

U.S.

Supreme Court Will Consider Whether Police Need Warrants to Search Cellphones

By ADAM LIPTAK JAN. 17, 2014

WASHINGTON — The Supreme Court on Friday agreed to hear a pair of cases about whether the police need a warrant to search the cellphones of people they arrest, presenting a major test of the meaning of the Fourth Amendment in the digital age.

The court has long allowed warrantless searches in connection with arrests, saying they are justified by the need to find weapons and to prevent the destruction of evidence. The question for the justices in the new cases is whether the potentially vast amounts of data held on smartphones warrant a different approach under the Fourth Amendment, which bars unreasonable searches.

The lower courts are divided. In one of the cases the court agreed to hear, the federal appeals court in Boston in May threw out evidence gathered after the police there inspected the call log of a drug dealer's rudimentary flip phone. "Today, many Americans store their most personal 'papers' and 'effects' in electronic format, on a cellphone, carried on the person," Judge Norman H. Stahl wrote for a divided three-judge panel of the court.

"That information is, by and large, of a highly personal nature: photographs, videos, written and audio messages (text, email, and voice mail), contacts, calendar appointments, web search and browsing history, purchases, and financial and medical records," he added.

When the full appeals court declined to rehear the case, Chief Judge Sandra L. Lynch said she hoped the justices would soon address the "very important and very complex" questions presented by it. "Only the Supreme Court can finally resolve these issues, and I hope it will," she wrote.

In urging the Supreme Court to hear the case, *United States v. Wurie*, No. 13-212, Solicitor General Donald B. Verrilli Jr. said courts have long endorsed inspection of anything carried by the people they arrest, including wallets, calendars, pocket diaries, address books and pagers.

In February, a state appeals court in California applied the principles established in those cases to allow a search of a smartphone containing much more information than the one seized in Boston. That case arose from the arrest of David L. Riley, who was pulled over for having an expired auto registration. The police found loaded guns in the car and, on inspecting Mr. Riley's smartphone, entries they associated with a street gang.

A more comprehensive search of the phone led to information that linked Mr. Riley to a shooting. He was later convicted of attempted murder and sentenced to 15 years to life.

His lawyers asked the Supreme Court to hear the case, *Riley v. California*, No. 13-132, to determine how the Fourth Amendment applies to a device "that happens to include a phone" but is in essence a computer "capable of storing a virtually limitless amount of information." They argued that a warrant should be required "before allowing the police to rummage through the digital contents of such a device."

In agreeing Friday to hear that case, the justices said they would decide a narrower question than the one proposed by Mr. Riley's lawyers, that of whether evidence admitted at Mr. Riley's trial was obtained by a search that violated his Fourth Amendment rights.

The court on Friday also agreed to hear a third case, *Lane v. Franks*, No. 13-483, on the First Amendment rights of public employees. It concerns Edward Lane, a former director of a youth program at a public community college in Alabama.

Mr. Lane was subpoenaed to testify at the corruption trial of a state legislator accused of accepting paychecks from the program without doing substantial work for it. The legislator, Suzanne Schmitz, was convicted and sentenced to 30 months in prison.

Mr. Lane was fired, and he sued the president of the college, Steve Franks, saying that his termination was retaliation for his testimony and a violation of his

First Amendment right to free speech. Mr. Franks said he let Mr. Lane go for financial reasons unrelated to his testimony.

The federal appeals court in Atlanta said it was unnecessary to decide who was right because public employees have no First Amendment protections in any event for statements they make as part of their official duties.

Since “the record fails to establish that Lane testified as a citizen on a matter of public concern,” the appeals court said in an unsigned opinion, “he cannot state a claim for retaliation under the First Amendment.

Other courts have said that subpoenaed testimony is protected by the First Amendment.

“Society has a strong interest in facilitating sworn testimony in public corruption investigations, lest the corruption continue unchecked,” Mr. Lane’s lawyers told the justices in a petition urging them to hear the case. “Public employees have vital information relating to fraud, waste and abuse in the government. If the First Amendment fails to protect them when they speak out, there is a substantial risk that they will be deterred from coming forward.”

A version of this article appears in print on January 18, 2014, on page A13 of the New York edition with the headline: Supreme Court Will Consider Whether Police Need Warrants to Search Cellphones.