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US & World

Supreme Court to Decide If Cops Can Search Cellphones Without Warrants

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A Supreme Court Police officer stands outside the U.S. Supreme Court in Washington on April 26, 2014.

IMAGE: JACQUELYN MARTIN/ASSOCIATED PRESS

BY LORENZO FRANCESCO BICCHIERAI | 1 HOUR AGO

The Supreme Court will hear two cases on Tuesday that could decide whether police officers need warrants to search through the cellphones of people they arrest.

The justices' decision could extend beyond the two particular cases and have widespread ramifications on privacy rights: Should a cellphone be treated like a wallet, which a cop can rummage through upon arrest without a judge's permission, or like a home, which requires a warrant?

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"It's an opportunity for the court to decide and examine once again," said Hanni Fakhoury, a staff attorney at Electronic Frontier Foundation (EFF), a digital rights organization. "What does the Fourth Amendment mean in the 21st century?"

The Fourth Amendment protects Americans against unreasonable search and seizure in their "persons, houses, papers and effects," which usually requires law

enforcement to obtain a warrant first. But the translation to modern-age devices like laptops and cellphones remains unclear and hotly debated.

Both cases before the Supreme Court hinge on the so-called "[search incident arrest exception](#)" to the Fourth Amendment, which allows law enforcement agents, to search a suspect without a warrant right after his arrest to find concealed weapons and prevent destruction of evidence.

For digital rights activists, as well as some legal experts, this exception should not apply to cellphones.

"It used to be that when you walked around, your pockets contained only a small amount of information," Adam Gershowitz, a professor at William and Mary Law School specializing in privacy law in the digital age, told *Mashable*. "No one ever envisioned a world in which you would have so much information on your cellphone."

In other words, we're not talking about just a wallet, cigarettes or even drugs — a cellphone is not just a simple object.

"The search of a cellphone today can reveal as much about ourselves as the search of a home," said Steven Shapiro, the legal director of the American Civil Liberties Union in a [statement](#). "The police generally need a warrant before they search our homes and they should need a warrant before they search our phones."

But the Obama administration, prosecutors around the country and law enforcement agencies think the ability to quickly search a phone can be vital; today, cellphone memories can be wiped remotely, destroying evidence that could play a key role during the trial.

What are the cases about?

Two very similar cases will be discussed on Tuesday: [Riley v. California](#) and [United States v. Wurie](#).

Riley v. California

In the first case, David Riley was pulled over in San Diego for driving with expired tags in 2009. When the police officers searched him, they also searched his Samsung Instinct M800 smartphone and found two incriminating photos: One of Riley posing with a gang member and another of a red Oldsmobile the officers believed was involved in a drive-by shooting.

What began as an arrest for a minor incident ended with prosecutors successfully convincing a jury to convict Riley of attempted murder and assault with a semiautomatic weapon. He was sentenced to 15 years to life in prison. He appealed, arguing the evidence obtained when searching his cellphone should have been thrown out.

United States v. Wurie

Brima Wurie was arrested in Boston in 2007 when police suspected he was selling drugs from his car. When police officers confiscated his LG flip phone, they found a series of incoming calls from a number labelled "my house" in Wurie's contact list, with a photo of a woman holding a baby as the background.

Police traced the location of the number, and after obtaining a warrant, found a stash of crack cocaine, a firearm, ammunition and marijuana in the house. Wurie was sentenced to 22 years in prison.

Wurie appealed, arguing the search of his house resulted from an illegal search of his phone. The First U.S. Circuit Court of Appeals agreed, dismissing two of the three charges in the case. In response to Wurie's partial win, the U.S. government appealed to the Supreme Court.

Why should you care?

The ruling wouldn't just apply to drug dealers and gang members. If the doctrine isn't changed after the hearings, the police could theoretically search your phone after pulling you over for a broken taillight. In 2010, more than 13 million people were arrested in the U.S., according to [data](#) collected by the Bureau of Justice Statistics.

Gershowitz, the law school professor, and Fakhoury, the EFF staff attorney, warn that this exception doesn't only apply to cellphones. If the Supreme Court doesn't draw a line, it might one day be used by police officers to justify searching a person's laptop, [iPad](#) or any other type of electronic device.

The application of the Fourth Amendment in this case, according to experts, could even extend to other privacy cases. It could impact how government searches emails and impact cases in which citizens defy the NSA's bulk collection of data.

SEE ALSO: [The 26-Year-Old Montana Legislator Fighting for Your Online Privacy](#)

What will the Supreme Court decide?

There isn't a precedent here, as the issues at hand in this case are relatively new: the current Supreme Court doesn't have a solid track record in technological matters.

"They've taken so few technology and computer cases over the years, that really no one can project what's going to happen," Gershowitz said. "There's nothing to go on, based on their prior writings, so no one really knows where this is going. I actually have no earthly idea what they're going to do."

In the most recent technology and Fourth Amendment-related case in 2012, [United States v. Jones](#), the Supreme Court voted unanimously to throw out evidence collected by a GPS device in the car of a suspected drug dealer. The ruling, however, was decided on the grounds that using data on the GPS constituted trespass — not on the grounds of the suspect's expectation of privacy. This left the larger question — whether a person has an expectation of privacy in his public movements — unanswered.

That could happen again, warned Fakhoury. The justices may ignore the big issues and simply rule on the matters of the two cases.

The ideal outcome, according to both Gershowitz and Fakhoury, would be for the Supreme Court to rule that police can't search a suspect's cellphone without any warrant (except in certain, limited cases). To prevent loss of data, Gershowitz explains (see his [paper](#) on the matter) the police officers could seize the phone, even without a judge's permission, and then put it in a Faraday bag. Such bags are designed to block all incoming and outgoing signals, preventing remote wiping and only cost a few dollars, which would be an inexpensive solution.

The outcome is uncertain, but privacy experts will be watching the arguments today closely. The decision, however, won't come out for a few months.

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