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With cellphone search ruling, Supreme Court draws a stark line between digital and physical searches

By: Andrea Peterson
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Privacy advocates scored a huge win Wednesday as the Supreme Court ruled unanimously that searching the cellphone of an arrested individual requires a warrant in most circumstances.

“The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought," the court said. "Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple — get a warrant.”

Privacy advocates applauded the ruling, saying the decision offers big protections for digital information.

"The simple fact that the Supreme Court unanimously agreed on today is this: When it comes to privacy, digital is different," says Kevin Bankston, policy director at the New America Foundation's Open Technology Institute. " Searching the vast amount of data on your cellphone is different from searching your backpack, just as tracking your car with a GPS device is different from having the police follow you, and the government seizing all of the e-mail you store in the cloud is different from seizing your file cabinet."

While this may have been obvious to the average person, the Supreme Court ruling is an "incredibly important new development in the law," he argues — one that suggests "the Fourth Amendment of the 21st century may be much more protective than that of the last century."

The court drew a clear distinction between digital and physical searches in the opinion, at one point saying it was the difference between horseback riding and space travel. "The United States asserts that a search of all data stored on a cell phone is 'materially indistinguishable' from searches of these sorts of physical items.... That is like saying a ride on horseback is materially indistinguishable from a flight to the moon."

It also invoked aliens when describing the proliferation of cellphones in modern life. "These cases require us to decide how the search incident to arrest doctrine applies to modern cell

phones, which are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy," it wrote. "A smart phone of the sort taken from Riley was unheard of ten years ago; a significant majority of American adults now own such phones."

But space analogies aside, Julian Sanchez, a research fellow at the Cato Institute, says the ruling provides significant protection from potentially invasive digital searches. "Thanks to an unfortunate 5-4 ruling in a 2001 case, *Atwater v. Lago Vista*, police have the discretion to arrest people even for very minor infractions, like not wearing a seat belt," he explains. The danger, Sanchez says, has been that police might be tempted to bypass courts by stopping someone for jaywalking — and then fishing through their personal e-mails, texts and photos.

"The unanimous ruling in *Riley* rules out that kind of digital fishing expedition and ensures that cops aren't incentivized to use pretextual arrests as an end run around the Fourth Amendment," Sanchez says.

The ruling today was the result of two cases involving cellphone searches in which police used information discovered on arrestees' phones to connect the plaintiffs to crimes. After pulling over David Leon Riley for a traffic violation, San Diego police used pictures on his smartphone and guns found in his trunk to connect him to an earlier shooting and a faction of the Bloods street gang. The other plaintiff, Brima Wurie, was arrested in Boston after police observed him participating in what they thought was a drug sale. Information on his flip phone was used to tie him to a drug stash.