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Maine Voices: Cellphone ruling a welcome development for embattled right to privacy

In saying police need a warrant to search our devices, Supreme Court justices updated the Bill of Rights.

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Late last month, privacy rights made a major comeback. The U.S. Supreme Court unanimously decided that police officers may not search the contents of an arrested person's cellphone without a warrant.

In doing so, the court did exactly what a court is supposed to do: apply the Bill of Rights and the Fourth Amendment to our ever-changing world and new technologies.

Our privacy takes a daily beating from data breaches, identity theft and governmental intrusions. Last week was a win for privacy rights advocates.

The court considered two companion cases: one from California, and the other from the 1st Circuit Court of Appeals (which includes Maine).

In the California case, San Diego resident David Riley was stopped for expired registration tags and arrested for having illegal handguns in the car. When his smartphone was searched, city police officers found evidence that he was in the Crip Killers gang, and he was charged with several other offenses.

In the 1st Circuit case, a Boston police officer witnessed a drug sale and arrested Brima Wurie. He had a flip phone that, when searched, revealed several text messages from "my house." After going to the South Boston house and executing a search warrant, officers seized crack cocaine, and Mr. Wurie was charged with additional offenses.

The Fourth Amendment, ratified in 1791, was drafted by the Founding Fathers to respond to general warrants that allowed British soldiers to rummage through the colonists' homes as they saw fit. The amendment states in the relevant part that the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated."

The Supreme Court brought the Bill of Rights forward to 2014 and in both cases decided that if officers want to search an arrested person's cellphone, they need to get a warrant.

What is remarkable about the decision is the court's acknowledgment of how important cellphones have become to all of us, and how much personal information we store on them every day. In the majority opinion, Chief Justice John Roberts had to apply the Fourth Amendment 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."

Noting that cellphones did not exist when the court made its earlier rulings, Chief Justice Roberts said that the court had to weigh the need for the government to search cellphones without a warrant against the degree to which the search “intrudes upon an individual’s privacy.”

The court recognized just how much personal private information each of us has on our cellphones. Chief Justice Roberts said that cellphones contain “vast quantities of personal information.” That is where the chief justice got it right.

Cellphones, as we all and the court know, aren’t just phones. As Chief Justice Roberts wrote, “They could just as easily be called cameras, video players, Rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps or newspapers.”

Chief Justice Roberts continued that the “90 percent of 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.”

He acknowledged that cellphones can contain information on people’s medical status and their previous location, and the devices may have apps for political affiliations, religious preferences, hobbies and romance.

Searching a cellphone, for the court, was just like “ransacking your house,” which all of us view as an intrusion on our privacy. Likewise, we all consider the information on our cellphones private, and now the Supreme Court does, too.

The court concluded that it knew this decision would have an impact on the ability of “law enforcement to combat crime,” but ultimately that “privacy comes at a cost.”

We are barraged every day with the government’s warrantless searches to protect us from terrorism, massive data breaches and people from foreign countries stealing our tax refunds. We are confronted with our loss of privacy on a daily basis.

Last Wednesday, the high court concluded that, at least in regard to our cellphones, our privacy rights are not dead and gone, but instead are alive and well.

— Special to the Press Herald

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