



Written by [Michael Tennant](#) on January 6, 2011

## Cops Can Search Cellphones Without a Warrant, Says California Court

Gregory Diaz was arrested in 2007 on suspicion of having purchased drugs from a police informant. Upon his arrest, a detective found a cellphone in Diaz's pocket and took possession of it. "Ninety minutes later," [reports Fox News](#), "a deputy searched its text messages without obtaining a warrant and found evidence linking Diaz to the drug deal. Diaz pleaded guilty and was sentenced to probation but appealed the search" on the basis that it violated the Fourth Amendment.



The California Supreme Court, however, ruled 5-2 that the search was legal.

[MSNBC's Bob Sullivan](#) describes the ruling:

"The cell phone was an item (of personal property) on (Diaz's) person at the time of his arrest and during the administrative processing at the police station," the justices wrote. "Because the cell phone was immediately associated with defendant's person, (police were) entitled to inspect its contents without a warrant."

In fact, the ruling goes further, saying essentially that the Diaz case didn't involve an exception — such as a need to search the phone to stop a "crime in progress." In other words, this case was not an exception, but rather the rule.

The court cited two U.S. Supreme Court rulings from the 1970s, one of which held that police were acting within the bounds of the law when they searched a cigarette pack found on a suspect, discovering heroin capsules inside. The other held that cops could search clothing removed from a suspect.

Justice Kathryn Werdegar, one of the two dissenting justices, strongly disagreed with the majority's finding, writing:

The majority's holding ... [allows] police 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 arrestee's person. The majority thus sanctions a highly intrusive and unjustified type of search, one meeting neither the warrant requirement nor the reasonableness requirement of the Fourth Amendment to the United States Constitution. As a commentator has noted, "[i]f courts adopted this rule, it would subject anyone who is the subject of a custodial arrest, even for a traffic violation, to a preapproved foray into a virtual warehouse of their most intimate communications and photographs without probable cause."

Similarly, legal expert Mark Rasch, former head of the Justice Department's computer crime unit, told Sullivan, "This ruling isn't just wrong, it's dangerous." Sullivan continues:



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The door is open for police to search the entire contents of iPhones or other smart phones that people routinely carry, [Rasch] said.

“In fact, I would be shocked if police weren’t getting instructions right now to do just that,” he said.

By applying the “personal property on the defendant’s person” standard, Rasch said, the ruling could logically extend to tablets or even laptop computers...

Rasch said ... modern phones that can store years’ worth of personal information are a far cry from drugs hidden in a cigarette case or clothes pockets.

“There is a process for looking at data inside devices,” he said. “It’s called a warrant.”

Diaz’s attorney, Lyn A. Woodward, plans to appeal the decision to the U.S. Supreme Court. She may be able to muster other court decisions to persuade the justices to overturn the California court’s ruling: Fox News notes that both a U.S. District Court judge and the Ohio Supreme Court have previously ruled that police do not have the right to search suspects’ cellphones without a warrant.

The Supreme Court should overturn the ruling. There are no exceptions to the Bill of Rights — and, yes, that includes the Tenth Amendment, which forbids the federal government from prosecuting the War on Drugs in the first place.



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