

Lake Forest College

Warrantless Cell-Phone Search and Seizure

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Introduction

Justice Roberts states in his last remark of the opinion in *Riley v California (2014)*, “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.” (Riley, pg. 14).

In the ruling of *Riley v. California (2014)*, the Supreme Court handed down a unanimous decision of the extent that police officers can proceed when conducting cell phone searches. Concluding that the exception of a search incident could no longer be applied to officers searching cell phone content without first obtaining a warrant. Over the years, individuals lived through democracy making sense of applying the Fourth Amendment to their daily lives. Initially, the Fourth Amendment only applied to federal government, leaving the state government to interpret the law as they please. This meant searching through people’s personal property without the need for a warrant or any repercussions that officers might endure for violating their rights. Currently, the Fourth Amendment limits the procedures the police take into searching and seizing an individual’s property, as well of the court system constantly trying keep the interest of individuals and police officers in balance with each other. Analyzing the cost and benefits between what warrantless searches can lead to prevents crime from occurring and

protects the people. This paper examines the United States Court of Appeals decision regarding whether police officers require a search warrant to search through individual's cell phone content or not. It also factors in the requirement police officers need to tracking cell phone data location on an individual's cell phone. By analyzing the Court of Appeals ruling of warrantless searches, it helps signal the Supreme Court setting precedent on the issue that would be applied to every court system. Based off the fact the Circuit Courts have split decision of interpreting the law, their decision impacts the advantage police have in their procedure which would make their police work easier to detect. It also creates a disadvantage to police procedure by giving the people more rights that slows down the police procedure process.

In modern time, cell phones have in sense become part of human's intellectual way of thinking. When an officer searches the contents of the phone without a warrant, they have access to individual's whole life records when they come across: personal text message exchanges with private individuals, contact information of individuals that one calls on a regular basis, photographs, calendars, e-mail, videos, and the record of internet use. Even though the Fourth Amendment aligns that officers need reasonable cause to search and seizure of an individual's phone, it also recognizes several exceptions to the requirement of obtaining a warrant. One exception is the searches incident to a valid arrest. A police officer may conduct a search by placing a suspect under arrest that stands as valid. This is allowed for officers to remove weapons or other objects that might be hazardous to the officer and for preventing the suspect from disposing of evidence (Epstein, Lee, and Thomas G. Walker, pg. 480). Another exception is the loss of evidence searches. Police officers must act quickly in certain situations they are placed in. This exception allows officers to conduct warrantless searches and seizures to prevent the loss of evidence (Epstein, Lee, and Thomas G. Walker, pg. 480). Consent searches are the

exception to the Fourth Amendment. Police officers can conduct warrantless searches upon consent. This may not seem like an exception because the individual is voluntarily giving up their rights to the search, but nevertheless the consent to search an individual must be voluntary that cannot be coerced (Epstein, Lee, and Thomas G. Walker, pg. 480-481). Safety searches is another exception that takes in consideration the dangerous tasks that police risk their lives pursuing every day. A police officer may stop and pat down a suspect in a criminal case whom the police believe poses a threat to society to find and remove any weapons. Police have reasonable suspicion to believe that an individual is involved in criminal activity and the other being that the officers must have cause to believe the person is armed and dangerous (Epstein, Lee, and Thomas G. Walker, pg. 481). Another exception made to the Fourth Amendment is hot pursuit. The Court says that focusing on the apprehension of a fleeting suspect, warrantless searches to obtain evidence would be considered permissible (Epstein, Lee, and Thomas G. Walker, pg. 481). Lastly, the plain view doctrine has been established as reasonable for police officers to obtain evidence without a search warrant. Given that the officers be acting awfully when any sizable items come into plain view, they can seize evidence without a warrant authorizing them to seize those specific items (Epstein, Lee, and Thomas G. Walker, pg. 482).

History of Warrantless Searches Incidents

The 4th Amendment is indispensably important to America, but in modern society, it's easy to forget how it applies to the daily lives of citizens. In today's time, public safety has become a major concern for both the public and government officials, which leads to the public compromising their expectation of privacy. While protecting their collective future, some would say that society is taking a step back from what the 4th amendment interprets. The 4th

Amendments protects the right of the people by protecting them from unwarranted searches of individuals property by stating:

“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.” (Epstein, Lee, and Thomas G. Walker, pg. 780).

As the Founders constructed the 4th Amendment, one question that has been debated throughout decisions involving the amendment is what constitute as an unreasonable search and seizure. Throughout the rulings of cases relating to the 4th Amendment, it is important to note that The Bill of Rights was catered originally to federal government meaning that the 4th Amendment was strictly for federal use before being applied to the state government. Over the years, courts have recurrently been called upon to determine how the 4th Amendment applies to search and seizure cases due to police conduct. One of the first cases courts had to grapple with issues related to constitutional violations committed by police while gathering evidence is the decision in *Weeks v. United States (1914)* (Epstein, Lee, and Thomas G. Walker, pg. 464). The defendant, Fremont Weeks, was arrested by a police officer at the Union Station in Kansas City, where he was employed. Other officers traveled to Weeks’ house, while unlawfully and without a warrant or authority to do so, entered his home where they seized much of Weeks’ possessions (pg. 386-387). To search for additional evidence, the officers returned to the residence of Weeks, without a search warrant, to seize more evidence such as; books, letters, money, papers, notes, evidences of indebtedness, stock, certificates, insurance policies, deeds, abstracts, and other muniments of title, bonds, candies, clothes, and other property (pg. 387). Weeks objects that any

of the evidence obtained from his property without a search warrant was a violation of his 4th and 5th Amendment rights, which was objected by the court and he was later convicted. The history of the 4th Amendment is given by the Justices to make aware of what the 4th Amendment was intended to uphold in society. The Justices delivered the opinion that the framers of the Amendments to the Federal Constitution provide that the 4th Amendment would secure its purpose to the American people, among other things, those safeguards which had grown up in England to protect the people from unreasonable searches and seizures, such as were permitted under the general warrants issued under authority of the government (pg. 390). The Courts explains that the 4th Amendment is to limit the power and authority of the United States and Federal officials as to the exercise of their power and authority to secure the people from unreasonable searches and seizures under the guise of law. (pg. 392) They continue to make the distinction that:

“if letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution” (pg. 393).

This ultimately led the Courts to enact the exclusionary rule to exclude evidence applicable to the search. Although the evidence seized that was used in Weeks conviction shows that he was guilty of the crime committed, but due to the insufficient condition the evidence was obtain, would not have led to a successful prosecution (Epstein, Lee, and Thomas G. Walker, pg. 464). The Courts further their reasoning that even though the main goal of the courts is to bring justice to those worth punishable are not to be aided by the sacrifice of the great principles that the founders laid out as a foundation years ago (pg. 393). Due to their reasoning, the Courts

conclude that the possessions taken from Weeks' property was a direct violation of Weeks' constitutional rights. The precedent from the ruling of Weeks not only affected law enforcement procedures and criminal rules that protect the people against unreasonable government intrusion into their daily lives (Epstein, Lee, and Thomas G. Walker, pg. 464).

Furthermore, the Courts proceed on what constitutes as an unreasonable search in the *Chimel v. California (1969)* decision. Police officers arrived at the home of the petitioner with a warrant authorizing his arrest for the burglary of a coin shop. Upon arrival, the officers waited with the permission of Chimel's wife until Chimel returned home. As he returned, he was given an arrest warrant and was asked for permission to look around the residence. When Chimel objected, he was advised that 'on the basis of the lawful arrest,' the officers would be allowed to conduct a search without the necessity of a warrant in present (pg. 754). After searching the premises, the officers seized numerous items, primarily coins that were used to convict Chimel with charges of burglary. Chimel objected that the evidence should not be admitted into his trial because they have been unconstitutionally seized. The courts held that since the arresting officers had acquired the warrant 'in good faith,' and since in any event they had had sufficient information to constitute probable cause for the petitioner's arrest, that the arrest had been lawful (pg. 754). The Courts question in this ruling is whether the warrantless search of Chime's entire house can be constitutionally justified as incident to his arrest. The Court disputed that whatever is found upon a person or in their control that is unlawful for them to have when arrested for an offense can be used to prove the offense can be sized and held as evidence in the prosecution (pg. 755-756). The Court states that the framers of the Fourth Amendment required adherence to judicial processes wherever possible to provide security against unreasonable intrusions in individuals private lives. (pg. 758-759). The Courts corroborated a previous court

precedent that the absent of a search warrant interposes a magistrate between the citizen and the police. Noting that this is done not to shield criminals nor to make the home safe haven for illegal activities, but that an objective mind might weight the need to invade that privacy in order to enforce the law (pg. 761). The Courts emphasized that the scope of a search must be strictly tied to and justified by the circumstances which rendered its initiation permissible (pg. 762). The Courts ultimately ruled that the search of Chimel property had no constitutional justification, in the absence of a search warrant, for extending the search beyond the premise of what was required from the officers that violated Chimel's Fourth and Fourteenth rights (pg. 768). Curiously enough, Justice White dissented in the Courts decision stating that he found it unreasonable to require the police to leave the scene of the arrest to obtain a search warrant when they are already legally there to make a valid arrest (pg. 774). While the Court ruled in favor for Chimel, it is important to note that the Court also states that it is reasonable for the arresting officer to search the person arrested to remove any weapons that the latter might seek to use to resist arrest and effect his escape. Therefore, making it reasonable for the officer to search for and seize any evidence on the arrestee's person to prevent its concealment or destruction as well as the area into which an arrestee might reach in order to grab a weapon or evidentiary items (pg. 763). This gives precedent to the search and seizure because it gives authorization for searches of the area within the grabbing reach of the person under arrest or detained and barring searches of what the people arrested cannot get to within reaching distance. *Terry v. Ohio (1968)* modeled this precedent because the police officer witness two men pacing a store and suspected the men were going to rob the store which allowed him to act on his suspicion. The officer stopped the men and asked for identification and then frisked Terry and founded a pistol (Epstein, Lee, and Thomas G. Walker, pg. 493). Terry argues that the officer lacked probable cause to stop and frisk

him. The Court found it reasonable stating that: “We therefore reject the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a “technical arrest” or a “full-blown search”” (Epstein, Lee, and Thomas G. Walker, pg. 495). Just like in the *Chimel* case, in *Terry*, the officer conducted his search was no broader than a pat down of Terry instead to ensure protective purposes.

In *United States v. Robinson (1973)* the Court restated its understandings that any individual placed under arrest are subjected to a full search without a search warrant. Probable cause leads a police officer to arrest Robinson for driving while his license was revoked. The police officer made a full-custody arrest for the offense. In the course of searching Robinson, the officer found in Robinson’s coat pocket a cigarette package containing heroin which leads to the conviction of Robinson for a drug offense (pg. 218). The Court of Appeals reverse the ruling deciding that the officer must have conducted a limited frisk even after the officer lawfully places a suspect under arrest for taking him into custody. The officer is not allowed to proceed to fully search the arrestee (pg. 227). *Terry v Ohio (1968)* takes precedent in the ruling of the Courts. In *Terry*, the Court rules that: “At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that the petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures...” (Epstein, Lee, and Thomas G. Walker, pg. 496). Taking from *Terry*, The Court states that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the 4th Amendment. Being upheld by two propositions: the first is that a search may be made of the person of the arrestee by virtue of the lawful arrest; the second is that a search may be made of the area within the control of the arrestee (pg. 224). The Court further makes it case by reciting that it is intended to maintain society’s interest in having its laws obeyed, and it is

inevitably accompanied by future interference with the individual's freedom of movement whether the arrestee is detained (pg. 228). The Court refutes the Court of Appeals inquiry of a case-by-case adjudication being required. Thus, making the argument that a police officer's determination as to how and where to search the person he detains is necessarily a quick ad hoc judgement which the Fourth Amendment does not require to be broken down in each instance into a step-by-step analysis concluding that the search made by the officer was permitted under the 4th Amendment (pg. 235). The impact from the ruling of *Robinson* authorizes a search of a arrestee incident to any lawful arrest.

Circuit Court Approaches to Regulation Cell Phone Searches

The Federal Court of Appeals are for the most part split on the issue of whether what constitutes as reasonable for an individual's cell phone to be searched when detained by officials. While examining how the courts are split on deciding on the issue, it also explicates how the Supreme Court are sought out for their service as a "tiebreaker" to resolve the Circuit court split.

The District of Columbia rule in favor of a law that protects the people not just from warrantless cell phone searches made by the police, but protection of having their data tracked by the police as well. This leads the Court to rule that the warrantless use of a cell-site simulator violated the Constitution. In *Prince Jones v. United States (2017)*, the case arose from the defendant's arrest in 2013 for incidents involving sexual assault and robbing on two individual women. In each incident, the defendant stole each woman's cell phone, which allowed the officers to obtained phone records, in which they found the same number to contact each individual woman. From there, with the help of the MPD's Technical Services Unit, the police were able to track the suspect's and the complainants' phones (pg. 708). Go to the location equipped with a cell-site simulator to track the suspect to a parked car. After conviction at the

trial court, the defendant appealed his convictions claiming his Fourth Amendment rights had been violated since most of the evidence used to sentence him stemmed from a warrantless and unlawful “stingray” (pg. 707). While making the decision to reverse the defendant’s conviction, the Court noted that the government violated the defendant’s Fourth Amendment rights when the police arrayed the cell-site simulator against him without first obtaining a warrant based on probable cause as well as the government’s good-faith doctrine argument (pg. 707). The Court first turns to whether the government’s use of the cell-site simulator to locate the defendant’s cellphone constituted a search or seizure. One of the consequences of a cell phone user is that they carry it everywhere they go. Along that locating and tracking a cellphone using a cell-site simulator has the substantial potential to expose the owner’s intimate personal information. (pg. 711). The government testified how the cell-site simulator they used works based on the information that’s publicly available. As soon as the simulator comes across a target’s phone signal, it grabs it and it holds on to it and then begins to report the general location information and signal strength that can locate the target’s phone’s exact location (pg. 709-710). Due to this fact, the Court concluded that cell phone tracking can easily invade the right to privacy in one’s home or other private areas. Secondly, a person’s “familial, political, professional, religious, and sexual associations” can be observed by a cell-site simulator due to cell phone user’s public movements, revealing sensitive information. Lastly, a cell-site simulator can be used by the government not merely to track a person but to locate him or her. (pg. 712). They took into consideration that the cell-site simulator exploits a security vulnerability in the phone; being as the defense expert claims as “dumb devices” as they are unable to differentiate between a legitimate cellular tower and a cell-site simulator imitating as one. Leaving cell phone users, the only option to turn off their phones and its radios, thus forgoing its use as a communication

device (pg. 713). Given this expense of the cell-site simulator, the Court believes it invades a reasonable expectation of privacy when it located the defendant's location. People justifiably seek to keep sensitive personal information from being exposed from a cell-site simulator. The Court further quote that permitting the government to implement a tool as powerful as the cell-site simulator without judicial oversight would "shrink the realm of guaranteed privacy" in which corresponds in relation to the Fourth Amendment (pg. 714).

In *United States v. Jones* (2012), when deciding whether a (GPS) tracking device in an individual vehicle constitutes as a search or seizure within the terms of the Fourth Amendment, *the* Court reiterated in the case that the government physically occupied private property for the purpose of obtaining information, having no doubt that such a physical intrusion would have been considered a "search" within the meaning of the Fourth Amendment (Epstein, Lee, and Thomas G. Walker, pg. 473). The Court upheld the "good faith" exception in the case given that wiretaps attached to telephone wires on the public streets did not constitute a Fourth Amendment search because there was no entry of the houses or offices of the defendant (Epstein, Lee, and Thomas G. Walker, pg. 473). As the Supreme Court upholding the warrantless search in the *Jones* case, the Court of Appeals justices in *Prince Jones* express the opposite. Stating that the government contends that because a cellphone "must continuously broadcast a signal," cellphone users are engaging in "conduct [that] is not calculated to keep [his] location private and gave no reasonable expectation of privacy in his location (pg. 715). Not only that, the Court would not allow the good-faith exception given that cellphone use has become so integrated into society and the daily lives of customers that accessing such sensitive data would require for the police to obtain a warrant. The home and offices that the police are not invading in the *Jones* case are

stored into the phones of users of the information that they would store in their homes and offices.

The First Circuit Court ruled that the police are required to have a warrant to search data within cell phones. In the First Circuit Court of Appeals, *United States v. Wurie (2013)*, the judges conclude that police seizing a cell phone from an individual's person as part of his lawful arrest and searching the phone's data without a warrant exceeds the boundaries of the Fourth Amendment search-incident-to-arrest exception (pg. 1). On September 5, 2007, a Boston Police Sergeant was performing a routine surveillance when he observed Brima Wurie in his parked car in what he suspects to believe a drug sale taking place in the car. After the sale takes place, the officer and his backup stopped the suspected buyer and found crack cocaine in his pocket. The suspected buyer told the police that he brought the drugs from Wurie in the car where the sale took place. Another officer had been following the description of the car Wurie have been driving and arrested him upon Wurie parked his car. Upon arriving to the station, Wurie's personal property was confiscated which included two cell phones. After noticing that one of the cell phones collected was receiving calls from a number identified as "my house" on the external caller ID screen in plain view, the officers opened the phone to look at Wurie's call log (pg. 1-2). The officers pressed a button on the phone, which allowed them to access the phone's call log. The call log shows incoming calls from "my house." The officers pressed one more button to determine the phone number associated with "my house" caller ID reference. After typing the number into an online directory matching an address with the number, the officers took the keys collected among the possession taken from Wurie at the station and went to the address associated with the "my house" number. The officers entered the home of the address while obtaining a search warrant and found large amounts of drugs along with cash, which leads to

Wurie being charged with possession with intent to distribute among other charges (pg. 2). With the trial court denying the motion to suppress evidence, Wurie was found guilty on all counts. The First Appellate Court starts out by stating that courts have grappled with the question of whether the search-incident-to-arrest exception extends to data within an arrestee's cell phone (pg. 3). Going on to state that in the Fourth Amendment context, "a single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront" (pg. 6). Affirming that a cell phone, like any other item carried on the person, can be thoroughly searched incident to a lawful arrest, reasoning that: (1) Wurie's cell phone was an item immediately associated with his person, because he was carrying it on him at the time of his arrest; (2) such items can be freely searched without any justification beyond the fact of the lawful arrest; (3) the search can occur after the defendant has been taken into custody and transported to the station house and (4) there is no limit on the scope of the search, other than the Fourth Amendment's core reasonableness requirement (pg. 7). The Circuit Court starts finding discrepancies in the reasoning behind the government's argument on the subject of the warrantless search of data within a cell phone. The Circuit Court reject the government notion that a cell phone can be compared to other items carried on a person implies that individuals in modern society store much more personal information on their cell phones than could ever fit in a wallet, address book, briefcase, or any of the other traditional containers that the government has invoked (pg. 9). While also arguing that the government does not support its argument that cell phone data searches are justified by a need to protect arresting officers, perceiving that Wurie allows that arresting officers can inspect a cell phone to ensure that it is not actually a weapon. The Circuit Court sees no reason to believe that the officer safety would require a

further intrusion into the phone's contents (pg. 9). Using the contents of *Robinson*, where the officer conducting the search had no idea what he might find in the cigarette pack, which therefore posed a safety risk. On the other hand, the officers who searched Wurie's phone knew exactly what they would find therein: data. They also knew that the data could cause no harm to them (pg. 10). The Circuit Court also rejects the notion made by the government that phone's data content search was necessary to prevent the destruction of evidence. The government points out the possibility that the calls on Wurie's call log could have been overwritten or the contents of his phone remotely wiped if the officers had waited to obtain a warrant. Where the government goes wrong the Courts conjecture is that the officers had methods to prevent overwriting of calls or remote wiping of information that was not set in place that was simply not taken into consideration (pg. 11). One option is to turn the phone off or remove its battery. Secondly, they could have put the phone in a Faraday enclosure, which shields the interior from external electromagnetic radiation. Lastly, the officers might have been able to copy the entire cell phone contents, to preserve them should the battery remotely wiped, without looking at the copy unless the original disappears. Without using the methods, the officers risk loss of the evidence during the time it takes them to search through the phone (pg. 11). While weighing everything into place, the Circuit Court found the government's reasoning as insufficient stating that even though the methods that are put into place to help the officers secure their evidence properly could be less convenient in taking the steps as it would be conducting a full search of a cell phone's data incident to arrest, the government has not proven otherwise that the methods are unworkable, while bearing the burden of justifying its failure to obtain a warrant (pg. 11). The Circuit Court holds that rules are put into place for all warrantless cell phone searches that are based off previous instances in which the police do not take advantage of the unlimited

potential presented by cell phone data searches. Holding that since the government could not provide that a search-incident-to-arrest exception was necessary, it does not authorize the warrantless search of data on a cell phone seized from arrestee's person (pg. 13).

In *United States v Leon (1984)*, the good-faith exception is used to the exclusionary rule which the Circuit Court overlooked. Based on observation and surveillance of residences of drug activities from an unproven reliable tip, a police officer drew up an affidavit to obtain a search warrant. The warrant was issued, and the officers were able to seize large quantities of drugs at several residences. The argument is that the search warrant was invalid due to how the original informant lacked credibility; therefore, the judge did not have probable cause to issue the warrant (Epstein, Lee, and Thomas G. Walker, pg. 505). Justice White concurred that: "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion" (Epstein, Lee, and Thomas G. Walker, pg. 507). Reasoning that the officers acted within judicious reliance of a search warrant issued. This would be arduous to prove for *Wurie* because the officers did not act on the preventive methods to diffuse the information on the phone in a productive matter.

In the ruling in *United States v Caraballo (2016)*, the Second Circuit Court decided that the police are not in violation of the Fourth Amendment when they "pinged" a suspect cellphone in the case that 'exigent circumstances' exist. The details of the case follow that the defendant, who is well-known drug dealer, was under investigation by the police. After the body of an associate of the defendants was discovered, the officers asked Sprint, the defendant's cell-phone provider, to track the GPS coordinates of the defendant's cell phone to investigate the death of the associated (pg. 97). Due to the sensitivity of the cases primarily involving narcotics, officers

worked diligently with confidential informants of the defendant because they believed that it was necessary to obtain the defendant's location or "potentially some was going to get hurt or killed" (pg. 98). Compiling with the officers, the cell phone provider was able to locate the defendant, where he was later apprehended. The defendant contents for a motion to suppress evidence recovered upon his arrest, citing that the "pinging" of his cell phone was a search in violation of the Fourth Amendment. The court commences by stating "the warrant requirement of the Fourth Amendment must yield in those situations in which exigent circumstances require law enforcement officers to act without delay." The court found that due to exigent circumstances, it justified the police in pinging the defendant's phone (pg. 101). An understanding that comes about "exigent circumstances" is a way for government to bypass procedure of obtain a warrant due to possibility that evidence would be lost or harm would be done to the public. Further reviewing officers' response of conducting the "pinging", the officers considered other methods to track down the defendant; having a confidential informant contact him, as well as posting police on major roadways to identify his vehicle as it left the state. (pg. 99). They also thought to obtain a search warrant to ask the defendant's cell carrier for the location of the defendant. Due to the time that would have been lost securing the warrant "in the absence of exigent circumstances," the officers believed that the provider's slow compliance with the warrant would cause a huge delay in receiving the information. They justified their warrantless search to the fact that the officers believed that the law permitted them to request a warrantless search of a phone's GPS location if there was an emergency involving a threat of serious bodily injury or death (pg. pg. 99). Evermore, the Court affirmed that even if the officers' actions violated the defendant's rights under the Fourth Amendment, submission of the exclusionary rule would be unsuitable in this case because the officers relied on good faith (pg. 100-101). While coming to the core

question of the case in applying the exigent-circumstances doctrine, the court approved the notion of the government. First, the court agreed with the government contention that the officers reasonably believed that the defendant's posed an imminent threat to law enforcement, mainly the undercover informants on the case. Second, the court agreed with the government argument that the delay associated with securing a warrant would result in the destruction of evidence (pg. 104).

In *United States v Katzin (2014)*, the Third Circuit Court reigned in the ruling that law enforcement must obtain a warrant based on probable cause to carry out a GPS device on any moveable object. While investigating a series of pharmacy burglaries, the police was able to identify one of the defendants as a suspect. After making out the model of the defendant's van, without a warrant, officers attached a battery powered "slap-on" GPS device of the defendant's van while it was parked on a public street (pg. 167-168). After later arresting the defendants, the defendants pushed to suppress the evidence recovered from the van, while also arguing that their Fourth Amendment rights were violated due to the warrantless installation and monitoring of the GPS device (pg. 168). Eventually having the evidence suppressed by the district court, the government appealed. While the ruling of the *United States v. Jones* case at the District of Columbia just passed where the court states that that for police to attach a GPS tracker device onto a car, they must first obtain a warrant. While acknowledging the ruling, however, the government argued that the good faith exception should apply (pg. 168-169). Firmly abiding by the *Jones* case, the Third Circuit Court firmly rejected the government's argument. The court stated their concerns of a "slap-on" GPS tracker because it is magnetically attaches to the exterior of a target vehicle and requires no electronic connection to the automobile. What makes the difference to them is that the GPS technology is vastly different from more primitive tracking

devices of former time technology, such as a beeper. While the beeper requires the police to expend resources of time and manpower to follow a vehicle, the GPS device uses a network of satellites to determine its own location that anyone with the access can analyze and monitor the location data (pg. 193-194). While understanding to the facts of the case, the government recalls that the Fourth Amendment only prohibits “unreasonable” searches and seizures. Searches that are conducted in the absent of a warrant are unreasonable under the Fourth Amendment are subject to certain exceptions. Quickly discarding any room for an exception to apply, the court goes on to say one cannot violate a constitutional amendment to justify an illegal act; there is no constitutional right to have the evidence of the illegal search suppressed (pg. 169-170). This addresses the government’s good faith exception: the court states that the application of the good faith exception turns on whether the agents at the time of monitoring the defendants would have known that it was unconstitutional (pg. 179). While the government makes the point that they had reason to believe that the warrantless GPS search was legal because the GPS tracker was effective on the defendant’s vehicle before either this Circuit or the Supreme Court had spoken on the constitutional propriety of such an endeavor. In this case of no guidance from either court, law enforcement could look to sister circuits to find the universe of case law (pg. 190). However, the court states that when the officers decide to take the Fourth Amendment inquiry into their own hands, rather than to seek a warrant from a neutral magistrate, they are acting in a constitutionally reckless fashion (pg. 192). The court set a precedent of officers implementing a warrant to tracking an individual using a GPS device. The thought that the police can slap a tracking device on any merely subject in a case was not envisioned by the framers of the Constitution when they amended the Fourth Amendment. The entire issue could be avoided by requesting a warrant, which is unburdened by time nor trouble (pg. 191).

The Fourth Circuit Court district allowed for cell phones to be searched when the individual at hand was arrested. In *United States v Murphy (2009)*, a Virginia State Trooper pulled over a vehicle traveling 95 miles per hour. Having determined that no one in the vehicle had a valid driver's license, the Trooper prepared to have the vehicle towed along with additional officer assistance to help determine the identity of the vehicle's occupants and conducting an inventory of the vehicle's contents that is required by state police (pg. 407-408). Do to one of the vehicle's occupants providing multiple names and that his identity could not be verified, was arrested for obstruction of justice, while later identity of the defendant was later revealed. During the inventory of the items seized from the vehicle, the Trooper became aware of some cell phones seized contained possible incriminating information which was later logged in as evidence. Analyzing the data of phone including text messages from an unknown individual who admitted in a phone interview with the officer that defendant was his drug supplier (pg. 409). The defendant moved to suppress evidence concluding that the cell phone was seized during a search incident to arrest because there was no evidence presented to indicate that the cell phone was located on him at the time of the arrest as well that the officers had no authorization to examine the contents of the phone without first obtaining a warrant (pg. 410). He argues that the warrantless search of the contents of the cell phone was not lawful because there was no evidence of the volatile nature of the cell phone's information and it was not contemporaneous with his arrest (pg. 410-411). To further explain his argument in depth, the defendant claims that a cell phone may be searched without a warrant base of the phone's storage capacity, conceding that a device with a small storage capacity may be searched without a warrant due to the volatile nature of the information stored. Proceeding on the other hand that a search of a cell phone with a larger storage capacity would implicate a heightened expectation of privacy and would require

a warrant to be issued before searching of its contents (pg. 411-412). The Court rejects Murphy's argument on several reasons. First, Murphy has not supplied the Court with any standard by which to determine what would constitute a "large" storage capacity as opposed to a "small" storage capacity, as he does not quantify the meaning of these terms in any way. The next reason being that Murphy has not produced any evidence that his cell phone was categorized as a "large" storage capacity to his contention, heightens expectation of privacy (pg. 411). Even if Murphy could prove his phone as a "large" storage capacity, information on the size of the device would not make the information stored in the devices any less valuable no more the storage capacity. Lastly, the Court corrects Murphy's argument because to require police officers to ascertain the storage capacity of a cell phone before conducting a search would simply would be unreasonable to the officer due to the unlikeliness of knowing whether the content on the phone will be preserved or be automatically deleted simply by looking at the cell phone (pg. 411).

One case in relations of *Murphy*, is the opinion of the court in *Maryland v King (2013)* given by Justice Kennedy that: "there can be little reason to question "the legitimate interest of the government in knowing for an absolute certainty the identity of the person arrested..." (Maryland, pg.3). It would be of absolute little reason for officers to consider what constitutes as a "large" or "small" storage capacity to when they can search a cell phone that does not requires a warrant and when it would be appropriate. As Justice Kennedy said, "new technology will only further improve its speed and therefore its effectiveness" (Maryland, pg.3). As technology continues to advance, it would not only be a burden but unreasonable for officers to keep up with the changing times.

In *United States v. Finley* (2007), the Fifth Circuit Court of Appeals decided that police officers could search cell phone without a warrant when the individual is arrested. On August 19, 2005, the defendant was detained by the DEA. They searched the defendant's person and seized a cell phone that was in his pocket. The phone belonged to the company the defendant worked for, but he was also allowed to use the phone for personal purposes as well (pg. 253-254). During the questioning, the defendant's cell phone records and text messages that were searched through revealed to him relating narcotics use and trafficking, later charging him with possession among other things (pg. 254). The defendant contends the motion to suppress the call records and text messages seized during the search. An important gesture he endeavors to argue is that the police had no authority to examine the phone's contents without a warrant since the cell phone is analogous to a closed container. The court corrects the defendant that the permissible scope of a search incident to a lawful arrest extends to containers found on the arrestee's person, holding that police may search containers, whether open or closed, located within arrestee's reach (pg. 259-260). The Court disagree with the government assertion that the defendant did not have a reasonable expectation of privacy of the cell phone because it was a business phone issued to him by his employer. Determining whether a defendant has a reasonable expectation of privacy sufficient to contest a valid search, it is inquired (1) that the defendant is able to establish an precise subjective expectation of privacy with respect to the place being searched or items being seized and (2) whether that expectation of privacy is one which society would recognize as reasonable (pg. 258). The Court took into consideration to the required rule whether the defendant has a possessory interest in the thing seized or the place search, and whether he has a right to exclude others from that place, whether he has exhibited an subjective expectation of privacy that it would remain free from governmental intrusion, whether he took normal

precautions to maintain privacy, and whether he was legitimately on the premises (pg. 258-259). What the Court concludes is that the defendant maintained a property interest in the phone that he acquired from his employer which gave him the right to exclude others from using the phone. He also exhibited a subjective expectation of privacy in the phone and took normal precautions to maintain his privacy in the phone (pg. 259). Upon their review, the Court found the search as lawful citing that officers may look for evidence of the arrestee's crime on his person to preserve it for use at trial. While also citing that no warrant was required to examine the content of the defendant's phone since the search was conducted pursuant to a valid custodial arrest (pg. 260).

One take away is that the court determined an expectation of privacy that individuals are entitled to. Since the phone was work related and the property of the defendant's employer, the court resulted in that the defendant was entitled to an expectation of privacy from outside intrusion. The Fifth Circuit court concluded that the defendant had a property interest in his cellphone and a right to exclude others from using it. In *Katz v. United States (1967)*, Katz challenged the use of the transcripts recorded of him, in a public telephone booth, as evidence against him stating that the telephone booth was a "constitutionally protected area" (Epstein, Lee, and Thomas G. Walker pg. 467). The court stated that the correct solution of Fourth Amendment problems is not promoted an enchantment of the phrase "constitutionally protected area." As well that the Fourth Amendment cannot be translated into a general constitutional "right to privacy." (Epstein, Lee, and Thomas G. Walker pg. 467). In *Finley*, the Fourth Amendment protected the defendant's privacy from government intrusion when it came to him on his phone, more so than any set location since the Fourth Amendment does not extend to the protection in any area.

Echoing the different ruling as the District of Columbia Circuit Court, the Sixth Circuit court held that using a GPS to track a motorhome vehicle did not constitute as a search in *United States v. Skinner* (2012). The case commences with the opinion of Circuit Judge Rogers, stating that when criminals use technological devices to carry out such criminal acts, they can hardly complain when the police take advantage of the inherent characteristics of those devices to catch them, given that the Constitution does not protect the criminal's expectations regarding the imperceptibility of their cellphones (pg. 774). The defendant appeals that the use of a GPS location information emitted from his cell phone was a warrantless search that violated the Fourth Amendment, citing the lack of sufficient evidence to find him guilty (pg. 777). While the government used data from the defendant's phone to determine his real-time location as the defendant transported drugs along the public thoroughfares between states where they confiscated a motorhome filled with drugs, the Court upholds the conviction of the defendant as there was no Fourth Amendment violation and the defendant did not have a reasonable expectation of privacy in the data emanating from his cell phone that showed his location (pg. 774-775). The Court starts off by stating that there was no Fourth Amendment violation in the defendant's case because he did not have a reasonable expectation of privacy in the data given off by his voluntarily procured prepaid cell phone. Given the uniqueness of a device such as a cellphone gives off a signal that can be tracked for location, certainly the police could pick up on the signal to track the defendant. The Court gives the analogy that the defendant could not be entitled to rely on the expected cellphone that was untraceable. If the case stands, dogs could not be used to track a fugitive if the fugitive did not know that the dog hounds had his scent (pg. 777). Technology is not an exception to the law because if the defendant had an expectation of his privacy in this instance, technology would help criminals and not the police. The Court

continues in saying law enforcement tactics must be allowed to advance with technological changes to prevent criminals from circumventing the justice system (pg. 777-778). While there may have been situations where police can track a person's activities that the very comprehensiveness of the tracking is unreasonable to the Fourth Amendment, but prior to certain advances in technology, "practical" considerations often offered "the greatest protections of privacy" (pg. 780).

The ruling in *Skinner* imitates the same ruling that the Court gave in *Katz v United States (1967)*. Particularly, in *Katz*, the court states that since the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance (Epstein, Lee, and Thomas G. Walker, pg. 468). The court in *Skinner* states that the tracking of the defendant's cellphone for a relatively short amount of time monitoring of his movements on public streets was reasonable in accords to the expectations of privacy (pg. 780). While the GPS penetrated the motorhome, the court disregard that it would give constitutional significance to the cases, they relied on the fact that technological changes requires the officers to conduct a level of extreme comprehensive tracking (pg. 780). In other words, it triumphs *Katz* because during the time period, society was less technologically advanced to understand the lengths officers now have to go through to close a case.

While the Federal Courts established precedents of the allowance of warrantless searches of GPS data location, the lower courts ruled that police officers need a warrant to carry out warrantless cellphone searches. In *State v. Smith*, the court asked whether the Fourth Amendment to the United States Constitution prohibits the warrantless search of data within a cell phone when the phone is lawfully seized incident to an arrest (pg. 163). The defendant is arrested for trafficking cocaine among other drug related convictions. During the arrest, the police searched

the defendant and found a cell phone on his person. The police did not have a warrant of the defendant's phone content when the officer checked the call records and phone numbers on his cell phone. During trial, the court ruled that it would allow the permit testimony regarding the cell phone's call records and phone numbers, excluding the use of photographs on the phone (pg. 164). The court ultimately found the defendant guilty on all counts. The defendant appealed, arguing that the trial court erred in refusing to suppress the evidence found on his cell phone. The defendant bases his challenge on the Fourth Amendment. While it is well established that searches conducted without a warrant are unreasonable, while being subjected to certain exceptions, the exception in this case is "the search incident to arrest, which allows officers to conduct a search that includes an arrestee's person and the area within the arrestee's immediate control" (pg. 165). Searches may also extend to the personal effects of an arrestee, being held that it is reasonable for police to search any container or article on a defendant's person in accordance with established inventory procedures (pg. 165). The court's approach to determine if the warrantless search of the defendant's cell phone is by characterizing it by fact-driven reasoning from past cases. If they characterized the defendant to the *United States v. Finley* approach, where the Fifth Circuit analyzed Finley's cell phone to a closed container found on an arrestee's person, the defendant does not concede that his cell phone is corresponding to a closed container (pg. 166-167). The court tried characterizing the facts to *United States v. Park*, where the United States District Court for the Northern District of California granted a defendant's motion to suppress the warrantless search of his cell phone because the search of the cell phone's contents was not conducted out of concern for the officer's safety or to preserve evidence (pg. 167). The court then characterized Smith's case to closed containers. They disagreed with *Finley* and agreed with the *Robinson* approach. Their outlook on what a closed container constitutes as

is that a “closed container” have been physical objects capable of holding other physical objects. The Robinson approach shows a cigarette package containing drugs found in a person’s pocket. Once again, the defendant’s cell phone does not come into likeness as a closed container (pg. 167-168). Lastly, the court tries to characterize the defendant’s case to see if he had a legitimate expectation of privacy. The court acknowledges that cell phone technology continuously advanced and that there are legitimate concerns regarding the effect of allowing warrantless searches of cell phones that can store large amounts of private data. While the court would not portray the defendant’s cell phone as having advanced technological capability, some of the phone’s functions included; text messaging and camera capabilities. Yet, they concluded that any standard phone comes with the same functions and that it would not be fair to require officers to discern the capabilities of a cell phone before acting accordingly (pg. 168). After analyzing the components to consider for the case, the court decided that an officer does not have the right to conduct a search of a cell phone’s contents incident to a lawful arrest without first obtaining a warrant. Citing that in alliances with the Fourth Amendment, the dissent fails to provide evidence that the justification behind the search of the defendant’s phone was to preserve the evidence or to ensure the officer’s safety (pg. 170-171).

The Seventh Circuit Court uphold that the police does not need a warrant to search through an arrested individual’s phone. In *United States v Flores-Lopez (2012)*, the defendant was arrested in a drug operation sting for selling meth. Upon arresting the defendant and his accomplice, the officers searched the defendant and his truck and seized a cell phone from the defendant’s person and two other cell phones from the truck. At the scene of the arrest, an officer searched each cell phone for its telephone number, which was used to subpoena call history from the telephone company. The defendant was sentenced to 10 years in prison (pg. 804). The

defendant argues that the search of his cell phone was unreasonable because not conducted pursuant to a warrant. The phone number was not incriminating evidence, but it enables the government to obtain incriminating evidence which resulted from an illegal search (pg. 805). Judge Posner, giving the opinion of the Seventh Circuit Court, start off by giving the explanation that any object that can contain anything else, including data, is a container. After making the clarification, he proceeds to use a diary to give an example of a container in an accurate description. The diary is a container not only because of the pages that can conceal what is being displayed on the sheet, which gives the police justification in turning the page, but it is also a container of information just as a cell phone or a computer (pg. 805). He responds to the defendant argument that since a container found on an arrestee may be searched as an incident to the arrest even if the arresting officers don't suspect that the container holds anything that affects their safety, the officer does not need any justification to search the defendant. Judge Posner is also aware of the rapid advancement in technology, stating that the potential invasion of privacy in searching a cell phone is more severe than in searching a "container." This belief is coming into light of the judges that a computer, distinguishing a cell phone as a computer, is not just a regular phone book due to the amount of personal content a cell phone carries (pg. 805). Judge Posner makes a remark that in cases pertaining to a similar one they are examining, searches without a warrant have been upheld with it is considered reasonable. Being accepted by the officers' reasonable concerns for their safety, but the defendant's cell phone did not endanger any one when it was secured with the officers. However, from their knowledge of the defendant as a drug dealer, the phone contained evidence or that would lead to evidence (pg. 806). From past judgement used in *United States v. Jones* (2012), where the police monitored the activity of Jones by a GPS tracking device on his vehicle, the court declares that the government installation

of the GPS device on Jones's vehicle and its use of the device to monitor the vehicle's movements therefore would constitute as a search (Epstein, Lee, and Thomas G. Walker, pg. 473). Furthering using that the government physically occupied private property for the purpose of obtaining information, the physical intrusion would be considered a search (Epstein, Lee, and Thomas G. Walker, pg. 473). Posner says that the court has went on to hold that a minimally invasive search would be lawful in the absence of a warrant, even when the usual reasons for excusing the failure to obtain a warrant are absent. It therefore corrects their past judgement in *Jones*, to update their ruling on the subject (pg. 806-807). Because society continuous changes in the sense of what is right it, the court must adjust their ruling to keep up with the constant change. The court later affirm search a "container" found on a person arrested to verify their identification and any information in relations to their arrest would be permissible. Answering the defendant's argument, a cell phone number in the defendant's phone can be found without searching the phone's content (pg. 807). The court states that it is not clear that they need a law specific to cell phones or other computers. With that being said, if police are entitled to open a pocket diary to copy the owner's address, they should be entitled to turn on a cell phone to learn its number. Agreeing to this only in regards of "remote wiping" where an individual could press a button on the cell phone to wipe its contents and at the same time sends an emergency alert to an outside source (pg. 807). Ending that the police did not search the contents of the defendant's cell phone, but only to obtain the cell phone's phone number, the defendant's motion to suppress evidence was denied (pg. 810).

While the court did rule that police did not need a warrant to search the contents of an arrested individual's phone, they also made it unclear as to whether do they think that an individual is entitled to privacy. Judge Posner states that the court is aware of the rapid change in

technology that could cell phones hold more sensible information than just a pocketbook and that the search would be a much more severe degree if the phone is searched. Later, he states that a minimally invasive search can be used in absence of a warrant. The court made it open that officers could search any individual's phone without a warrant just if the content being search is pertaining to what the arrestee is subject to. Also, the court categorized all cell phone users as having motive to wipe their data anytime they are pulled over by the police. This leaves open a broad topic that police are aware of remote wiping and to preserve evidence of information they are known even aware of; cell phones can be searched without a warrant.

The Eighth Circuit Court of Appeals have most recently ruled in *United States v Crumble (2018)*, that the police do not need a search warrant to search a cell phone. The interesting thing about this ruling is that a search warrant is not required when searching an abandoned cell phone. After police officers responded to reports of a shooting, the officers arrived on the scene to a wrecked vehicle, where the key were in the ignition and a handgun on the floorboard. After receiving information about the informants, the police eventually attained the defendant in custody and drove him back to the scene of the wrecked vehicle. When an officer searched the vehicle, he found a cell phone on the driver's seat, which was secured in evidence. The next day the officer applied for a warrant for more information on the crime committed. After the warrant was issued, contents from the cell phone put the defendant at the time of the shootout, which lead to him being charged (pg. 658). The defendant moved to suppress the evidence recovered from the cell phone for he had not abandoned his Fourth Amendment rights to the phone being searched. Rejected by the district court that the evidence was admissible because the defendant abandoned the vehicle and the phone when he fled the scene and denied any knowledge of the vehicle. The court later states that the good-faith exception would be applied to the case even if

the officers did not have probable cause to search the cell phone (pg. 658). The opinion, given by Judge Shepherd, starts out that while it is established that a defendant would not have a reasonable expectation of privacy in abandoned property, the issue of the court is stated as: “the issue is not abandonment in the strict property right sense, but rather, whether the defendant in leaving the property has relinquished his reasonable expectation of privacy” (pg. 659). To determine abandonment of property depends on two factors: being in denial of ownership and physical relinquishment of the property. One factor displayed to examine is that after the crash defendant fled the scene, leaving the vehicle wrecked on a stranger’s lawn. The vehicle’s keys were still in the ignition and it allowed easy access to wherever that was in the car with the back window shot out. The defendant claims he was not fleeing from the police, but rather attempting to get away from the shooter in the other vehicle that was targeting him (pg. 659). The court disregard the reasoning of the defendant for the officers reasoning that they believed that the defendant abandoned the vehicle and the contents found inside of it. The district court was correct in the abandonment of the vehicle, but not to the subjective intent of the reason the abandonment occurred. Another factor is that the defendant initially denied any knowledge of the wrecked vehicle, exhibiting his intent to abandon the vehicle and its contents. It was only the next day after the cell phone was seized that the defendant claims ownership of the vehicle. The court affirms the district court’s holding based on abandonment and does not need to consider whether the warrant was valid. (pg. 660).

The courts did not even consider whether a search warrant was need in this case due to the nature that the officers were under the assumption that the defendant has abandoned the vehicle. The defendant could not provide whether he had a reasonable expectation of privacy because he initially denied any knowledge of the vehicle. The conflict with this ruling is that

whenever a police officer came across a cell phone, did the officer assume that the phone was abandoned which gives them the right to search through the content of the cell phone? Or conversely, would the officers assume the phone is lost or misplaced? This would give police officers a major advantage of searching contents of a phone without a warrant if they assume every phone left unattended is abandoned. When a person's entire life is stored away into a cell phone, it should not be assumed that the phone is abandoned.

The Ninth Circuit Court have reaffirmed the ruling of the Supreme Court's decision in *Riley v. California (2014)*, ruling that police officers needs a warrant to be able to obtain information from an individual's phone. In the case of *United States v. Lara (2016)*, the question in concern is how does the Fourth amendment extends to the rights of a person on probation? In *Lara*, the defendant contends that his Fourth Amendment rights have been violated when probation officers conducted two warrantless, suspicion less searches of his cell phone. He also contends that the exclusionary rule requires the suppression of any content that was found on his cell phone (pg. 607). The defendant was subject to a term of probation to sign a "Fourth Amendment waiver," that required him to submit his "person and property, including any residence, premises, container or vehicle" to search and seizure "without a warrant, probable cause, or reasonable suspicion" (pg. 607) After conducting a home probation search at the defendant's residence, one of the officers spotted a cell phone on a table and examined it. Without asking the defendant's permission to search the cell phone, the officer review the most recently sent text messages on the defendant's cell phone and discovered messages containing images of a semiautomatic handgun that indicates the defendant involvement in the distribution of the sale of the gun (pg. 608). The officers search the rest of the defendant's residence for the gun. The officers further received the cell phone for examination and found the GPS data

embedded in the images of the gun. The defendant was charged with a felon and moved to suppress the evidence as a result of illegal searches of his cell phone (pg. 608). The Circuit Court was not aligned in the government's reasons to affirm the district court's denial of defendant's motion to suppress. The first contention of the government is that the defendant waived his Fourth Amendment rights. The courts held that probationers do not entirely waive their Fourth Amendment rights by agreeing to the conditions of their probation explaining that there is a limit on the price the government may exact in return for granting probation. The issue is whether the search he accepted was reasonable. Stating "any search made pursuant to the condition included in the terms of probation must necessarily meet the Fourth Amendment's standard of reasonableness" (pg. 609). The court opposed the government's content of the expectation of privacy of the defendant. Because the defendant is on probation, his reasonable expectation of privacy is lower than someone who has completed probation or who has never been convicted of a crime. Explaining that the defendant's reasonable expectation of privacy is greater than that of another probationer because he was not convicted of a particularly "serious and intimate" offense (pg. 610). The court further explained that the cell-phone search condition of the defendant's probation was not clear. The terms the defendant agreed to was to "submit his person and property, including any residence, premises, container...under his control to search and seizure." The courts cite that the defendant's cell phone was not a container and for the purpose of a search incident to arrest, calling a cell phone a container makes no sense (pg. 610). The court concludes that the defendant had a privacy interest in his cell phone and the data it contained. While recognizing that his privacy interest was in a sense diminished by the defendant's probation status, but it was not diminished since he accepted an unequivocal consent waiver (pg. 611-612). The court concludes that the search of Lara's cell phone data was unlawful and that

the exclusionary rule bars the admission of the evidence that was the fruit of the unlawful search (pg. 614).

In *Katz v United States*, the Justice Stewarts delivers in the opinion of the court, “what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected” (Epstein, Lee, and Thomas G. Walker, pg. 468). In *Lara*, the defendant had a reasonable expectation of privacy because what he does in private is not for others to see. The defendant had an expectation of keeping his gun activities private, so he would not violation his probation. Even though the activity the defendant is engaged in goes against his probation, none of the less it would have stayed undetectable if his Fourth Amendment right had not been violated. In *Riley v California*, the court states that the fact that an arrestee has diminished privacy interests, when “privacy-related concerns are weighty enough” a “search many require a warrant, notwithstanding the diminished expectations of privacy of the arrestee” (Riley, pg. 8). In *Lara*, the court acknowledge that due to the Lara’s status of a probation would in fact diminish his expectation of privacy, but the courts outweighed the benefits of Lara’s probation status with the fact that he signed in invalid condition form that made him unaware what he was signing. This was only because the conditions of the Fourth Amendment Waiver were unreasonable with what the court saw as reasonable to individuals.

The Tenth Circuit Court decision in *United States v Dahda (2017)*, gives police officer permission use a mobile interception device to track individuals. The defendant was convicted of marijuana distribution. Serving on an invalid wiretap is reviewed under the consideration that the information pertained from the wiretap can be viewed as void. On appeal, the defendant calls for a motion to suppress wiretap evidence because the wiretap authorization orders had allowed law

enforcement to use stationary listening posts outside of the issuing court's territorial jurisdiction (pg. 1105). The courts analyzed the motion by reasoning of whether the wiretap orders permitted interception outside the issuing court's territorial jurisdiction. If so, whether the orders limited extra-territorial interception to instances involving a mobile interception device (pg. 1112). The court rules that in the event the target telephone numbers are transported outside the territorial jurisdiction of the court, interception may take place in any other jurisdiction within the United States (pg. 1112). The orders allowed interception outside the court's territorial jurisdiction because there was no geographic restriction on the locations of either the cell phones or the listening posts (pg. 1112). What stemmed from the reasoning behind the rationale is whether the "mobile interception device" exception applies. The court comes up with three possibilities of whether the exception exist; a listening device that is mobile, a cell phone being intercepted, or a device that intercepts mobile communications, such as cell phone calls (pg. 1113). The court begins by defining the term "mobile" as a noun that modifies interception device. The court later interprets the next possibility to treat the cell phones as "mobile interception devices" would be impossible to for a "device" to be interpreted as something used to intercept a call. Lastly the court decides that the last possibility would require the court to rewrite the statute (pg. 1113). Ultimately, concluding that "mobile interception device" is irrelevant to the police ability to conduct their jobs using wiretaps. Also deeming it as facially insufficient (pg. 1113-1114). The case overall focused less on statutory text or factual facts and more on the perception of the Circuit judges.

While the Federal Court of Appeals ruled that officers could use wiretaps on individual's cell phones. Years before the ruling, the lower court address the warrantless cell phone search. In another case, the Colorado Court of Appeals decided the same way in *People v Taylor (2012)*.

The court found the search of the defendant's cell phone during a warrantless search of the defendant's call history as lawful, rejecting the defendant's motion to suppress evidence. The defendant was arrested in a sting operation conducted by undercover officers. As the defendant provided an illegal drug purchase, the undercover officers observed as the defendant's make a call on his phone to supply them with their "purchase." After an outside source that the defendant called to supply the undercover officers with their "purchase," the officers arrested both the defendant and his party (pg. 320). After arresting the defendant, the officers seized his cell phone as one of the officers opened the call log history of defendant's cell phone, noting a call was recently placed to the defendant's outside source's phone (pg. 320). After being convicted, the defendant contends he was subject to an unlawful search when the officers reviewed his cell phone's call history without obtaining a warrant. The opinion of the court is given by Justice Graham, who starts off by assuming two propositions that applies to case: if the defendant had a reasonable expectation of privacy in his cell phone's call history and, the officer's review of the call history constituted a warrantless search within the meaning of the Fourth Amendment (pg. 321). The court brings up that under the Fourth Amendment to the United States Constitution states that warrantless searches are per se unreasonable unless they fall under a specifically established and well-delineated exception to the warrant requirement. The court looks at the "a search incident to lawful arrest" exception, which allows officers search an arrestee's person and the area within the arrestee's immediate control when making a lawful arrest (pg. 321-322). While the state has not set precedent of the matter of whether a search incident to arrest may include a search of a cell phone's contents or even how thorough the search might proceed as, the courts conclude that under the circumstances that the search of defendant's cell phone's call history would be considered lawful search incident to arrest (pg.

322). Before concluding, the court further gives its opinion how cell phone users could prevent searches of information on the cell phones is by a user password protecting the electronic device. This solution does not lie with a revamped analysis of the search incident to arrest doctrine (pg. 325). With the both rulings taken place within the Tenth Circuit court district, the court have made their stance clear that warrantless cell phone searches on an arrestee is permissible under their district.

Lastly, the Eleventh Circuit court ruled from a unique perspective of conducting warrantless cellphone searches at the border in *United States v. Vergara (2018)* when examining whether agents from the Department of Homeland Security violated the Fourth Amendment rights of individuals when performing warrantless searches of cellphones at the entry to the United States in Tampa, Florida. The facts of the case are the defendant, a United States citizen, returned to Tampa, Florida on a cruise ship from Cozumel, Mexico with three phones. An officer at the border searched the defendant's luggage and found a phone inside of it where the officer proceeds to request the defendant to turn the phone on to looked through its contents. After looking through the phone, the officer notified the Department of Homeland Security after finding a video of two topless female minors. The agents than decided to search through all three phones of the defendant for forensic examination for any traces of child pornography (pg. 1311). After being convicted, the defendant filed a motion to suppress the evidence obtained from his cellphones. The court affirmed the defendant's conviction stating that the forensic searches of the defendant's cellphones occurred at the border, not as searches incident to arrest as the defendant tries to argue using the *Riley* case. Also ruling that border searches never requires a warrant or probable cause (pg. 1311). The courts start off by acknowledging that usually when a search is undertaken by law enforcement officials to discover evidence of the criminal wrongdoing,

reasonableness requires the obtaining of a judicial warrant. While trying to stay align with the Fourth Amendment, the court veers away to make the argument that at the border, preceding the adoption of the Fourth Amendment that is has always been reasonable by the single fact that the person or item in question that had entered the country from outside (pg. 1312). The forensic searches of the defendant's cellphones required neither a warrant nor probable cause because the border searches never require there to be one as it has always required reasonable suspicion at the border of highly invasive searches such as a strip search or an x-ray examination (pg. 1312). The court concludes that the history of warrantless searches at the border is as long as the time the Fourth Amendment has been implemented into society. Along with the fact that the defendant did not address whether reasonable suspicion existed in his case that gave him an expectation of privacy (pg. 1312-1313).

The ruling of *Vergara*, has left open an interest ruling that the Supreme Court would take up when ruling whether law enforcement practice was constitutional at the border. When the Court of Appeals ruled that warrantless searches at the border has been implement before the existed of the Fourth Amendment, the ruling left an unclear *Riley* ruling of the significant of privacy interests implicated in cell phone searches in which the Supreme Court has already ruled on (pg. 1312-1313). While the court ultimately upheld warrantless searches, Circuit Judge Jill Pryor dissented that when it comes to cell phone searches, these 'physical realities' no longer exist because individuals could not carry across the border all the mail they had received, pictures they had taken, and books they had read (pg. 1315). While in *Riley*, the court distinguished a modern cell phone as misleading because many of them are in fact minicomputers that can store a large capacity of data (*Riley*, pg. 8). As at the border, officers might have stumbled across an item such as a diary here and there, but in comparison of today

where ninety percent of American adults who own a cell phone carries such sensitive information that allowing the police to scrutinize such records on a routine basis is different from allowing them to search a personal item or two (Riley, pg. 10). When the court has already made is distinctive difference of an officer doing a routine search, the courts now have to apply what they hold up in *Riley*, which will hold up to border searches where warrantless searches was in existence before the Constitution or technology was effective.

Police Officers Carrying Out Good Protocol

Well showing the repercussion officers take upon their selves in not getting a search warrant to search and seize objects from a suspect, the court have been split on the issue to either reject the officer's findings or apply them using exceptions. If an officer can just apply for a search warrant to evaluate evidence, not only can their argument stand in court, but also, they can be more efficient in their police work to avoid constantly going to court of justify their actions. In the *United States v. Rarick* the officer was able to prove his action of a cell phone search by obtaining a search warrant and having probable cause. It all plays out first when the defendant is stopped by a police officer outside a Cheap Tobacco store after being determined he had a suspended license (pg. 1). The officer stopped the defendant to determine the registered owner and thus driving with a suspended license. During the stop, the defendant became argumentative and at some point, removed his smartphone from his pocket, held it up, approached the officer stating he was recording her. In which the officer took the phone and placed it on the trunk of the defendant's car that propelled the defendant to retrieve the cell from the trunk. The officer approached him to see he was manipulating his phone and ordered the defendant to stop. He was arrested shortly afterwards, and his cell phone seized as evidence (pg. 1-2). The defendant refused to consent to a search of his phone, in which the police filed an

affidavit for a search warrant, citing the offense of obstructing official business, with the Ohio state judge authorizing the warrant to include all information on the phone including previously erased data. After the warrant was executed, the office connected the defendant's phone to a computer that displayed all the phones contents to come across pictures and videos of child pornography (pg. 3). The police put a request of another search warrant to search the phone further citing probable cause to search for evidence of child pornography. After a third warrant was issued to search the contents of the defendant's vehicle and home, he was arrested of child pornography among other convicts. The defendant moved to suppress all the evidence found on his phone and the fruits obtained from the search which was first struck down by the district court. By the time of his appeal, he argues that the first search warrant failed the Fourth Amendment's requirement and that the manner of the search was unreasonable and unconstitutional (pg. 4). "The Fourth Amendment further requires that "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" (pg. 5). Proceeding to follow the Fourth Amendment clarity, the court analyzed the defendant's arguments that the first search warrant was overly broad for lacking to specify the electronic evidence sought from the phone nor the crime to which the evidence was connected (pg. 5-6). The first search warrant did not contain that information that questions the court as to whether the affidavit, in which the first warrant referred was valid to satisfy the particularity requirement of the Fourth Amendment, also considers the warrant's failure to specify the date of the confrontation between the officer and the defendant (pg. 6-7). The court starts off by stating that certain sections of the first warrant were not limited to files specific to what the government was searching for, of a video or image taken by the defendant on the date and around the time of his arrest (pg. 7). Even though the

affidavit text was ambiguous, the officer had probable cause to search images or videos, therefore, satisfy the particularity requirement (pg. 8). Clarifying their decision that although in searching electronic devices where criminals can easily “hide, mislabel, or manipulate files to conceal criminal activity,” it does not give the government the right to roam throughout all the files on the device (pg. 6). The next argument that the court addresses is whether the manner of the search was unconstitutional due to the officers not searching the content of the phone where the evidence would most likely be. The court declines to get into what methodologies the officer should have taken instead of inclining to examine whether the search executed under the facts of the case was reasonable (pg. 9). The court vouched that the officer targeted his search to where he reasonably believed the recording was most likely to be found. With the reasoning that the officer took guarded steps to examine the contents of the phone in a careful manner, the court denied the defendant’s motion to suppress evidence (pg. 10).

The impact from this ruling is the officer went through the necessary steps to search the evidences by putting in multiple warrants to search different contents of the phone. Instead of going on a hunch to recover evidence after witnessing the defendant manipulating evidence, the officers could have just looked through the phone without a warrant to try to recover the evidence and argue in court that it was in good faith to preserve the evidence. He instead took the right protocol to proceed in manner.

Data Analysis

The data analysis proportion of the research paper details whether the different rulings that the courts project have any effect on police force to do their job. Throughout the course of the paper, it is shown that some courts rule the use of warrantless cell phone data and tracking location as unconstitutional. Other courts rule in the favor of police carrying out these methods

for various reasons containing to the exceptions of the Fourth Amendment and the revolving time that technological has impacted society. I wonder what was the affect that the Court of Appeals rulings have on the rate of crime in relations to the weather police are granted the power to search and seizure cell phones without a warrant. In concurrence with the Court of Appeals cases, the data analysis looks at a relevant timeframe in which the court cases have been passed, in correlation to the population within the states of the Circuit district. It also factors in the violent crime rate from each state, including District of Columbia, overtime to display a trend of whether states violent crime rate have fluctuated or decrease in time. Based on data from the Federal Bureau of Investigations, the violent crime rate is compiled of statistics on violent crime; murder and nonnegligent manslaughter, rape, robbery, and aggravated assault (Federal Bureau of Investigations). Contrast, the chances that crime rates correlates when police are subjected to obtain a warrant to search cell phones. Along with this reasoning, a treatment was placed on each state, carrying the number 0 or 1. Being assigned 0 meant that the state is not in violation of the 4th Amendment prior to the case being ruled. Being assigned 1 meant that the state is in violation of the 4th Amendment. For instance, since the topic of warrantless cell phone searches are particularly new to courts passing regulations, all states are assigned a 0 up until the point the court in their district pass a ruling that the police can continue proceeding in warrantless cell phone searches or that the protocol police officers have been taken is in violation of the 4th Amendment. My hypothesis is that whenever the Court of Appeals passing a ruling of whether police officers need to obtain a warrant for unauthorize search of cell phone contents, there will be no effect on the crime rate. This is because historically over the years, crime rates have dropped significantly. From there, a treatment was construed on each state regarding whether the

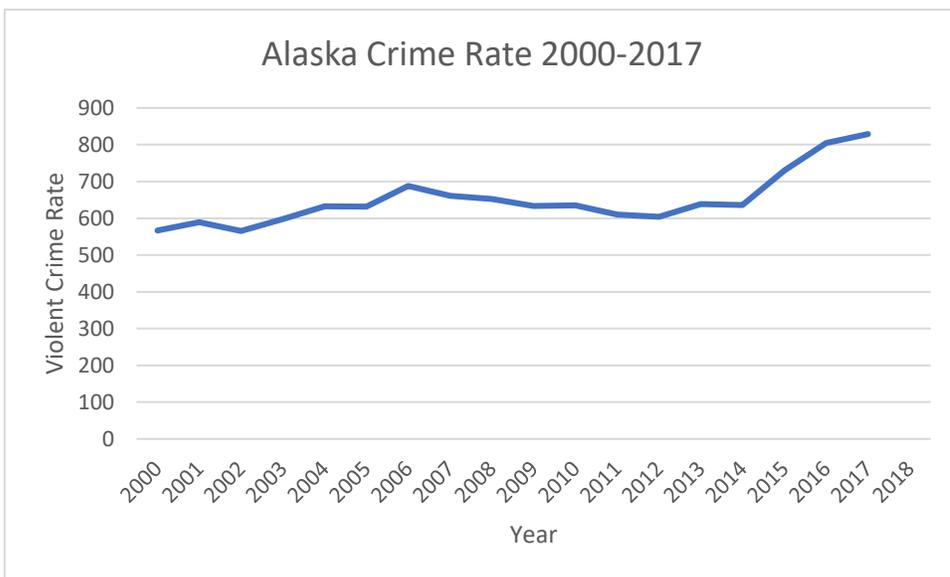
state was in violation of the Fourth Amendment until a ruling was interact that would make the state non-violate depending on the ruling.

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. regress CrimeRate treatment AL AK AZ ARK CA CO CT DE DC FL GA HA ID IL IN IA KS
> A ME MD MA MI MN MS MO MT NE NV NH NJ NM NY NC ND OH OK OR PA RI SC SD TN UT VT
> A WV WI WY _2000 _2002 _2003 _2004 _2005 _2006 _2007 _2008 _2009 _2010 _2011 _20
> 2013 _2014 _2015 _2016 _2017
```

Source	SS	df	MS	Number of obs	=	918
Model	38578437.2	68	567329.959	F(68, 849)	=	201.86
Residual	2386163.1	849	2810.55724	Prob > F	=	0.0000
				R-squared	=	0.9418
				Adj R-squared	=	0.9371
Total	40964600.3	917	44672.4103	Root MSE	=	53.015

CrimeRate	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]
treatment	-3.401376	9.578433	-0.36	0.723	-22.20156 15.39881
AL	-35.27778	17.67156	-2.00	0.046	-69.96285 -.5927037
AK	166.7613	17.70358	9.42	0.000	132.0133 201.5092
AZ	-6.388736	17.70358	-0.36	0.718	-41.13666 28.35918
ARK	13.63889	17.67156	0.77	0.440	-21.04619 48.32396
CA	10.50571	17.70358	0.59	0.553	-24.24221 45.25363
CO	-140.3722	17.67156	-7.94	0.000	-175.0573 -105.6871
CT	-202.1278	17.67156	-11.44	0.000	-236.8129 -167.4427
DE	115.1892	17.79929	6.47	0.000	80.25342 150.125
DC	883.9945	17.67957	50.00	0.000	849.2937 918.6953
FL	134.1111	17.67156	7.59	0.000	99.42604 168.7962
GA	-54.36111	17.67156	-3.08	0.002	-89.04619 -19.67604
HA	-222.2276	17.70358	-12.55	0.000	-256.9755 -187.4797
ID	-248.7776	17.70358	-14.05	0.000	-283.5255 -214.0297

The regression analysis figure show that there is no correlation between the violence crime rate



and the rulings of the Circuit Court rulings. For instance, a one percentage increase in Alaska is associated with a 35.27 increase in the percentage to violent crime rate. Meaning that police lowering crime rate in relations to the Court ruling

regarding warrantless cell phone searches holds no merit. For example, in the graph, Alaska crime rate has increased in the last three years. Alaska falls under the *United States v Lara (2016)* ruling in the Ninth Circuit Court where the court ruled that police would need to obtain a warrant to search the contents of a cell phone. It could be said that the hypothesis that was constructed was incorrect due to the time of the case ruling in 2016, violent crime rate has increased. If when the court rules in favor of protecting the people's rights, crime rates would increase. There are many factors that comes into play; as to whether historically has Alaska been a violent state to begin with, the economic climate of the state, how many homeless people are populated in Alaska. These variables are not counting in the data analysis looking at the state, but rather just the statistic violent crime rate overall.

Conclusion

Court of Appeals rulings are essentially importance to the social and political climax of America. When different circuit courts are split on decisions, such as the protocol police takes when carrying out a warrantless search of cell phone contents, laws are applied with different meaning to different parts of the country. Ultimately, it is up to the Supreme Court to assert itself as a 'tiebreaker' to set precedent on an issue that the entire country must follow. The ruling that the Court of Appeals pass is also important because when cases are not selected for review by the Supreme Court, the issue goes unsettle that further hinder the process of the country to collective come to terms on the same level. While matters remain split on the circuit level, my hypothesis was proven right that regardless of the ruling that circuit courts make to the protocol the police officers make, there is no correlation to the violent crime rate.

References

- Chimel v. California, 395 (1969). HeinOnline,
<https://heinonline.org/HOL/P?h=hein.usreports/usrep395&i=826>
- Epstein, Lee, and Thomas G. Walker. *Constitutional Law For a Changing America: Rights, Liberties, and Justice*. 8th ed., Sage, 2012.
- Federal Bureau of Investigation. 2015 Crime in the United States. Accessed 2 Dec. 2018,
<https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-4>
- Federal Bureau of Investigation. 2017 Crime in the United States. Accessed 2 Dec. 2018,
<https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-4>
- Federal Bureau of Investigation. Uniform Crime Reporting Statistics. Accessed 2 Dec. 2018,
<https://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>
- Jones v. United States, 168 A.3d 703 (2017). HeinOnline,
https://heinonline.org/HOL/CaseLawAuth?cid=12450032&native_id=12450032&rest=1&collection=fastcasefull#
- Maryland v. King. 569 U.S. (2013) Handout.
- Ohio v. Smith, 920 N.E.2d 949 (2009). HeinOnline,
https://heinonline.org/HOL/CaseLaw?native_id=6438804&cop=&collection=journals
- People v Taylor, 296 P.3d 317. HeinOnline,
https://heinonline.org/HOL/CaseLawAuth?cid=9796339&native_id=9796339&rest=1&collection=fastcasefull#
- Riley v. California. 573 U.S. (2014). Handout.
- United States v Crumble, 878 F.3d 656 (2018). HeinOnline,
https://heinonline.org/HOL/CaseLaw?native_id=12491040&cop=&collection=journals
- United States v Dahda, 853 F.3d 1101 (2018). HeinOnline,
https://heinonline.org/HOL/CaseLaw?native_id=12611796&cop=&collection=journals
- United States v Flores-Lopez, 670 F.3d 803 (2012). HeinOnline,
https://heinonline.org/HOL/CaseLaw?native_id=8771770&cop=&collection=journals#
- United States v Lara, 815 F.3d 605 (2016). HeinOnline,
https://heinonline.org/HOL/CaseLawAuth?cid=12267954&native_id=12267954&rest=1&collection=fastcasefull
- United States v Skinner, 690 F.3d 772. HeinOnline,
https://heinonline.org/HOL/CaseLawAuth?cid=9435058&native_id=9435058&rest=1&collection=fastcasefull
- United States v Vergara, 884 F.3d 1309 (2018). HeinOnline,
https://heinonline.org/HOL/CaseLawAuth?cid=12654787&native_id=12654787&rest=1&collection=fastcasefull#

- United States v. Caraballo, 831 F.3d 95 (2016). HeinOnline,
https://heinonline.org/HOL/CaseLawAuth?cid=12416315&native_id=12416315&rest=1&collection=fastcasefull
- United States v. Finley, 477 F.3d 250 (2007). HeinOnline,
https://heinonline.org/HOL/CaseLaw?native_id=5376171&cop=&collection=journals#
- United States v. Katzin, 769 F.3d 163 (2014). HeinOnline,
https://heinonline.org/HOL/CaseLawAuth?cid=11102017&native_id=11102017&rest=1&collection=fastcasefull
- United States v. Murphy, 552 F.3d 405 (2009). HeinOnline,
https://heinonline.org/HOL/CaseLaw?native_id=5973844&cop=&collection=journals#
- United States v. Rarick, Case No. 14-4212. HeinOnline,
https://heinonline.org/HOL/CaseLawAuth?cid=11018424&native_id=11018424&rest=1&collection=fastcasefull#
- United States v. Robinson, 414 (1973). HeinOnline,
<https://heinonline.org/HOL/P?h=hein.usreports/usrep414&i=370>.
- United States v. Wurie, 728 F.3d 1 (2013). HeinOnline,
https://heinonline.org/HOL/CaseLaw?native_id=10014711&cop=&collection=journals#
- Weeks v. United States, 232 (1914). HeinOnline,
<https://heinonline.org/HOL/P?h=hein.usreports/usrep232&i=429>