

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PRENTISS ANTHONY CRUMBLE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

- 1. WHETHER OR UNDER WHAT CIRCUMSTANCES PEOPLE ABANDON FOURTH AMENDMENT PRIVACY INTERESTS IN THE COMPLETE CONTENTS OF THEIR CELL PHONES.**
- 2. WHETHER OR UNDER WHAT CIRCUMSTANCES A WARRANT AUTHORIZING THE SEARCH OF "ALL ELECTRONIC DATA" IS SUFFICIENT TO SATISFY THE FOURTH AMENDMENT'S PARTICULARITY REQUIREMENT.**

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Prentiss Anthony Crumble respectfully petitions for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Eighth Circuit, affirming in part and reversing in part a conviction and sentence of the United States District Court for the District of Minnesota.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported at 878 F.3d 656 and is attached as Appendix A. The district court order was not reported, but it is attached as Appendix B.

JURISDICTION

Mr. Crumble entered a conditional plea of guilty to being a Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g). He was sentenced to 180 months imprisonment by the Honorable Donovan W. Frank.

The United States Court of Appeals for the Eighth Circuit affirmed Mr. Crumble's conviction while vacating his sentence in a published opinion filed January 2, 2018. Mr. Crumble's petition for rehearing was denied on March 22, 2018.

The jurisdiction of this Court to review a judgment of the court of appeals is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides that:

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.

STATEMENT OF THE CASE

Mr. Crumble's case presents questions regarding the proper standard for abandonment of a cell phone and the particularity required for a cell phone search warrant. The district court denied Mr. Crumble's motion to suppress the evidence obtained from the search of his cell phone. In a published decision, the Eighth Circuit Court of Appeals affirmed the denial of the suppression motion while remanding on other grounds.

The case began on October 21, 2014, when police officers were notified that two cars were exchanging gunfire while driving through a residential neighborhood in St. Paul, Minnesota. Dispatchers then informed the officers that one of the cars, a tan Buick, had crashed into a house, and the Buick's occupants had fled.

When the officers arrived on the scene of the crash, a witness told the officers that, after the Buick crashed and couldn't move, the people in the other car continued to shoot at it. The witness told the officers that the two men in the Buick got out and ran away.

The physical evidence quickly confirmed the account. Inspecting the Buick, the officers found bullet holes in the passenger side, with the rear passenger window entirely shot out. Other officers found bullet casings where the witness had said the other car had paused to shoot. Inside the Buick, the officers found a handgun on the floor of the driver's side.

Within 15 minutes of responding to the scene, officers found Mr. Crumble hiding behind a shed. He matched the witness's description of one of the men running from the Buick. He was arrested and taken back to where the Buick was crashed so that the witness could make an identification.

At the time, Mr. Crumble denied knowing anything about a shooting or a crash. He repeated the claim in a *Miranda* interview the next day, but once the interview was over, he admitted that he had been in the car, although he claimed that he had gotten out before the crash.

Immediately after Mr. Crumble's arrest, the car was searched, and officers found a cell phone. According to Chad Degree, the officer who recovered and had custody of the phone, he never looked through or operated the phone. But approximately an hour after the phone was recovered, someone sent a text message from the phone to Mr. Crumble's sister, who had been frantically calling and texting.

Off. Degree obtained a search warrant to examine the cell phone. The warrant application requested authorization to search "[a]ll electronic data (including but not limited to contacts, calenders [sic], call records, voice

messages, text messages, photo and video files) stored in" the phone. The application asserted that "data stored on the phone will provide information as to the second occupant of the Buick or further information related to the crime," although the affidavit contained no evidence that the cell phone had been used during the shooting and nothing to suggest how information on the cell phone would lead them to the second occupant. But, according to the warrant application, "Affiant knows from training and experience that information contained in cell phones, memory cards and often contains evidence that is useful in a criminal investigation."

The warrant was granted, and during a search, Off. Degree found a video of Mr. Crumble that was, according to its metadata, taken shortly before the incident. In the video, Mr. Crumble was wearing the t-shirt he was arrested in and brandishing a handgun similar to the one recovered in the Buick. After seeing the video, Off. Degree handed the video over to another officer, who completed "a dump of all the data and the evidence."

Mr. Crumble was charged with being a felon in possession of a firearm, subject to sentencing under the Armed Career Criminal Act (ACCA). Mr. Crumble moved to suppress the evidence obtained from his cell phone, and the magistrate judge recommended granting the motion. The magistrate judge found it undisputed that Mr. Crumble owned the phone, and further found that his ownership was proved by the evidence of the text message that was sent from his phone to his sister's. The magistrate

judge found that Mr. Crumble maintained a privacy interest in the contents of the phone.

Although the magistrate judge rejected Mr. Crumble's argument that the warrant application lacked probable cause to believe relevant evidence would be recovered on the phone, the magistrate judge agreed that a request to search through "[a]ll electronic data" without limitation amounted to a general warrant, so lacking in required particularity that the officers could not have relied on it in good faith.

The district court rejected the recommendation and denied the suppression motion. The district court based this denial on three conclusions. First, the district court found that Mr. Crumble abandoned the cell phone when he left it behind in the Buick and then denied having been in the car. Second, the district court ruled that the search warrant did not lack particularity or probable cause. Third, even if the search warrant affidavit was deficient, the officers were entitled to the presumption of good faith in executing the warrant.

Mr. Crumble then entered a conditional guilty plea, reserving his right to appeal the suppression motion and his sentence under ACCA. On appeal, the Eighth Circuit Court of Appeals affirmed the denial of his suppression motion but vacated his ACCA sentence and remanded for resentencing. Mr. Crumble's petition for en banc rehearing on the suppression issue was denied, with three judges voting to grant rehearing.

REASONS FOR GRANTING THE WRIT

THIS CASE PRESENTS AN OPPORTUNITY TO RULE ON TWO IMPORTANT QUESTIONS OF FEDERAL LAW WHILE CORRECTING THE LOWER COURTS' ERRONEOUS APPLICATION OF *RILEY V. CALIFORNIA*.

The decision below decided vital questions of Fourth Amendment law in ways that conflict with this Court's decision in *Riley v. California*, 134 S.Ct. 2473 (2014), emphasizing the vital privacy interests inherent in cell phones. This Court should grant review to establish proper standards on both questions.

"It would be foolish to contend that the degree of privacy secured to citizens by the Fourth Amendment has been entirely unaffected by the advance of technology." *Kyllo v. United States*, 533 U.S. 27, 33–34 (2001). As this Court recognized in *Riley*, cell phones lie at the very heart of modern life. Because of the unique wealth of information cell phones contain about our most intimate details, traditional Fourth Amendment jurisprudence is often poor guidance for protecting essential privacy interests. A cell phone has long been more than just a phone, and it does little good to compare a cell phone to a briefcase or other container. Although *Riley* was specifically concerned with the applicability of the search-incident-to-arrest exception to the warrant requirement, *Riley's* apply more broadly.

Mr. Crumble's case presents this Court with the opportunity to address two key issues of Fourth Amendment law. First, the lower courts have

struggled to determine the proper standard for addressing when Fourth Amendment rights in cell phones may be considered abandoned. Second, the lower courts have also differed on the degree of particularity required in searches of cell phones. A decision by this Court would provide necessary guidance to the state and federal courts.

Abandonment

This decision is the latest in a line of cases where the lower courts have attempted to determine the proper standard for addressing when cell phones may be abandoned. It is also, given its particular circumstances, the most extreme of these cases.

Generally speaking, the lower courts have applied typical abandonment principles to cell phones, without adequate consideration of whether those principles should be reconsidered in light of *Riley*. Given the vital privacy interests recognized in *Riley*, this Court should step in to establish the proper standard for analyzing when cell phones may be deemed abandoned.

Courts have taken different approaches, but more often than not they have acted almost as if *Riley* did nothing to affect the analysis. Massachusetts ruled, before *Riley*, that a defendant abandoned his cell phone when he put it on a windowsill as an officer approached and, when asked about it by the officer, said that it belonged to a friend, it didn't work, and he didn't want it. See *Comm. v. Martin*, 467 Mass. 291, 301-02 (Mass. 2014). In *State v. Samalia*, 375 P.3d 1082, 1084 (Wash. 2016), the

Washington Supreme Court dealt with a case where a police officer searched a cell phone he discovered in a stolen car after the driver disobeyed the officer's commands and ran away after a traffic stop. *Samalia*, over a stark dissent, ruled that this was abandonment, even after *Riley*. See *id.* at 1089.

Some courts have actively ignored *Riley*. An intermediate Texas court ruled, without addressing the implications of *Riley*, that a cell phone was abandoned when it was left on top of a stolen car after its occupants were involved in a shootout with a security guard and then fled the scene. *Edwards v. State*, 497 S.W.3d 147, 154, 161–62 (Tex. App. 1st Dist. 2016).

Although a circuit split has yet to develop, these opinions are often handed down by divided courts at odds about the proper analysis for cell phone abandonment. There have been numerous important dissents, all coming to the same basic conclusion: courts are acting in ways that threaten, in the words of one South Carolina Supreme Court Justice, to “limit[] the holding in *Riley*” and “effectively negate[] its precedential value.” *State v. Brown*, --- S.E.2d ---, App. No. 2015-2360 (S.C. June 13, 2018) (citing *State v. K.C.*, 207 So. 3d 951, 956 (Fla. Dist. Ct. App. 2016) and *Samalia*, 375 P.3d at 1091-96 (Yu, J., dissenting)).

Justice Yu's dissent in *Samalia* is particularly enlightening on the question of adopting common-law principles to modern technology, engaging in a lengthy and thoughtful consideration of the applicability of traditional abandonment precedent to cell phones. Under Justice Yu's view,

informed by careful consideration of this Court's decision in *Riley*, even a voluntary abandonment of a cell phone should not automatically be considered an abandonment of Fourth Amendment interests. As Justice Yu, concluded the alternative would permit police officers to conduct a limitless search of any cell phone they happen to discover away from its owner. As in *Riley*, the answer to this problematic situation "is accordingly simple — get a warrant." *Riley*, 134 S.Ct. at 2495.

The court of appeals decision here arguably misapplied even traditional abandonment precedent in upholding the search. Although abandonment cases are always fact-intensive, here the evidence was undisputed that Mr. Crumble left his cell phone behind in a car because people were actively shooting at him. He was arrested within approximately 15 minutes of leaving the car. Although he initially denied knowing anything about the car, he ultimately admitted being in it. More importantly, Mr. Crumble was never asked about the phone, and the record is devoid of any evidence he even knew he didn't have his phone.

This case would be a close call under traditional abandonment precedent, but the failure of the court below and of other courts in similar situations to address how those precedents must be updated in light of *Riley v. California* calls for this Court's supervisory guidance. The implications are too dire, because the decision here incentivizes poor police work and encourages routine violations of liberty.

Although there are issues with the warrant the officers sought in this case, *see infra*, whenever a cell phone is involved, officers should be encouraged to obtain a warrant before they search. By loosely applying abandonment precedent and ignoring the implications of *Riley*, the lower court decisions threaten to wipe away the compelling privacy interests in a cell phone on the slightest pretext. This Court should step in to remind the lower courts that *Riley* meant what it said.

Particularity

As with abandonment, the lower courts have been struggling for years to establish a proper standard for how to apply the Fourth Amendment's particularity requirement to modern technology. The particularity requirement is one of our most essential protections, lying at the very heart of the Fourth Amendment. John Adams claimed that "the child Independence was born" in the controversy sparked by the English practice of general warrants and the similarly loathsome writs of assistance. *See Boyd v. United States*, 116 U.S. 616, 624–29 (1886) (discussing at length the colonial origins of the Fourth Amendment); *see also Riley*, 134 S.Ct. at 2491 (quoting this passage from *Boyd*).

As one prominent commenter has noted, "limiting a search to a particular computer is something like . . . limiting a search to the entire city." Kerr, *Digital Evidence and the New Criminal Procedure*, 105 COLUM. L. REV. 279, 303 (2005). In the context of a modern cell phone, where something carried casually in the pocket can hold a shockingly broad array of intimate details, the lower courts desperately need authoritative guidance on the requirements law enforcement must meet when scouring those details for evidence. Thus far, the lower courts have been hesitant to establish privacy-protective particularity standards to guide law enforcement.

Because of the difficulty distinguishing relevant from irrelevant files, "[b]y necessity, government efforts to locate particular files will require

examining a great many other files to exclude the possibility that the sought-after data are concealed there.” *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1176 (9th Cir. 2010) (en banc) (per curiam). This creates “a serious risk that every warrant for electronic information will become, in effect, a general warrant, rendering the Fourth Amendment irrelevant.” *Id.*

“In today's world, if any place or thing is especially vulnerable to a worrisome exploratory rummaging by the government, it may be our personal computers.” *United States v. Christie*, 717 F.3d 1156, 1164 (10th Cir. 2013). The Supreme Court recognized in *Riley* that the unlimited search of a citizen’s cell phone actually poses a *graver* threat to his privacy than unrestrained rummaging through his house, because “[a] phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is.” *Riley*, 134 S.Ct. at 2491.

The lower courts have thus far been unable to come up with a solution that adequately protects privacy rights. In many cases, even where courts have been troubled by a warrant’s lack of particularity, the searches have been upheld because of good faith. *See, e.g., United States v. Russian*, 848 F.3d 1239, 1246 (10th Cir. 2017) (agreeing that a warrant was not sufficiently particular, but permitting the search because of the officer’s reasonable reliance).

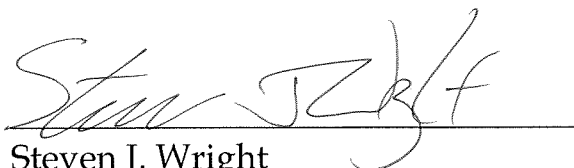
The main problem with the decision here, which is currently the governing legal standard throughout the land, is that it permits far too much. Here, the government had no evidence tying the actual crime – a shooting – to the cell phone in the car. They had only an officer’s experience that cell phones are often “helpful” in criminal investigations, an undeniable if utterly unenlightening fact. Based on this limited offering, the officers were able to get a warrant granting them access to every single piece of information on Mr. Crumble’s cell phone.

This result, whether in this case or in any other, seems antithetical to the concerns that drove *Riley*. The post-*Riley* decisions addressing the particularity requirement seem inadequately concerned with the amount of personal information a police officer can access during a search of a cell phone. While it is this Court’s general practice to permit the lower courts to develop Fourth Amendment jurisprudence in a case-by-case manner, the current state of lower court precedents show that the direction offered by *Riley* has not been followed. The lower courts need guidance from this Court about the particularity standards law enforcement should be held to when they get a warrant to search a cell phone, in light of the principles announced by this Court in *Riley*.

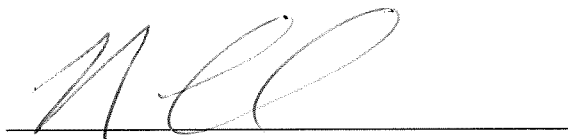
CONCLUSION

For the foregoing reasons, Mr. Crumble prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit.

Dated: June 20, 2018



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