

US justices wary of unlimited cellphone searches

April 29 2014, by Mark Sherman



People walk on the steps of the U.S. Supreme Court in Washington on Saturday April 26, 2014. The Supreme Court is considering whether police may search cellphones found on people they arrest without first getting a warrant. The court's latest foray into the issue of privacy in the digital age involves two cases being argued Tuesday that arose from searches of phones carried by a gang member and a drug dealer. Police looked through their cellphones after taking the suspects into custody and found evidence that led to their convictions and lengthy prison terms. (AP Photo/Jacquelyn Martin)

The U.S. Supreme Court seemed wary Tuesday of allowing police unbridled freedom to search cellphones found on people they arrest without first getting a warrant.

A key question in two cases argued Tuesday is whether Americans' cellphones, with vast quantities of sensitive records, photographs and communications, are a private realm much like their homes.

"People carry their entire lives on their cellphones," Justice Elena Kagan said.

The issue is of more than passing concern for many people. More than 90 percent of Americans own at least one [cellphone](#), the Pew Research Center says, and the majority of those are smartphones. More than 12 million people were arrested in the U.S. in 2012, according to FBI statistics.

The court heard arguments in cases involving a drug dealer and a [gang member](#) whose convictions turned in part on evidence found on their cellphones.

The justices suggested they might favor limiting warrantless cellphone searches to looking for evidence of the crime on which an arrest is based. Both defendants could lose in such an outcome.

But such a ruling would allow the court to avoid subjecting people arrested for minor crimes to having all the contents of their cellphones open to [police](#) inspection.

If police should arrest someone for driving without a seat belt, Justice Antonin Scalia said, "it seems absurd that they should be able to search that person's iPhone."

The Supreme Court has previously ruled that police can empty a suspect's pockets and examine whatever they find to ensure officers' safety and prevent the destruction of evidence. The Obama administration and the state of California, defending the searches, said cellphones should have no greater protection from a search than anything else police find.

But the defendants in these cases, backed by an array of civil libertarians, librarians and news media groups, argued that cellphones, especially smartphones, are increasingly powerful computers that can store troves of sensitive personal information.

Under the U.S. Constitution's Fourth Amendment, police generally need a warrant before they can conduct a search. The warrant itself must be based on "probable cause," evidence that a crime has been committed. But in the early 1970s, the Supreme Court carved out exceptions for officers dealing with people they have arrested.

Several justices expressed concern about applying rules written 40 years ago to a rapidly evolving technology.

"How do we determine what the new expectation of privacy is?" Justice Samuel Alito asked.

Justice Department lawyer Michael Dreeben repeatedly warned the court about restricting officers when they seize a phone by invoking technological advances in encryption that might render the device impregnable if police don't act quickly. If officers are forced to get a warrant and the phone's protection is activated, Dreeben said, "It may be months or years or never before officers can break through that encryption."

But lawyer Jeffrey Fisher, representing a San Diego gang member, urged

the court to regard cellphones generally as extensions of the home, where privacy protections are greatest,

In the two cases, David Leon Riley of San Diego carried a Samsung smartphone, while Brima Wurie of Boston had a less advanced [flip phone](#).

Prosecutors used video and photographs found on Riley's smartphone to persuade a jury to convict him of attempted murder and other charges. Officers who arrested Wurie on suspicion of selling crack cocaine checked the call log on his flip phone and used that information to determine where he lived. When they searched Wurie's home, armed with a warrant, they found crack cocaine, marijuana, a gun and ammunition.

The justices expressed varying levels of sophistication about cellphones. Chief Justice John Roberts, Justice Sonia Sotomayor, Kagan and Alito seemed most comfortable talking about the technology. They are, perhaps not coincidentally, the four youngest justices.

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