

SUPREME COURT  
FILED

MAR - 9 2022

Court of Appeal, Fourth Appellate District, Division Three - No. G060987

Jorge Navarrete Clerk

S272696

Deputy

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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GREGORY DAVID MUÑOZ, Petitioner,

v.

SUPERIOR COURT OF ORANGE COUNTY, Respondent;

THE PEOPLE, Real Party in Interest.

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The petition for review is denied.

**CANTIL-SAKAUYE**

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*Chief Justice*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE

GREGORY DAVID MUÑOZ,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Real Party in Interest.

G060987

(Super. Ct. No. 20CF2992)

ORDER

THE COURT:\*

The petition for a writ of mandate/prohibition and request for immediate stay are  
DENIED.

FYBEL, ACTING P. J.

\* Before Fybel, Acting P. J., Goethals, J., and Zelon, J.\*\*

\*\*Retired Justice of the Court of Appeal, Fourth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

# APPENDIX

- 1 -

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3.9.22. DENIAL ORDER BY CALIFORNIA  
SUPREME COURT FOR PETITIONERS REQUEST  
FOR REVIEW

- 12 -

1      **Gregory David Muñoz #3043516**  
2      550 N Flower St.  
3      Santa Ana CA 92703

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6      In Pro-Per

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9      **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10      **COUNTY OF ORANGE**

11      THE PEOPLE OF THE STATE OF CALIFORNIA,      )      CASE NO.: 20CF2992  
12    )      DEPT.:      C40  
13    )      TIME:      9:00AM  
14    )      Plaintiff,      )      ESTIMATE TIME: 6HRS  
15    )  
16    )  
17    )      DEFENDANT MOTION TO  
18    )      SUPPRESS EVIDENCE DUE  
19    )      TO ILLEGAL SEARCH OF  
20    )      CELL PHONE.  
21    )      (PEN. CODE §1538.5)  
22    )  
23    )  
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26    )  
27    )  
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17      TO THE HONORABLE JUDGE PRESIDING IN THE SUPERIOR COURT OF  
18      CALIFORNIA FOR THE COUNTY OF ORANGE, AND TO THE DISTRICT ATTORNEY  
19      OF ORANGE COUNTY:

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21      Please take note that on September 24, 2021, in department C-40, at 9:00am, or as soon  
22      thereafter as -- Counsel/Defendant can be heard, Defendant Gregory David Munoz will move  
23      this court under (penal code §1538.5 and Riley V. California (2014)). To suppress the  
24      following evidence in this case: All digital data in "people's 42 -- here-in-after referred to as  
25      AV-55 and all other digital data as physical in nature that might exist.

1 As more fully discussed in the attached memorandum of Points & Authorities, the evidence in  
2 this case should be suppressed because it was acquired as a fruit of the unlawful search  
3 conducted on my digital cellphone. Please take further notice that all references to preliminary  
4 hearing transcripts in this motion will be in short example (P.H.T) and Exhibits will be  
5 attached documents.

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Dated: August 18, 2021

Respectfully Submitted

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Gregory David Munoz  
In Pro Per

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Motion to Suppress and Memorandum of Law

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. STATEMENT OF FACTS**

**I.**

1) November 21, 2016, a cellphone that belonged to defendant Gregory David Munoz, was discovered in Gregory David Munoz cell during a random cell search. In "Calipatria State Prison" (See Exhibit-A RVR#1516324 Dated Nov. 21, 2016, Attached)." The cellphone was then placed in (Evidence Locker #1216) In Calipatria State Prison (See Exhibit A – RVR #1516324).

A) Sometime thereafter the cellphone seized was searched and its digital data contents were downloaded onto a "sim card" by a prison Investigators who acted without a warrant or legal process of any kind. (See P.H.T. 846, 1-26) These same prison investigators, then mailed the "sim card" containing all the digital data to "Detective J. Reger of the Placentia Police Department". Who then transferred the "sim card" digital data onto a flash drive (See P.H.T. 846, 16) Detective J. Reger began to view all the digital data stored in the flash drive (See P.H.T. 846, 16) without a warrant nor legal process of any kind.

B) After viewing the data stored in the flash drive without a warrant, Detective J. Reger of the Placentia Police Department used the viewed knowledge to procure a warrant to search the seized cellphone. Soon thereafter the Orange County District Attorney framed and indictment against the defendant using the digital data in question the indictment was eventually dismissed, on other grounds by this court and a felony complaint against defendant was then framed and filed using data viewed without a warrant.

## B. STATEMENT OF THE CASE

II.

2) On October 18, 2020. The District Attorney charged Gregory David Munoz, alleging that defendant violated the following laws:

COUNT 1 - 182(a)1 - (Conspiracy to commit a crime)

COUNT 2 -187(a) (Murder)

COUNT 3 - 664(a) - 211/212.5(a) (Attempt 1<sup>st</sup> degree robbery)

COUNT 4 - 459-460(a) (First degree residential burglary)

COUNT 5 - 186.22(a) (Street Terrorism)

### C. STANDING TO CHALLENGE

III

3) Defendant Gregory David Munoz is and was the owner of the seized phone (See Exhibit A - RVR #1516324- Attached) At no time has defendant denied ownership of the contraband phone in question, and thus has a right to challenge the legality of the warrantless search that was conducted on the contraband phone

## D. ARGUMENT

IV.

The search of the contraband phone falls outside the scope of the search incident to a lawful seizure.

C) The United States Supreme Court set the stage for modern Fourth Amendment Analysis in the Paramount Electronic Device Case Riley V. California. The Court observed that cellphones are now so commonplace that “the proverbial visitor from mars might

1 conclude they were an important part of human anatomy". It is clear to see why the Court  
2 made such an observation the constitutional implications of the widespread technological  
3 phenomenon are at the heart of the Riley opinion. The Riley Court held that even when  
4 the phone is located on the arrestee's person. The unique privacy interests in such a  
5 device mandate that police be limited to seizure and securing the phone. Which suffices  
6 to eliminate any risk of "harm to officers" or "destruction of evidence". (Riley, at PP.  
7 2484-2485). The underlying principal in Riley V. California, U.S. 134 S. CT. 2473.189  
8 L. ED. 2d 430 (2014) which foreclosed the application of the search, incident arrest  
9 exception to a (cellphone) also forecloses the application of their exception to warrantless  
10 searches of the contraband cellphones under both the Fourth Amendment to the United  
11 States Constitution and the California Constitution and as well in Penal code §4576(E)  
12 which required prison officials to obtain a warrant before searching or viewing digital  
13 data on contraband digital devices.

14

15 **WARRANTLESS SEARCH OF SEIZED CELLPHONE THAT WAS INVESTIGATORY**  
16 **IN NATURE VIOLATE THE FOURTH AMENDMENT**

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18 D) In recent years, the United States Supreme Court has grappled with defining the courts of  
19 the search incident to arrest exception in our increasingly digital world. In Riley, 134 S.  
20 CT. AT 2494, the court addressed whether the search incident to arrest exception to the  
21 warrant requirement applies to cellphones and concluded that it does not. In reaching this  
22 conclusion the court reasoned that applying the search incident to arrest doctrine to the  
23 search of digital data serves neither of the two justifications announced in Chimel, 395  
24 U.S. AT 762-763,89 S. CT. 2034: "Harm to Officers" and "Destruction of Evidence."  
25 Riley, *supra* at 2484-2485 S. CT.

1 This reasoning presents a competing basis to exclude the digital data of the contraband  
2 cellphones from the search incident to a lawful prison random cell search exception to the  
3 warrant requirement. Like the cellphone in Riley, here the twin threats of "Harm to an office" or  
4 "the destruction of evidence" are not present with regards to digital data on a digital cellphone.  
5 See ID. Once the device has been secured as it occurred in the present case (See Exhibit A  
6 RVR#1516324) and the potential treats eliminated, 'Data on this device can endanger no one'  
7 The officers and prison investigators are free to examine the physical aspects of the phone" to  
8 ensure that it will no be used as a weapon. Likewise, the risk to the prison is also mitigated once  
9 the phone in question had been secured by prison Investigators, as it occurred here. In the present  
10 case defendant Gregory David Munoz's cellphone was seized during a random cell-search  
11 because it was considered contraband (See Exhibit A - RVR#1516324) from that point on  
12 "ample time" existed for prison officers and investigators to procure a warrant. Instead of  
13 obtaining a warrant they searched the phone and downloaded the data without a warrant or legal  
14 process of any kind. After a few months had elapsed a prison investigator mailed a "sim card"  
15 containing all the data to "Detective J. Reger" of the Placentia Police Department. this  
16 investigator alone with other investigators viewed the data on the "sim card" prior to procuring a  
17 warrant, since no probable cause to obtain a warrant before viewing the data existed. All the  
18 officers and investigators involved in the seizure and searches of the phone from the moment it  
19 was seized to the moment its data was used to procure a warrant and frame a complaint did  
20 exactly "What the Riley court strictly prohibits."

## E. CONCLUSION

4) For the reasons stated above, all the evidence digital and physical in nature being used against defendant should be suppressed as fruit of an unlawful search on his phone.

DATE: August 18, 2021

Respectfully Submitted

Gregory David Munoz

In Pro Per