



Local authorities applaud cell phone search ruling

By: Loretta Park
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Police usually must get a warrant before searching the mobile phone of a person being arrested, the U.S. Supreme Court ruled Wednesday, saying the vast trove of information on modern devices requires broad constitutional protections.

Davis County Attorney Troy Rawlings, whose office is in Farmington, said “It will not impact our cases. We agree with the decision. The Davis County Attorney’s Office has been advising law enforcement to operate accordingly for some time.”

Layton Police Lt. Shawn Horton said police chiefs across the state have been aware for several years that a ruling like the one rendered on Wednesday would be coming and have created policies that require officers to obtain warrants before searching a cell phone, unless verbal consent is given or if there is reason to believe a person’s life is in danger.

Davis County Sheriff Todd Richardson said his officers get warrants before they search a cell phone or any electronic device and have done so for several years.

Rawlings said his office has advised all law enforcement agencies in Davis County to get warrants to search any electronic device.

He also said, “The privacy concerns that drove the U.S. Supreme Court to this decision are shared by our office. This is also reflected in the fact that we do not use ‘administrative subpoenas,’ which have no judicial oversight. As a footnote, it is nice to see that the current Attorney General followed our lead and advice on this issue. We wish the IRS, NSA and DOJ also cared about privacy and your constitutional rights more than politics.”

The unanimous decision by the Supreme Court comes in two cases that tested the reach of privacy rights in the digital age. More than 90 percent of American adults own mobile phones, giving the ruling broad practical significance.

“Modern cell phones are not just another technological convenience,” Chief Justice John Roberts wrote for the court. “With all they contain and all they may reveal, they hold for many Americans the privacies of life.”

The disputes, which tested the Constitution’s Fourth Amendment and its ban on unreasonable searches, were part of a wider debate over electronic privacy that ultimately may produce a Supreme Court showdown over the National Security Agency’s telephone-data surveillance program.

Lower courts had reached different conclusions, with some saying police can constitutionally look through a phone just as they can search other objects in the person’s possession at the time of arrest.

The Supreme Court Wednesday rejected that reasoning, saying mobile phones are unlike the cigarette case the justices said could be searched in a 1973 dispute.

“Many of the more than 90 percent of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives -- from the mundane to the intimate,” Roberts wrote.

The case united the nine-member court, with only Justice Samuel Alito adding so much as a qualification. Alito, who agreed with Roberts on the result and some of his reasoning, wrote separately to say he would reconsider the matter if Congress or a state legislature drafted a law that made distinctions based on the type of information being sought.

“What’s really surprising about this ruling is that it’s both broad and unanimous,” said Ilya Shapiro, a senior fellow at the libertarian Cato Institute. “Here we have a loud and unified bright-line rule that sets a major standard in the digital age.”

One of the cases involved an old-style “flip” phone with limited data capacity, while the other concerned a newer smartphone.

The smartphone case stemmed from David Leon Riley’s 2009 arrest in San Diego for carrying concealed and loaded weapons under his car’s hood. Police took Riley’s Samsung Instinct M800 smartphone, searching it at the scene and later at the station.

Officers found photos and videos suggesting that Riley was a member of a gang, as well as a photo of him and another person in front of a car that police suspected had been involved in a shooting. The information eventually helped prosecutors win a conviction of Riley on shooting-related charges, including attempted murder.

Riley was sentenced to 15 years to life in prison, and a California state appeals court upheld the conviction. His case now returns to a lower court.

The Obama administration told the justices that police need to be able to search phones immediately, before accomplices can wipe the data off from a remote location. During

arguments in April, a government lawyer also said new technology can automatically encrypt data when a phone shuts off, making it impossible for police ever to get access.

Roberts said the briefing in the case “reveals only a couple of anecdotal examples of remote wiping triggered by an arrest.” He added, “Similarly, the opportunities for officers to search a password-protected phone before data becomes encrypted are quite limited.”

The chief justice also said police can use aluminum-foil “Faraday bags,” which can isolate a phone from radio waves and prevent the destruction of data from the outside.

“We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime,” Roberts wrote. “Privacy comes at a cost.”

The Justice Department said it will work with law enforcement agencies to ensure compliance with the ruling.

“We will make use of whatever technology is available to preserve evidence on cell phones while seeking a warrant,” said Ellen Canale, a department spokeswoman. The department will also help agents determine “when exigent circumstances or another applicable exception to the warrant requirement will permit them to search the phone immediately without a warrant,” she said.

In the flip-phone case, the Obama administration sought to reinstate the conviction of Brima Wurie, who was arrested in 2007 in Boston for allegedly selling drugs.

At the police station, officers saw that Wurie’s phone was repeatedly receiving calls from a number identified on the caller-ID screen as “my house.” An officer opened the phone, checked the call log and found the number for the house.

Police then used that number to get Wurie’s address. Officers eventually found crack cocaine, marijuana and a firearm in his apartment. A jury convicted Wurie on drug and weapons charges, and he was sentenced to more than 21 years in prison.

A federal appeals court overturned the conviction, saying police had violated Wurie’s constitutional rights. The Supreme Court upheld the lower court ruling.