



Roll Call Reporter

August 2015

LEGAL UPDATES FOR MARYLAND LAW ENFORCEMENT OFFICERS

QUESTION: Must officers obtain a search warrant before searching a cell phone?

ANSWER: Generally, yes. Since the Supreme Court's 2014 decision in *Riley v. California*, officers must, save for case-specific exigent circumstances, obtain a search warrant before searching a cell phone recovered incident to arrest.

CASE: *Steven Spence v. State of Maryland*
Court of Appeals of Maryland
Decided July 27, 2015

This is the second of three in a series of Roll Call Reporters – all related to the warrantless searches of cell phones incident to arrest.

The Robbery Investigation:

During the early morning hours of January 13, 2011, Sergeant Nancy Nagel of the Caroline County Sheriff's Office responded to a report of a robbery at a mobile home in a trailer park in Preston, Maryland. After completing her interview with the robbery victims, which established that prescription pills had been

stolen, Sergeant Nagel noticed fresh footprints in the snow outside of the victims' home, leading from a doorstep a few mobile homes away directly to the robbery victims' home. While Sergeant Nagel and at least one other officer who had arrived on the scene were investigating the footprints, a woman stepped out from the home where the footprints began and identified herself as Tonya LaLone.

Sergeant Nagel asked LaLone if she could come inside to speak about the robbery that had just occurred. LaLone consented and, as they stepped into the home, Sergeant Nagel asked who else, if anyone, was present. LaLone informed Sergeant Nagel that her two parents, who owned the home, and her three-year-old son were present. She then pointed to a room where, she said, her son was asleep. Sergeant Nagel heard a loud noise coming from the room. She asked again who was in the room. Sergeant Nagel then drew her weapon, and, when she did, LaLone said that her boyfriend, Dwayne Steven Spence, was inside the bedroom. Sergeant Nagel ordered him out.

As Spence came out of the bedroom, he had a cell phone in his hand and was using it. Sergeant Nagel and another officer ordered Spence to put his hands in the air. Spence obeyed, keeping his

cell phone in his hand. Sergeant Nagel then asked Spence to sit on a chair. Spence sat down and continued to use the phone. Sergeant Nagel told him to place the phone on the end table, and Spence complied. Sergeant Nagel then re-holstered her gun.

Spence was frisked, but no weapons were found. Sergeant Nagel then gathered all of the occupants and told them that a robbery had taken place and that she was searching for shoes matching the imprints outside and the stolen prescription pills. Sergeant Nagel obtained consent to search the home.

The Residence Search, Arrest, and Search of the Cell Phone:

While searching the bedroom from which Spence had come, Sergeant Nagel found a black wallet propped against an aquarium and, behind the wallet, a clear bag containing what she recognized as marijuana. The wallet contained Spence's identification card. Inside a cabinet in the room were additional bags of marijuana, drug paraphernalia, and a small digital scale. Sergeant Nagel did not find any evidence linking Spence to the robbery.

Spence and LaLone were placed under arrest. Sergeant Nagel decided to search the cell phone Spence had been using when he walked out of the bedroom. The phone was a "flip" phone and a smartphone. It had internet capabilities and a touch screen. Sergeant Nagel examined the phone in an effort to discover any other evidence that could be destroyed. She activated the phone's screen and message folder. She then opened the message folder and found text messages relating to the distribution of controlled dangerous substances. Sergeant Nagel also saw two text messages related to the

robbery she was investigating. Those two messages had not been read or answered. Spence said that he had no knowledge of the robbery and that he was likely asleep when those two messages came in. He said the messages were from his brother's phone. Sergeant Nagel then "seized" the phone because she was concerned that the evidence could be destroyed by remote or instantaneous wiping of the phone. The police later obtained a warrant to search the data in the phone.

The Motion to Suppress and Convictions:

Spence was charged with multiple drug offenses and moved to suppress the evidence against him. The court denied the motion on grounds that the warrantless search of the phone was limited; that Sergeant Nagel was reasonably concerned about the destruction of evidence; and that the phone could have been used to summon third-parties to the scene. Spence waived his right to jury trial and was found guilty by the court. He was sentenced and appealed.

The Decision on Appeal:

Spence was arrested in 2011. In 2014, after Spence's conviction, the United States Supreme Court decided *Riley v. California*, holding that searches of cell phones fall outside the permitted scope of a search incident to arrest. This means that officers must generally secure a warrant before conducting searches of data on cell phones. Even so, the State argued on appeal that exigent circumstances were present when Sergeant Nagel searched the phone, and that, even if they were not, she acted in "good faith" and in reliance on the law at the time of arrest, and, as such, the evidence should not have been suppressed.



The Court of Appeals agreed with the “good faith” argument, so it did not even consider whether or not exigent circumstances were present. The law at the time of Spence’s arrest *did* authorize searches of cell phones incident to valid arrests. Therefore, the lower court was correct in not suppressing the evidence, and Spence’s convictions were upheld.

NOTE:

Despite the change in the law in 2014, law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon – for example, to determine if there is a razor blade hidden between the phone and its case. Also, exigent circumstances may be present that justify an immediate search of a cell phone. However, once an officer has secured a phone and eliminated any potential physical threats, the data on the phone itself can endanger no one, and a warrant to search it is required.

*By John F. Breads, Jr., Director of Legal Services,
Local Government Insurance Trust*

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

