



# Roll Call Reporter

LEGAL UPDATES FOR MARYLAND LAW ENFORCEMENT OFFICERS

July 2015

**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, with limited exception, obtain a search warrant before searching a cell phone recovered incident to arrest.

**CASE:** *Quioly Shikell Demby v. State*  
Court of Appeals of Maryland  
Decided July 27, 2015

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

## The Drug Activity:

On May 24, 2012, Corporal Leonard Nichols of the Maryland State Police received information from a confidential informant about a potential drug deal at a park on Red Bridges Road in Caroline County, Maryland. The informant identified one man involved as Steve Lepore and the other as "Oly." Sometime later that day, the Caroline County dispatch center relayed that it

had received an anonymous call from an individual who saw a person traveling up and down Red Bridges Road on a golf cart, meeting other subjects in their vehicles. Corporal Nichols and an undercover police officer arrived at the scene, where Corporal Nichols observed a golf cart parked behind a Nissan Altima. A man, later identified as Lepore, was standing between the vehicles on the driver's side of the Altima. Another man, later identified as Quioly Shikell Demby, was sitting in the passenger's seat of the Altima, and another man was sitting in the driver's seat.

Corporal Nichols approached the vehicles, identified himself as a police officer, and told the individuals that he was responding to complaints regarding potential drug activity. He then asked the individuals if they were in possession of anything illegal. Lepore replied that he had a "bowl" (a device to smoke marijuana) in his pocket. Corporal Nichols searched Lepore and found a bowl containing marijuana. Demby said that he had pills and presented to Corporal Nichols an unlabeled prescription bill containing 11 pills. Based on his experience in the Drug Task Force, Corporal Nichols identified seven pills as oxycodone and four other pills as oxycodone acetaminophen.

Demby told Corporal Nichols that he received a prescription for the pills from the hospital.

### **The Arrests, the Vehicle Search, and Recovery of the Cell Phone:**

Corporal Nichols arrested Demby and, along with other officers who by then had arrived as backup, searched the vehicle in which Demby had been sitting. During the search of the car, the police noticed on the dashboard a cell phone repeatedly ringing and sending out tones. The phone was not a smartphone (it was either a flip phone or a slide phone), and it was receiving calls and/or text messages. Corporal Nichols asked who owned the phone, and Demby said that it was his.

### **The Search of the Cell Phone at the Scene and Subsequent Search Pursuant to a Warrant:**

Corporal Nichols “opened” the phone and viewed the most recent text messages. Based on his training and experience, Corporal Nichols understood the messages to mean that the senders were looking to buy pills from Demby. Corporal Nichols searched the cell phone at the arrest scene because, based on his personal experience, cell phones can pose safety concerns for police officers because a suspect might have a plan to notify third parties to show up if the police arrived. Also, evidence on a cell phone might be destroyed by remote “wiping” (when a cell phone provider resets the phone to factory settings upon request). Demby was cooperative during his arrest and his cell phone was not remotely wiped.

Corporal Nichols took possession of the cell phone and subsequently obtained a warrant to

search the data within the phone. Execution of the warrant provided police with the same data that Corporal Nichols observed at the time of Demby’s arrest, and more.

### **The Motion to Suppress and Conviction:**

Demby was charged and, through counsel, moved to suppress the evidence obtained at the time of his arrest. He argued that the warrantless search of a cellular device is unreasonable under the Fourth Amendment. The court denied the motion on the ground that the evidence was the result of a valid search incident to arrest. The court also ruled that, even if the search of the phone incident to arrest was unreasonable, the evidence was still admissible by application of the inevitable discovery exception to the exclusionary rule. Demby waived his right to a jury trial, was found guilty, and sentenced to four years, all suspended, and probation. He appealed.

### **The Decision on Appeal:**

While the appeal was pending, the United States Supreme Court decided *Riley v. California* (2014), holding that officers generally must obtain a warrant before searching a cell phone. However, Demby’s arrest occurred two years before the Supreme Court’s decision in *Riley*, and the law at the time of Demby’s arrest in 2012 allowed the search of a cell phone incident to a valid arrest. So, since Corporal Nichols searched Demby’s cell phone in good faith and in reasonable reliance on the law at the time of arrest, the Court of Appeals of Maryland agreed that the evidence against Demby should not have been suppressed. As a result, Demby’s conviction was affirmed.



**NOTE:**

The conviction here was saved because the arrest occurred two years before the Supreme Court's decision in *Riley v. California*. For all searches of cell phones *since* the decision in *Riley*, the rule is clear: The warrantless search of the digital information in an arrestee's cell phone incident to a lawful arrest, save for case-specific exigent circumstances, is unreasonable and violates the Fourth Amendment.

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

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