CRIMINAL PROCEDURE—SEARCH INCIDENT TO ARREST—WARRANTLESS COLLECTION OF DIGITAL INFORMATION FROM CELL PHONES DEEMED UNCONSTITUTIONAL.

Riley v. California, 134 S. Ct. 2473 (2014).[1]

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In *Riley v. California*,[2] the United States Supreme Court addressed whether or not accessing digital information stored on a cell phone seized incident to an arrest, but without a warrant, violated the Fourth Amendment[3] prohibition against unreasonable searches.[4] In the first case consolidated for appeal, police stopped petitioner David Riley for driving with expired registration tags and subsequently arrested Riley for possession of two handguns.[5] One of the officers removed a cell phone from Riley's pants pocket.[6] Two hours later, at the police station, a detective who specialized in street gangs examined the phone and found evidence of gang-related activities.[7] As a result of the information found on the

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[1] Riley v. California is a consolidation of People v. Riley (*Riley I*), No. D059840, 2013 WL 475242 (Cal. Ct. App. Feb. 8, 2013) and United States v. Wurie (*Wurie II*), 728 F.3d 1 (1st Cir. 2013). Riley v. California (*Riley II*), 134 S. Ct. 2473, 2480–82 (2014).

[2] 134 S. Ct. 2473 (2014).

[3] The Fourth Amendment provides:

> 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.

U.S. CONST. amend. IV.

[4] *Riley II*, 134 S. Ct. at 2480–81.

[5] *Id.* at 2480. In addition, officers found items associated with the "Bloods" street gang. *Id.*

[6] *Id.* The officer accessed Riley's smart phone and found information that he believed to be related to the "Bloods" gang. *Id.* Specifically, initials that he believed to stand for "Crip Killers." *Id.*

[7] *See Riley II*, 134 S. Ct. at 2480–81. The detective found videos of young men fighting and using "Blood" language. *Id.* at 2481. In addition, the phone con-

phone, police charged Riley in connection with an unrelated gang shooting for firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder.[8]

Prior to trial, Riley moved to have all evidence that the police discovered from his cell phone suppressed because the search had been performed without a warrant, in violation of the Fourth Amendment.[9] The trial court denied the motion.[10] On appeal, the California Court of Appeal affirmed the decision and held that the trial court correctly applied *People v. Diaz*.[11] The California Supreme Court denied Riley's petition for review and the United States Supreme Court granted certiorari.[12]

In the second case consolidated for appeal, police arrested respondent Brima Wurie after a police officer saw Wurie involved in an apparent drug sale.[13] At the police station after the arrest, officers observed that one of the phones taken from Wurie continued to receive phone calls from a number labeled "my house."[14] Officers accessed the phone and determined the phone number listed under the label "my house."[15] Using the address they found associated with the phone number, the police were able to locate Wurie's apartment.[16] Upon arrival, officers secured the apartment while they obtained a search warrant.[17]

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tained photographs of Riley in front of a car that was suspected to be involved in a shooting that took place a few weeks prior to Riley's arrest. *Id.*

[8] *Id.*

[9] *Id.* Riley further contended that there were no exigent circumstances to justify the warrantless search. *Id.*

[10] People v. Riley (*Riley I*), No. D059840, 2013 WL 475242, at *3 (Cal. Ct. App. Feb. 8, 2013). The trial court held that because the cell phone was on Riley's person, the search was lawful. *Id.* (citing People v. Diaz, 244 P.3d 501 (Cal. 2011) (holding that stored data in text message folder of cell phone was subject to a search incident to arrest)). "Riley was convicted on all three counts and received an enhanced sentence of fifteen years to life in prison." *Riley II*, 134 S. Ct. at 2481.

[11] *Riley I*, 2013 WL 475242 at *3, *6, *10. The court found that "Riley's cell phone was immediately associated with his person when he was arrested, and therefore the search of the cell phone was lawful whether or not an exigency still existed." *Id.* at *6 (citing *Diaz*, 244 P.3d at 505).

[12] *Riley II*, 134 S. Ct. at 2481.

[13] Unites States v. Wurie (*Wurie I*), 612 F. Supp. 2d 104, 106 (D. Mass 2009). Wurie was arrested for distribution of cocaine. *Id.* The officer seized two cell phones that police found on Wurie's person. *Id.*

[14] *Id.*

[15] *Id.* The officers also noticed a young black woman set as the background on Wurie's phone. *Id.*

[16] *Wurie I*, 612 F. Supp. 2d at 106–07.

[17] *Id.* at 107. When the officers executed the search warrant they found 215 grams of crack cocaine, a loaded 9-millimeter firearm, .40-caliber hollow point ammunition, four plastic bags of marijuana, and drug paraphernalia. *Id.*

The district court denied Wurie's motion to suppress the evidence obtained from the search of his apartment, and Wurie was subsequently convicted.[18] On appeal, the Court of Appeals for the First Circuit reversed the denial on the grounds that the search violated the Fourth Amendment and vacated Wurie's convictions for possession with intent to distribute and possession of a firearm.[19] The Supreme Court granted certiorari.[20]

The Court consolidated *Wurie* and *Riley* in order to analyze "[w]hether the police may, without a warrant, search digital information on a cell phone seized from an individual who has been arrested."[21] The Court cited long legal precedent that establishes a warrantless search as reasonable only if certain exceptions to the warrant requirement are met.[22] The Court recognized that the appeals concerned the reasonableness of a warrantless search of the digital data on a cell phone under the incident to a lawful arrest exception to the warrant requirement.[23]

The Court held that officers generally must obtain a warrant before they conduct a search of the digital information on a cell phone.[24] In its analysis, the Court relied on its decision in *Chimel v. California*.[25] In that case, the Court held that a warrantless search

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[18] *Riley II*, 134 S. Ct. at 2482. Wurie was convicted of "distributing crack cocaine, possessing crack cocaine with intent to distribute, and being a felon in possession of a firearm" and was sentenced to 262 months in prison. *Id.*

[19] *Wurie II*, 728 F.3d 1, 14 (1st Cir. 2013); *see Riley II*, 134 S. Ct. at 2482. A divided panel held that cell phones are distinguishable from other physical items because of the amount of personal information that can be stored on a cell phone. *Riley II*, 134 S. Ct. at 2482. The court held that "the search-incident-to-arrest exception does not authorize the warrantless search of data on a cell phone seized from an arrestee's person, because the government has not convinced us that such a search is ever necessary to protect arresting officers or preserve destructible evidence." *Wurie II*, 728 F.3d at 13 (citing Chimel v. California, 395 U.S. 752, 763 (1969)).

[20] *Riley II*, 134 S. Ct. at 2482.

[21] *Id.* at 2480.

[22] *Id.* at 2482; *see also* Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 653 (1995) ("reasonableness generally requires the obtaining of a judicial warrant") (citing Skinner v. Ry. Labor Execs.' Ass'n, 489 U.S. 602, 619 (1989)); Kentucky v. King, 131 S. Ct. 1849, 1856 (2011) (stating that the presumption that a warrantless search is unreasonable may be overcome by certain circumstances that allow for a reasonable exception to the warrant requirement).

[23] *Riley II*, 134 S. Ct. at 2482–84; *see also* Weeks v. United States, 232 U.S. 383, 391–92 (1914) (stating that a warrantless search incident to a lawful arrest can be an exception to the warrant requirement of the Fourth Amendment).

[24] *Riley II*, 134 S. Ct. at 2485. The Court's holding reversed the judgment of *Riley I* and remanded the case for further proceedings. *Id.* at 2495. The Court affirmed the judgment of the court in *Wurie II*. *Id.*

[25] *Id.* at 2483–86 (citing Chimel v. California, 395 U.S. 752 (1969), *abrogated on other grounds by* Davis v. United States, 131 S. Ct. 2419 (2011)).

incident to an arrest is reasonable to allow the officer to remove any weapons that the arrestee may use to resist arrest or facilitate his escape.[26] In addition, *Chimel* held it reasonable for an officer to conduct a warrantless search and seize evidence in order to prevent its concealment or destruction.[27]

The Court found that these *Chimel* justifications for a warrantless search incident to an arrest were not present concerning digital information found on a cell phone.[28] Once the cell phone has been seized, the arrestee cannot use the phone, or the data on that phone, to harm the officer or resist arrest.[29] The Court also found insufficient presence of the second *Chimel* justification where digital information on a cell phone is involved.[30] The Court reasoned that once the officers have taken the phone, the arrestee *himself* would no longer be able to delete evidence from the phone.[31]

In addition to failing to meet the concerns addressed in *Chimel*, the Court found that the warrantless search of digital information on a cell phone constitutes an invasion of privacy distinct from the search of other physical objects found incident to an arrest.[32] The Court reasoned that the information that can be ob-

[26] *Chimel*, 395 U.S. at 762–63.

[27] *Id.* at 763. The Court, therefore, found that "[t]here is ample justification . . . 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." *Id.*

[28] *Riley II*, 134 S. Ct. at 2485 ("Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape.").

[29] *Id.* In addition, the Court noted that, in *Chimel*, its primary concerns about officer safety focused upon weapons that an arrestee himself might grab and use against an officer or assistant in an escape; however, the Court declined to expand those concerns to cover cell phone searches in this case. *Id.* at 2485–86 (rejecting the government's argument that a phone may alert officers that confederates of the arrestee are headed to the scene).

[30] *Id.* at 2486–88.

[31] *Id.* at 2486–87 (holding that the risks of remote wiping and data encryption are too remote to justify the warrantless search of digital information on a cell phone). The Court stated that "in situations in which an arrest might trigger a remote-wipe attempt or an officer discovers an unlocked phone, it is not clear that the ability to conduct a warrantless search would make much of a difference." *Id.* at 2487. The Court further noted that if officers were truly confronted with such risks, they could rely on exigent circumstances to search the phone immediately. *Riley II*, 134 S. Ct. 2487 (citing Missouri v. McNeely, 133 S. Ct. 1552, 1561 (2013)).

[32] *Id.* at 2489–91 ("Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person."). The Court noted that cell phones have "immense storage capacity" and that the intrusion on privacy that occurs with a warrantless search of a cell phone is not physically limited in the same way as other physical objects that may be found on a person. *Id.* at 2489.

tained from a cell phone is qualitatively different from physical records because a cell phone contains extremely specific information about the habits and daily activities of a person and "could reveal an individual's private interests or concerns."[33] Because the Court found that a warrantless search of cell phone data incident to an arrest could not be justified by the *Chimel* concerns, it held that the searches in *Riley* and *Wurie* exceeded the scope and purpose of the incident to an arrest exception to the warrant requirement.[34]

The United States Supreme Court has long recognized that a warrantless search incident to an arrest may constitute an exception to the warrant requirement of the Fourth Amendment.[35] The scope of this exception was undefined until the Court established the foundation for the modern search incident to arrest doctrine in *Chimel v. California*.[36] In *Chimel*, three police officers arrived at the home of the petitioner with a warrant for his arrest.[37] After the arrest, the officers sought to search petitioner's house.[38] The officers proceeded to search the entire house, including the attic, garage, and workshop.[39] As a result of the search, the officers seized various objects including coins, medals, tokens, and other items.[40]

The petitioner subsequently faced trial for two charges of burglary.[41] The petitioner moved to suppress the evidence based on the grounds that police seized it unconstitutionally; however, the trial court denied the motion and the petitioner was convicted.[42]

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[33] *Id.* at 2490 (discussing internet history, location history, and mobile application software).

[34] *See id.* at 2494–95.

[35] *See* Weeks v. United States, 232 U.S. 383, 392 (1914) ("[T]he right on the part of the government always recognized under English and American law, to search the person of the accused when legally arrested, to discover and seize the fruits or evidences of crime.").

[36] *See* Chimel v. California, 395 U.S. 752, 755, 762–63 (1969), *abrogated on other grounds by* Davis v. United States, 131 S. Ct. 2419 (2011); *see also Riley II*, 134 S. Ct. at 2482–83; Arizona v. Gant, 556 U.S. 332, 335, 339–40 (2009).

[37] *Chimel*, 395 U.S. at 753. The petitioner was wanted for the burglary of a coin shop. *Id.* Petitioner was not at home when the police arrived at his house. *See id.* His wife let the officers into the house where they waited to arrest petitioner when he arrived home. *Id.*

[38] *Id.* The petitioner objected, but the police officers told him that the search was based on a lawful arrest and they would conduct a search against his objections. *Id.* at 753–54.

[39] *Chimel*, 395 U.S. at 754 ("[T]he officers directed the petitioner's wife to open drawers and 'to physically move contents of the drawers from side to side so that (they) might view any items that would have come from (the) burglary.'").

[40] *Id.*

[41] *Id.*

[42] *See id.*

The California Court of Appeal and the California Supreme Court both affirmed the judgment.[43] Both courts held that the warrantless search was reasonable because the search was incident to a lawful arrest.[44]

After the California Supreme Court's decision, the petitioner appealed, and the United States Supreme Court granted certiorari to review "the permissible scope under the Fourth Amendment of a search incident to a lawful arrest."[45] The Court overturned the Supreme Court of California's decision and held that a warrantless search incident to an arrest is reasonable only if the officer searches the arrestee in order to remove any weapons that may be used to resist arrest, or to seize any evidence in order to prevent its concealment or destruction.[46] The Court further held that an officer may search "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."[47]

The Court reasoned that the lower courts did not properly apply the justifications for a search incident to an arrest exception to the facts in *Chimel*.[48] The Court held that there is no justification for a warrantless search of any room other than where an arrest occurs, or even for a search through desk drawers in the same room as an arrest.[49] Further, the Court asserted that "[t]he police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure."[50] The Court rejected the argument that it is automatically reasonable to search a house

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[43] *Id.* Both of these courts agreed that the arrest warrant was invalid, but because the officers obtained the warrant in good faith and had probable cause, the arrest was valid. *Id.*

[44] *Chimel*, 395 U.S. at 754–55.

[45] *Id.* at 753, 755.

[46] *Id.* at 763, 768.

[47] *Id.* at 763.

[48] *See id.* at 768. The Court stated:

> The rule allowing contemporaneous searches is justified . . . by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime . . . where the weapon or evidence is on the accused's person or under his immediate control. *But these justifications are absent where a search is remote in time or place from the arrest.*

Id. at 764 (emphasis added) (quoting Preston v. United States, 376 U.S. 364, 367 (1964)).

[49] *Chimel*, 395 U.S. at 763.

[50] *Id.* at 762 (quoting Terry v. Ohio, 392 U.S. 1, 20 (1968)).

where a man is arrested on the grounds that such a standard would cause the Fourth Amendment protection to all but disappear.[51] Because the warrantless search in *Chimel* "went far beyond the petitioner's person and the area from which he might have obtained either a weapon or something that could have been used as evidence against him," the Court ruled the search unreasonable and reversed the petitioner's conviction.[52]

Only four years after its decision in *Chimel*, the Court changed course in *United States v. Robinson*[53] and determined that a warrantless search incident to an arrest can be reasonable even if there is no danger to the officer or risk of losing evidence.[54] In *Robinson*, a police officer observed and determined that the respondent was operating a motor vehicle with a revoked driver's license.[55] The officer pulled over the respondent, and the three occupants of the vehicle stepped out of the car.[56] The officer began to search the respondent.[57] The officer felt an object in the breast pocket of the respondent, removed the object, and discovered what turned out to be a cigarette package.[58] Inside of the cigarette pack were fourteen gelatin capsules that were later shown to be heroin capsules.[59]

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[51] *Id.* at 764–65. The Court saw no reason to allow the fact that a person had been arrested in his home rather than on his front lawn or down the street from his home to serve as justification for a warrantless search of that person's home. *Id.* at 765. *See also* United States v. Rabinowitz, 339 U.S. 56, 83 (1950) (Frankfurter, J., dissenting) ("The test is the reason underlying and expressed by the Fourth Amendment: the history and experience which it embodies and the safeguards afforded by it against the evils to which it was a response."), *overruled by Chimel*, 395 U.S. at 758.

[52] *Chimel*, 395 U.S. at 768. In overruling *Rabinowitz*, the Court stated that "[n]o consideration relevant to The Fourth Amendment suggests any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items." *Id.* at 766; *see also* Harris v. United States, 331 U.S. 145, 197 (1947) (Jackson, J., dissenting) ("[O]nce the search is allowed to go beyond the person arrested and the objects upon him or in his immediate physical control, I see no practical limit short of that set in the opinion of the Court—and that means to me no limit at all."), *overruled by Chimel*, 395 U.S. at 758.

[53] United States v. Robinson (*Robinson II*), 414 U.S. 218 (1973).

[54] *Id.* at 235.

[55] *Id.* at 220. In the District of Columbia, at the time, such an offense required a mandatory minimum jail term, a mandatory minimum fine, or both. *Id.*

[56] *Id.* The officer arrested the respondent for operating a vehicle after revocation and for obtaining a permit by misrepresentation. *Id.*

[57] *Robinson II*, 414 U.S. at 221–22. The officer "explained at a subsequent hearing that he was 'face-to-face' with the respondent, and 'placed (his) hands on (the respondent), my right-hand to his left breast like this (demonstrating) and proceeded to pat him down thus (with the right hand).'" *Id.* at 222–23.

[58] *Id.* at 223. The officer later testified that, during his pat down, he could not identify what the object was or the size of the object. *Id.* He further testified that

The heroin was admitted into evidence at trial and the respondent was subsequently convicted and sentenced to concurrent terms of imprisonment.[60] The respondent appealed and the United States Court of Appeals for the District of Columbia Circuit remanded the case so that the district court could examine the scope of the search of the respondent's person.[61] The trial court once again found against the respondent, and on the second appeal, the court of appeals, en banc, reversed the conviction.[62] The court of appeals held that the evidence was the result of a warrantless search that violated the Fourth Amendment.[63] The court of appeals ruled that once a suspect is under custody, the arresting officer may only conduct a limited frisk in order to remove weapons the officer suspects that the arrestee has in his possession.[64] The United States Supreme Court granted certiorari to analyze the scope of a warrantless search incident to an arrest.[65]

On appeal, the Supreme Court reversed the lower court's holding that the warrantless search performed in *Robinson* violated the Fourth Amendment.[66] The Court noted that "[i]t is well settled that a search incident to a lawful arrest is a traditional exception to

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once he had the cigarette pack in his hand, he could not tell what the objects inside of the pack were. *Id.* The officer did state that he knew that the objects were not cigarettes. *Id.*

[59] *Robinson II*, 414 U.S. at 223.

[60] *Id.* at 219, 223. Respondent was convicted "of the possession and facilitation of concealment of heroin in violation of 26 U.S.C. s 4704(a) (1964 ed.), and 21 U.S.C. s 174 (1964 ed.)." *Id.* at 219.

[61] *Id.* 219–20. The district court found against the respondent and he once again appealed to the United States Court of Appeals for the District of Columbia Circuit. *Id.* at 220.

[62] *Id.*

[63] *Robinson II*, 414 U.S. at 220. The court of appeals held that *Chimel* limits a warrantless search to "'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.'" United States v. Robinson (*Robinson I*), 471 F.2d 1082, 1093 (D.C. Cir. 1972) (quoting Chimel v. California, 395 U.S. 752 (1969)), *rev'd*, 414 U.S. 218 (1973).

[64] *Robinson II,* 414 U.S. at 227. In its decision, the court of appeals relied on *Terry v. Ohio*. *Id.*; *see generally* Terry v. Ohio, 392 U.S. 1, 27–31 (1968) (discussing whether officers may conduct limited "pat down" searches of individuals not under arrest but suspected of illegal activity). The court of appeals held that the *Terry* decision limited a warrantless search conducted incident to an arrest and based on probable cause to a limited frisk for weapons. *Robinson II*, 414 U.S. at 227.

[65] *See Robinson II*, 414 U.S. at 220, 224. The Court set the case for argument with Gustafson v. Florida, 414 U.S. 260 (1973). *Id.*

[66] *Id.* at 224.

the warrant requirement of the Fourth Amendment."[67] The Court rejected the idea that each case requires adjudication on the issue of whether or not there was a probability that weapons or evidence were on the person to be searched incident to an arrest.[68] The Court held that a lawful arrest establishes the authority to perform a warrantless search and that a full search of the person following a custodial arrest is reasonable under the Fourth Amendment.[69]

The Court reasoned that its opinion in *Terry* recognized a distinction between a search incident to an arrest and a search consisting of a limited search for weapons, concluding, "*Terry*, therefore, affords no basis to carry over to a probable cause arrest the limitations this Court placed on a stop-and-frisk search permissible without probable cause."[70] The Court rejected the court of appeal's application of the *Terry* decision to cases involving an arrest for probable cause: "The standards traditionally governing a search incident to a lawful arrest are not [held] to the stricter *Terry* standards by the absence of probable fruits or further evidence of the particular crime for which the arrest is made."[71] In *Robinson*, the Court found that the fact the officer had no reason to fear or suspect that respondent was armed was of no importance in determining whether the search violated the Fourth Amendment.[72] As a result of its decision, the Court expanded the scope of warrantless searches incident to an arrest by eliminating the requirement that there be a concern that the arrestee has a weapon or that evidence may be lost or destroyed.[73]

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[67] *Id.*; *see also* Agnello v. United States, 269 U.S. 20, 30 (1925) ("The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made . . . is not to be doubted."); Weeks v. United States, 232 U.S. 383, 392 (1914) (recognizing the right of the government under English and American law to search the person of those legally arrested). The Court went on to state that "[n]o doubt has been expressed as to the unqualified authority of the arresting authority to search the person of the arrestee." *Robinson II,* 414 U.S. at 225.

[68] *Robinson II*, 414 U.S. at 235. The Court reasoned that the justification of a warrantless search incident to a lawful arrest "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect." *Id.*

[69] *Id.*

[70] *Id.* at 227–28 (alteration in original) (emphasis added).

[71] *Id.* at 233–35 (emphasis added). The Court stated, "This is an adequate basis for treating all custodial arrests alike for purposes of search justification." *Id.* at 235.

[72] *Robinson II*, 414 U.S. at 236. The Court later stated, in *Riley II*, that "[t]he Court did not draw a line between a search of Robinson's person and a further examination of the cigarette pack found during the search." *Riley II*, 134 S. Ct. at 2484.

[73] The Court later limited its ruling to "personal property . . . immediately associated with the person of the arrestee." United States v. Chadwick, 433 U.S. 1, 15–16

Almost forty years later, the Court reasserted the *Chimel* limitations placed on warrantless searches incident to an arrest in its decision in *Arizona v. Gant*.[74] Responding to an anonymous tip that a house was being used to sell drugs, officers initially made contact with respondent Gant who informed the officers that the owner would be returning later.[75] The officers returned to the house and eventually arrested a man located near the back of the house for providing a false name and a woman for possession of drug paraphernalia.[76] These arrestees were held in separate police cars when Gant arrived in his car and entered the driveway.[77] One officer approached Gant and arrested him, some ten to twelve feet from his car.[78] After Gant was placed in the back of the police car, the officers searched his car and found a gun and a bag of cocaine in a jacket located on the backseat.[79]

At trial, the respondent moved to suppress the evidence that was taken from his car.[80] He claimed that the warrantless search violated the Fourth Amendment.[81] Gant also argued that the search was not in response to any concerns that justify a warrantless search incident to an arrest.[82] The trial court ruled that the officers did not have probable cause to search Gant's car but denied the motion to suppress the evidence seized by the search.[83] The trial court convicted Gant on both counts and sentenced Gant to a three-year prison term.[84] On appeal, the Arizona Supreme Court

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(1977) (holding that a 200-pound, locked footlocker was not subject to a warrantless search incident to arrest).

[74] Arizona v. Gant (*Gant II*), 556 U.S. 332 (2009).

[75] *Id.* at 335–36. The officers left the area and later determined that Gant's driver's license had been suspended and that there was a warrant for his arrest for driving with a suspended license. *Id.* at 336.

[76] *Id.*

[77] *Id.*

[78] *Gant II*, 556 U.S. at 336. The two officers called for backup and two more officers arrived. *Id.* They handcuffed and locked Gant in the backseat of their patrol car. *Id.*

[79] *Id.* Gant was charged with possession of narcotics for sale and possession of drug paraphernalia. *Id.*

[80] *Id.*

[81] *Gant II*, 556 U.S. at 336.

[82] *Id.* Gant contended that because he was secured in the back of the police car, he did not pose a threat to the officers and no evidence of the crime that he had been arrested for could be found in the car. *Id.*

[83] *Id.* at 337. The court reasoned that the officers saw Gant commit the crime of driving with a suspended license and arrested him shortly after they observed him committing the offense; therefore, the search was justified as a search incident to an arrest. *Id.*

[84] *Id.*

reversed the decision of the trial court and found that the search was unreasonable.[85] The court recognized that police may search the passenger compartment of a vehicle and any items within that compartment "incident of an arrest of the vehicle's recent occupant."[86] The court, however, found that the *Belton* decision did not answer whether or not the police may execute a search incident to arrest *after* the scene is secured.[87] The court held that once the scene of an arrest is secure, the justifications stated in *Chimel* are no longer present and that a "'warrantless search of the arrestee's car cannot be justified as necessary to protect the officers at the scene or prevent the destruction of evidence.'"[88]

The United States Supreme Court granted certiorari to address the issue of whether the search of a car incident to an arrest requires the presence of the *Chimel* justifications.[89] The Court affirmed the ruling of the Arizona Supreme Court and rejected the broader reading of its *Belton* decision.[90] The Court held that "the *Chimel* rationale authorizes police to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search."[91] The Court reasoned that its *Belton* decision rested upon the assumption that most items inside the passenger compartment of a vehicle generally would be in the area that an arrestee could access.[92] In *Gant*, however, the Court found that all of the arrestees were handcuffed and placed in separate patrol cars.[93]

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[85] *See Gant II*, 556 U.S. at 337–38; *see also* State v. Gant (*Gant I*), 162 P.3d 640, 646 (Ariz. 2007).

[86] *Gant II,* 556 U.S. at 338 (citing New York v. Belton, 453 U.S. 454, 460 (1981)). In *Belton*, the Court considered the application of the *Chimel* justifications for a search incident to an arrest in the vehicle context. *Id.* at 339. The Court in *Belton* held that "when an officer lawfully arrests 'the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of the automobile' and any containers therein." *Id.* at 340–41 (quoting *Belton*, 453 U.S. at 460).

[87] *Id.* at 337. Some authorities construed the decision broadly and determined that the *Belton* decision allows for the search of a vehicle incident to an arrest regardless of the presence of the *Chimel* justifications. *See id.* at 338.

[88] *Id.* at 337–38 (quoting *Gant I*, 162 P.3d at 644).

[89] *Gant II*, 556 U.S. at 338.

[90] *Id.* at 350–51.

[91] *Id.* at 343 (footnote omitted). The Court also held that "circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" *Id.* at 343 (quoting Thornton v. United States, 541 U.S. 615, 632 (2004) (Scalia, J., concurring)).

[92] *Id.* at 341.

[93] *Id.* at 344.

Therefore, the respondent was not within reaching distance of his car, let alone the passenger compartment, and could not have accessed a weapon or evidence.[94]

The Court rejected the State's argument that privacy interests are significantly reduced in the context of a vehicle so as to allow police to search every item or container found in the passenger compartment regardless of the offense committed.[95] In addition, the Court reasoned that existing exceptions to the warrant requirement, such as authorizing a vehicle search when safety or evidentiary concerns so require, mitigate the need for a broad reading of *Belton*.[96] The Court stated that "[c]onstruing *Belton* broadly to allow vehicle searches incident to any arrest would serve no purpose except to provide a police entitlement, and it is anathema to the Fourth Amendment to permit a warrantless search on that basis."[97] By holding that a warrantless search of a vehicle is only reasonable when the arrestee is unrestrained and within reaching distance of the passenger compartment, the Court reinstated the necessary presence of the *Chimel* standards to justify a warrantless search.

In *Riley*, the Court recognized the requirement of the *Chimel* justifications as applied to the warrantless search of the digital information stored on a cell phone seized incident to an arrest.[98] The Court rejected the holding in *Robinson* that dismissed the need to show the presence of those justifications in order to make a warrantless search reasonable, and then applied each *Chimel* concern to the facts of the case.[99] The Court ruled that a cell phone, once it

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[94] *Gant II,* 556 U.S. at 344. The Court also noted that Gant was arrested for driving with a suspended license and no evidence of the crime could be found in the vehicle. *Id.*

[95] *Id.* at 344–45 (noting a concern over giving police unrestricted discretion to search a person's private effects). The Court did recognize that an operator's privacy interest in a vehicle is less than in a home. *Id.* at 345; *see also* New York v. Class, 475 U.S. 106, 112–13 (1986). *But cf.* Knowles v. Iowa, 525 U.S. 113, 117 (1998) (alteration in original) ("But while the concern for officer safety in this context [routine traffic stop] may justify the 'minimal' additional intrusion of ordering a driver and passengers out of the car, it does not by itself justify the often considerably greater intrusion attending a full field-type search.").

[96] *Gant II*, 556 U.S. at 346–47.

[97] *Id.* at 347.

[98] *See generally Riley II*, 134 S. Ct. 2473, 2484–89 (2014) (discussing the *Chimel* rationales in relation to searches of cell phones incident to arrest).

[99] *Id.* at 2485–87. The Court did not overrule the holding of *Robinson* that rejected the need for case-by-case adjudication of the *Chimel* concerns. *Id.* at 2485. Instead, the Court required the examination of "whether application of the search incident to arrest doctrine to this particular category of effects would 'untether the rule

is secure, offers no risk of harm to officers or risk that the arrestee will conceal or destroy evidence.[100] This ruling is based on the decision in *Gant* that saw no justification for the warrantless search of a car once the arrestee is secured and can longer access an area from which the arrestee could obtain a weapon or evidence.[101] The Court also found that the likelihood for increased intrusions of privacy due to the quality and quantity of information on a cell phone warranted protection from warrantless searches incident to an arrest.[102] Because of this ruling, officers will no longer be able to obtain access to a cell phone unless the situation demands that it is necessary due to exigent circumstances.[103] Otherwise, an officer is required to obtain a search warrant before searching the contents of a cell phone, even if police possession of that cell phone was incident to an arrest.

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from the justifications underlying the *Chimel* exception.'" *Id.* (citing *Gant II*, 556 U.S. at 343; Knowles v. Iowa, 525 U.S. 113, 119 (1998)).

[100] *Id.* at 2485–86.

[101] *See id.* at 2485; *see also Gant II*, 556 U.S. at 343–44 (discussing limited circumstances justifying the search of a vehicle incident to arrest).

[102] *See Riley II*, 134 S. Ct. at 2494–95. The Court stated, "The fact that technology now allows an individual to carry such information in his hand does not make that information any less worth of our protection . . . . [W]hat police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant." *Id.* at 2495.

[103] *See id.* at 2487 (citing Missouri v. McNeely, 133 S. Ct. 1552, 1561–62 (2013)) (discussing exigent circumstances that may allow officers to search a cell phone immediately).