

What is the Fourth Amendment?

The Fourth Amendment to the United States Constitution guarantees the security of persons, houses, papers and effects against unreasonable search and seizure, and requires that search and arrest warrants be issued by a judge after being presented with probable cause. It also states that warrants must specifically describe the place to be searched and persons or things to be seized. An exception to this rule is called **search incident to arrest**, which is performed by an arresting officer in order to ensure that the arrested person is not concealing weapons or potential evidence that they could later destroy. The right of an officer to search an arrestee's person is undisputed, but the extent of reasonable search is a highly contentious matter.

Exactly how far should an officer be allowed to search without a warrant?

Contemporary boundaries of searches incident to arrest have been determined largely by precedent established by the 1969 ruling of *Chimel v. California*. Under the parameters created by *Chimel*, it is reasonable for police officers to search (1) the arrestee's person and (2) the area within the arrestee's immediate control. The Supreme Court defined the latter as the area within which the arrestee might gain possession of destructible evidence or weapons. In the past, an item such as an address book was within the parameters of search incident to arrest. But since the 1970s, when most of the legal precedents for searches incident to arrest were established, address books have largely been replaced by cell phones, and judges are not in agreement as to whether they should be treated the same.

Should cell phones be an exception to searches incident to arrest?

This question is particularly relevant with the wide use of 3rd generation cell phones that process data as well as voice communication. Cell phones now provide users with a range of advanced services, including broadband internet access, video calls, and global positioning system (GPS) navigation, and have the ability to take pictures, record video, and handle financial transactions. These devices termed "smart phones" are essentially small computers, not only giving users access to internet, email, music and applications, but storing and tracking details from calls and messages. Even the most standard cell phones manufactured today have text messaging, camera, and internet browsing features which not only transmit information, but record it. Unless the United States Supreme Court redefines the legality of searching cell phones, those arrested in California may forfeit the privacy of any information accessible from their phones.

Is this Constitutional?

The California Supreme Court ruled in *California v. Diaz* that reviewing a cell phone's messages is a valid search incidental to arrest, and therefore does not require a warrant. Diaz had been arrested for selling Ecstasy to an undercover informant. Six tabs of Ecstasy were seized, as well as the defendant's cell phone. Diaz denied having knowledge of the drug transaction during initial questioning. The Deputy Sheriff searched Diaz's cell phone, which had been placed with the other evidence, and found a text message detailing the price of Ecstasy tablets. The Deputy Sheriff showed this message to Diaz, and Diaz then admitted to participating in the drug sale. The defendant was charged with selling a controlled substance, and pleaded not guilty with a motion to suppress the cell phone evidence, claiming protection under the Fourth Amendment. Court denied the motion and Diaz withdrew his plea of not guilty, pleading

guilty to transportation of a controlled substance. The Court of Appeals found that because the cell phone “was immediately associated with [defendant’s] person at the time of his arrest,” it was “properly subjected to a delayed warrantless search.”

The California v. Diaz ruling conflicts with the 2009 Ohio State Supreme Court decision of Ohio v. Smith, that ruled unwarranted cell phone seizure and search unconstitutional when unnecessary for the safety of officers. The Court recognized concerns of warrantless searches of cell phones and smart phones as legitimate, explaining that cell phones are more like laptop computers than address books or papers carried on the person, and thus have heightened privacy interests. “Once the cell phone is in police custody, the state has satisfied its immediate interest in collecting and preserving evidence and can take preventive steps to ensure that the data found on the phone are neither lost nor erased,” Justice Ann Lanzinger wrote on behalf of the majority. “But because a person has a high expectation of privacy in a cell phone’s contents, police must then obtain a warrant before intruding into the phone’s contents.”

With state supreme courts in disagreement of the constitutionality of cell phone searches incident to arrest, it is likely that the issue will be reviewed by the United States Supreme Court. Many feel that new laws must be drafted to integrate rapidly developing technologies with the ideals of the Constitution, and to more effectively protect Americans and the American legal system in the technological era.

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