



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. BRIAN MITCHELL LIETZAU,  
CR-19-0132-PR**

**PARTIES:**

*Petitioner/Appellee/Defendant:* Brian Mitchell Lietzau

*Respondent/Appellant/Plaintiff:* The State of Arizona

**FACTS:**

In August 2014, the superior court placed Lietzau on probation for domestic violence aggravated harassment. Under the terms of his written conditions of supervised probation, Lietzau agreed to submit to “search and seizure of person and property” by the Adult Probation Department “without a search warrant.” He also agreed to grant safe access to his residence and property, submit to searches and seizures of “person and property by any probation officer,” and provide probation officers with truthful answers to inquiries.

In early December 2014, a woman contacted Lietzau’s probation officer to report “an inappropriate relationship” she believed Lietzau was having with her 13-year-old daughter, S.E. A few weeks later, a probation surveillance officer arrested Lietzau for violating conditions of his probation based on his failure to provide access to his residence, participate in counseling programs, comply with drug testing, and perform community restitution.

On the way to the jail, the surveillance officer examined Lietzau’s cell phone and saw numerous text messages between Lietzau and S.E. The probation department reported these findings to the Tucson Police Department (“TPD”); a police detective then obtained a search warrant and discovered incriminating photos and text messages in the phone. The warrant application stated that S.E.’s mother was aware her minor daughter was “possibly sexually active” with an adult, impliedly identified as Lietzau. S.E. had told a doctor she had been sexually active with a twenty-one-year-old male “on previous occasions,” and the probation department had informed TPD that they had reviewed Lietzau’s cell phone and found “information on that phone that pertained to that relationship.” Lietzau was later indicted on charges of sexual conduct with a minor.

Lietzau filed a motion to suppress all evidence gleaned from his cell phone, citing *Riley v. California*, 573 U.S. 373 (2014), and arguing the initial search violated his Fourth Amendment rights because warrants “are required for searches of cell phones incident to arrest.” He also contended, in the alternative, that the search was unreasonable under the totality of the circumstances, citing *State v. Adair*, 241 Ariz. 58 (2016). The State countered that no constitutional violation occurs when a warrantless search is expressly authorized in a probationer’s terms of probation. It also asserted that the search of Lietzau’s phone fell within the scope of the search conditions in his probation orders, and therefore was “within the probation search exception

to the warrant requirement.” The State further argued that *Riley* was “inapposite” because the defendants in that case were not on probation, and the search here complied with *Adair*.

The trial court, relying on *United States v. Lara*, 815 F.3d 605 (9<sup>th</sup> Cir. 2016), granted Lietzau’s motion to suppress, reasoning that the surveillance officer’s search of the phone had not been related to Lietzau’s “administrative” violations of probation, and was therefore “arbitrary” and impermissible. More specifically, after analyzing the reasonableness of the search based on the factors stated in *Adair*, the court found that the search was not done for a “proper purpose” and was “arbitrary;” “the conditions of probation were not broad enough to permit the search of a cell phone”; and the probation violations for which Lietzau was arrested “were all administrative kinds of things.”

The State appealed, arguing the trial court erred (1) in denying its request to present testimony from Lietzau’s probation officer at the suppression hearing and (2) in granting Lietzau’s motion to suppress.

In an opinion filed March 25, 2019, the court of appeals reversed and remanded, holding the trial court abused its discretion in granting Lietzau’s motion to suppress. The court of appeals observed that “[u]nder the totality of the circumstances, including Lietzau’s significantly diminished privacy rights as a [felony] probationer, his acceptance of search conditions when he agreed to probation which arguably included his cell phone, the probation department’s well-grounded suspicion that Lietzau might be involved in a serious offense with an adolescent child, and the well-known use of cell phones as an aid in committing sexual offenses against children, it cannot be said the officer’s search of Lietzau’s cell phone was unreasonable.”

**ISSUES FOR WHICH REVIEW WAS GRANTED:**

1. Do Arizona’s standard conditions of probation, which permit warrantless searches of probationers’ person and property, extend to cell phone searches?
2. Did the search of Bryan Lietzau’s cell phone violate the Fourth Amendment?

*This Summary was prepared by the Arizona Supreme Court Staff Attorney’s Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum or other pleading filed in this case.*