Calif. High Court OKs Search Of Suspectâ€™s Cell Phone

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The California Supreme Court ruled Jan. 3rd that after police take a cell phone from a suspect during an arrest, they can search the phoneâ€™s text messages without a warrant.

The majorityâ€™s 5-2 decision reasoned that U.S. Supreme Court precedents call for cellphones to be treated as personal property â€œimmediately associatedâ€• with the suspectâ€™s person.

The case arose in 2007 when a Ventura County deputy sheriff who arrested Gregory Diaz witnessed an â€œEcstasyâ€• drug deal from the backseat of Diazâ€™s car. About an hour and a half later, after Diaz denied knowing anything about the transaction, the deputy looked at Diazâ€™s cell phone text message folder and found a text that seemed to set a price for six Ecstasy pills. When confronted with the message, Diaz admitted to participating in the drug sale.

Diaz tried to suppress the evidence from the cell phone search, but both the trial court and the Second District Court of Appeal held that the search was proper.

In weighing whether perusing the text messages constituted an illegal search, the California High relied on the U.S. Supreme Courtâ€™s opinion in U.S. v. Robinson (414 U.S. 218, 1973), which held it was legal for an officer to search a cigarette pack found in an arresteeâ€™s coat pocket. It also cited U.S. v. Chadwick (433 U.S. 1, 14-15 (1977)), which invalidated federal narcotics agentsâ€™ warrantless search of a 200-pound foot locker after they arrested the men loading it into a car.

Diazâ€™s lawyers argued that the quantities of personal data cell phones contain are â€œunrivaledâ€• by items traditionally considered â€œimmediately associated with the person of the arrestee,â€• such as clothing or a cigarette pack. They also argued that cell phones should be treated like the foot locker in Chadwick because theyâ€™re not necessarily worn on the person.

But the majority disagreed, finding that it didnâ€™t matter what the item was â€” it can be searched without a warrant if itâ€™s b
properly seized.

â€œNothing in these decisions even hints that whether a warrant is necessary for a search of an item properly seized from an arresteeâ€™s person incident to a lawful custodial arrest depends in any way on the character of the seized item,â€• wrote Justice Ming Chin.

In a dissenting opinion, Justice Kathryn Werdegar wrote that information stored on cell phones shouldnâ€™t be examined without a warrant and warned that the majority sanctioned searches that violated the U.S. Constitutionâ€™s Fourth Amendment.

Justice Werdegar, who was joined by Justice Carlos Moreno, argued there was no need to search a cell phone immediately if itâ€™s in police control. Instead, a warrant could have been obtained to conduct the search properly. The majority gave â€œpolice carte blanche, with no showing of exigency, to rummage at leisure through the wealth of personal and business information that can be carried on a mobile phone or handheld computer merely because the device was taken from an arresteeâ€™s person,â€• she wrote.

In a footnote, Justice Werdegar reasoned that the facts of the case â€“ because of increasingly ubiquitous cell phones and handheld computers â€“ differ enough that the precedents the majority cited â€œprovide no basis for evading this courtâ€™s independent responsibility to determinethe constitutionality of the search at issue.â€•

Justice Chin countered that if the U.S. Supreme Courtâ€™s decisions should be revisited â€œin light of modern technology, ther that reevaluation must be undertaken by the high court itself.â€•

Similarly, in a concurring opinion, Associate Justice Joyce L. Kennard wrote, â€œThe dissent asserts that in light of the vast data storage capacity of â€˜smart phonesâ€™ and similar devices, the privacy interests that the federal Constitutionâ€™s Fourth Amendment was intended to protect would be better served by a rule that did not allow police â€˜to rummage at leisure through the wealth of personal and business information that can be carried on a mobile phone or handheld computer merely because the device was taken from an arresteeâ€™s person.â€™â€•

â€œThe dissent also asserts that the three high court decisions I have mentioned are not binding here because they â€˜were no made with mobile phones, smartphones and handheld computers â€” none of which existed at the time â€” in mind.â€™ In my v however, the recent emergence of this new technology does not diminish or reduce in scope the binding force of high court precedents. â€œ

â€œI join the majority rather than the dissent because the United States Supreme Court has cautioned that on issues of federal law all courts must follow its directly applicable precedents, even when there are reasons to anticipate that it might reconsider, or create an exception to, a rule of law that it has established. The high court has reserved to itself alone â€˜the prerogative of overruling its own decisions.â€™â€• (People of Calif. v. Diaz , : Supreme Court of Calif. â€“ No.S166 Jan 3.) .

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