Supreme Court Mulls Cell Phone Searches

Mark Sherman, Associated Press

WASHINGTON (AP) — Two Supreme Court cases about police searches of cellphones without warrants present vastly different views of the ubiquitous device.

Is it a critical tool for a criminal or is it an American's virtual home?

How the justices answer that question could determine the outcome of the cases being argued Tuesday. A drug dealer and a gang member want the court to rule that the searches of their cellphones after their arrest violated their right to privacy in the digital age.

The Obama administration and California, defending the searches, say cellphones are no different from anything else a person may be carrying when arrested. Police may search those items without a warrant under a line of high court cases reaching back 40 years.

What's more, said Donald Verrilli Jr., the administration's top Supreme Court lawyer, "Cellphones are now critical tools in the commission of crimes."

The cases come to the Supreme Court amid separate legal challenges to the massive warrantless collection of telephone records by the National Security Agency and the government's use of technology to track Americans' movements.

Librarians, the news media, defense lawyers and civil liberties groups on the right and left are trying to convince the justices that they should take a broad view of the privacy issues raised when police have unimpeded access to increasingly powerful devices that may contain a wealth of personal data: emails and phone numbers, photographs, information about purchases and political affiliations, books and a gateway to even more material online.

"Cellphones and other portable electronic devices are, in effect, our new homes," the American Civil Liberties Union said in a court filing that urged the court to apply the same tough standards to cellphone searches that judges have historically applied to police intrusions into a home.

Under the 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. 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. In 2009, in the case of a suspect 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 if police believe the car contains evidence relevant to the crime for which the person had been arrested.

The Supreme Court is expected to resolve growing division in state and federal courts over whether cellphones deserve special protection.

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

In the two Supreme Court cases being argued Tuesday, one defendant carried a smartphone and the other an older and less advanced flip phone.

In San Diego, police found indications of gang membership when they looked through defendant David Leon Riley's Samsung smartphone. Prosecutors used video and photographs found on the smartphone to persuade a jury to convict Riley of attempted murder and other charges. California courts rejected Riley's efforts to throw out the evidence and upheld the convictions.

Smartphones also have the ability to connect to the Internet, but the administration said in its brief that it is not arguing for the authority to conduct a warrantless Internet-based search using an arrestee's device.

In Boston, a federal appeals court ruled that police must have a warrant before searching arrestees' cellphones. Police arrested Brima 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, marijuana, a gun and ammunition. The evidence was enough to produce a conviction and a prison term of more than 20 years.

The appeals court ruled for Wurie, but left in place a drug conviction for selling cocaine near a school that did not depend on the tainted evidence. That conviction also carried a 20-year sentence. The administration appealed the court ruling because it wants to preserve the warrantless searches following arrest.

The differences between the two cases could give the court room to craft narrow rulings that apply essentially only to the circumstances of those situations.

The justices should act cautiously because the technology is changing rapidly, California Attorney General Kamala Harris said in her court filing.

Harris invoked Justice Samuel Alito's earlier writing that elected lawmakers are better suited than are judges to write new rules to deal with technological innovation.

On the other side of the California case, Stanford law professor Jeffrey Fisher, representing Riley, cited FBI statistics showing 12 million people were arrested in 2012. In California and elsewhere, he said, those arrests can be for such minor crimes as "jaywalking, littering or riding a bicycle the wrong direction on a residential street."

It shouldn't be the case, Fisher said, that each time police make such an arrest, they can rummage through the cellphone without first getting a judge to agree to issue a warrant.

The cases are Riley v. California, 13-132, and U.S. v. Wurie, 13-212.

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