



ROLL CALL REPORTER

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Search of Cell Phones or Other Electronic Devices Incident to Arrest

QUESTION: Can the contents of an arrestee's cell phone or other electronic device be searched incident to arrest, without a warrant?

ANSWER: Yes. If the cellular phone or other device is in the arrestee's possession or immediate control, it can be searched incident to arrest, and no warrant is necessary.

CASE: *Ronald Sinclair v. State of Maryland*, Court of Special Appeals of Maryland
Decided September 25, 2013

While getting gas at a CITGO station in Temple Hills, Prince George's County, Maryland, Thomas Gaines was approached by two men, one of whom had distinctive dreadlocks and had just finished a heated conversation on his cell phone. The men approached Gaines and one of them asked him if he "wanted to buy some weed." When Gaines said no, the man with the dreadlocks pressed what appeared to be a semi-automatic pistol in his side and told him not to move. The second man went into Gaines's pockets and took his wallet and cell phone. The men then entered Gaines's car and drove off. The cashier at the CITGO station witnessed the armed carjacking. The next day, when he went to a nearby shopping center, Gaines saw his car in the parking lot. He also saw a police officer in the parking lot and had his girlfriend get out of the car and flag down the officer. Gaines then drove over to his car and blocked it in. Gaines then began looking for the suspects. By this time, the officer, Kevin Stevenson of the Prince George's County Police Department, had come over and confirmed that the car belonged to Gaines. He also had the description of the suspect given by Gaines. Gaines saw the suspect with the dreadlocks in the nearby barber shop. When the suspect left the barber shop, he was talking on his cell phone. A car soon pulled up and the suspect got in. Police officers, however, stopped the car before it could leave the parking lot. The suspect and the two other occupants were ordered out and told to sit on the curb. The suspect was identified as Ronald Sinclair.

Gaines positively identified Sinclair as the person who had carjacked him. Sinclair was placed under arrest and searched. His cell phone and a small amount of cocaine were seized from his person as part of the search incident to arrest. A few minutes later, Officer Stevenson examined the cell phone found in Sinclair's pocket. He observed that the screen saver of the cell phone was a photograph of automobile rims that were confirmed to be identical to the rims on Gaines's stolen car. Officer Stevenson also located two other pictures of automobile rims in the phone's photo library that were confirmed to be identical to the rims on Gaines's car.

Sinclair was indicted for carjacking, use of a handgun in the commission of a felony or crime of violence, and possession of cocaine. Prior to trial, Sinclair moved to suppress the photographs of the car rims found on his cell phone. Sinclair's attorney urged that, in the absence of exigent circumstances, the officer needed a warrant to examine the cell phone's photo content. The State argued that the examination of the cell phone and the finding of the pictures was part of a valid

search incident to arrest. The trial court agreed and Sinclair's motion was denied. He was convicted and sentenced to a twenty-year term. Sinclair appealed.

The Court of Special Appeals affirmed Sinclair's conviction on grounds that the cell phone was validly search incident to Sinclair's arrest. Searches incident to arrest have included wallets, address books, purses, brief cases, and other containers found on the arrestee's person. As to electronic devices, the general rule is that cellular phones and other personal electronic devices are simply a digital method of transporting information that otherwise would have to be carried in physical form. Consequently, a search of the contents of a defendant's cellular telephone or other personal electronic device is a lawful search incident to arrest. Based on this legal principle, the search of the contents of Sinclair's cellular phone incident to his arrest did not violate the Fourth Amendment.

NOTE: It must be noted that the issue of searches of cellular phones incident to arrest has yet to be addressed by Maryland's highest court, the Court of Appeals, or the United States Supreme Court. The issue may be complicated by devices such as "smart phones" which are capable of storing substantial amounts of personal data. So, the argument is that such devices are more similar to computers than address books. Some guidance in this area has come from the United States Court of Appeals for the Fourth Circuit, which interprets federal law in Maryland and several adjacent states. *United States v. Murphy*, decided in 2009, concerned the search of several cell phones seized incident to arrest after a traffic stop. The cell phones were logged in as evidence by the sheriff's department and, two months later, the defendant's cell phone was turned over to the DEA. A DEA agent examined the contents of the phone which contained text messages from an individual who later identified the defendant as his drug supplier. The Defendant challenged the warrantless search of his cell phone and lost. The Fourth Circuit held that *the need for the preservation of evidence* justifies the retrieval of call records and text messages from a cell phone or pager without a warrant during a search incident to arrest. As a general rule, however, the sooner the cell phone or other device is searched incident to the arrest, the better. The more time that passes between the arrest and the search, the louder the call for a warrant will become, especially where the defendant no longer has no access to the device and, thus, no ability to remove its contents.

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