.kendallhunt.com) Copies may be pre-ordered at https://www.kendallhunt.com/michigan_criminal_law/ or by calling Kendall Hunt Customer Service at (800) 228-0810.

SEARCH AND SEIZURE

Police officers are generally required to obtain a search warrant to search digital information on a cell phone seized from a person incident to arrest.

In *Riley v. California*, the United States Supreme Court considered two cases, *Riley v. California* and *United States v. Wurie*, which raised a common question: whether the police may, without a warrant, search digital information on a cell phone from an individual who has been arrested.

In *Riley v. California*, Riley was arrested for carrying a concealed firearm. During a search incident to arrest, the defendant's cell phone, a "smart phone," was seized and searched by officers incident to arrest. Officers found evidence of gang involvement and photographs that tied the defendant to an earlier shooting. Riley was charged in connection with the earlier shooting.

In *United States v. Wurie*, Wurie was arrested after police witnessed him engaged in an apparent drug deal. At the police station, officers seized two cell phones from Wurie, one of which was a "flip phone." This phone was repeatedly receiving calls. Officers opened the phone and, by pressing two buttons, accessed the phone's call log and obtained the phone

number associated with the "my house" label on Wurie's cell phone. Officers used this information to assist in determining where Wurie lived. Officers responded to Wurie's apartment, gathered additional information, and obtained a search warrant for the apartment. Wurie was charged with drug and weapon violations.

The Court held that police officers are generally required to obtain a search warrant before conducting a search of digital information on a cell phone seized incident to arrest.

In reaching this holding, the Court examined the traditional justifications for allowing warrantless searches incident to arrest: to remove weapons from the arrestee's person and to prevent concealment or destruction of evidence from the arrestee's person. The Court found these justifications did not apply to a search of the digital information on a cell phone.

The Court stressed that cell phones are different than other physical objects that might be kept on an arrestee's person. The Court noted that a person's entire private life can be reconstructed due to a cell phone's immense capacity to store many different types of highly personal information.

The Court noted that police officers may examine the physical aspects of a cell phone to ensure it will not be used as a weapon (e.g., to determine whether there is a razor blade hidden between the phone and its case), but once the officer has secured the phone and eliminated potential physical threats, the data on the phone cannot endanger anyone.

In addressing the prosecution's argument that evidence could be destroyed or hidden by remote wiping or data encryption, the Court noted that the problem did not appear to be prevalent and could be prevented by other means (e.g., turn the phone off, remove the battery, place the phone in an enclosure that isolates the phone from radio waves (e.g., Faraday bags)).

The Court recognized that, even though the search incident to arrest exception does not apply to cell phones, the exigent circumstances exception may apply when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment (e.g., a child abductor who may have information about the child's location on his cell phone).

The Court concluded its opinion with the following: Our answer to the question of what police need to do before searching a cell phone seized incident to arrest is accordingly simple - get a warrant.

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