

# High court could weigh in on cellphone searches

16 January 2014, by Mark Sherman

The U.S. Supreme Court decided 40 years ago that police do not need a search warrant to look through anything a person is carrying when arrested. But that was long before smartphones gave people the ability to take with them the equivalent of millions of pages of documents or thousands of photographs.

In a new clash over technology and privacy, the court is being asked to resolve divisions among federal and state courts over whether the old rules should still apply in the digital age.

The justices could say as early as Friday whether they will hear appeals involving warrantless [cellphone](#) searches that led to criminal convictions and lengthy prison terms.

There are parallels to other cases making their way through the federal courts that challenge the massive collection without warrants of telephone records by the National Security Agency. In both situations, the government is relying on a Supreme Court decision from the 1970s, when most households still had rotary-dial telephones.

Cellphones are now everywhere. More than 90 percent of Americans own at least one, the Pew Research Center says, and the majority of those are smartphones—essentially increasingly powerful computers that are also telephones.

In one of two cases before the justices, the [federal appeals court](#) in Boston threw out evidence police found when they conducted a limited search of a suspected drug dealer's cellphone after his arrest. Judge Norman Stahl of the 1st U.S. Circuit Court of Appeals said warrantless cellphone searches create a serious threat to the privacy even of people who have been properly arrested.

"Today, many Americans store their most personal 'papers' and 'effects' in electronic format, on a cellphone, carried on the person," Stahl said.

Under the U. 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, the Constitution says.

But in the early 1970s, the Supreme Court carved out exceptions for officers dealing with people they have arrested. The court was trying to set clear rules that allowed police to look for concealed weapons and prevent the destruction of evidence. Briefcases, wallets, purses and crumpled cigarette packs all are fair game if they are being carried by a suspect or within the person's immediate control.

Car searches pose a somewhat different issue and in 2009, in the case of a suspect who had been handcuffed and placed in the back seat of a police cruiser, the court said [police](#) may search a car only if the arrestee "is within reaching distance of the passenger compartment" or they believe the car contains evidence relevant to the crime for which the person had been arrested.

There is growing division in state and [federal courts](#) over whether cellphones deserve special protection. At least six courts have allowed warrantless searches, and at least three have not, said Stanford University's Jeffrey Fisher, representing a California defendant whose case is the other one being considered by the Supreme Court.

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