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ESSENTIAL CALIFORNIA LEGAL CONTENT

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[Back to Article](#)

Cell Phones Can Be Searched After Arrest, Justices Say

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SAN FRANCISCO — Delving into privacy concerns in the age of the smart phone, the California Supreme Court determined today that after police take a cell phone from a suspect during an arrest, they can search the phone's text messages without a warrant.

The majority in the 5-2 [decision](#) reasoned that U.S. Supreme Court precedents call for cell phones to be treated as personal property "immediately associated" with the suspect's person.

But in a dissenting opinion, Justice Kathryn Werdegar wrote that information stored on cell phones shouldn't be examined without a warrant and warned that the majority sanctioned searches that violate the U.S. Constitution's Fourth Amendment.

In 2007, a Ventura County deputy sheriff arrested Gregory Diaz after watching an Ecstasy deal go down in the backseat of Diaz's car. About an hour and a half later, after Diaz denied knowing anything about the transaction, the deputy looked at Diaz'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 Supreme Court relied largely on *United States v. Robinson*, 414 U.S. 218, 224 (1973) — which held it was legal for an officer to search a cigarette pack found in an arrestee's coat pocket — and *United States v. Chadwick* 433 U.S. 1, 14-15 (1977), which invalidated federal narcotics agents' warrantless search of a 200-pound foot locker after they arrested the men loading it into a car.

Diaz's lawyer, Lyn Woodward of Pacific Grove, had argued that the quantities of personal data cell phones contain are "unrivaled" by items traditionally considered "immediately associated with the person of the arrestee," such as clothing or a cigarette pack. She also argued that cell phones should be treated like the foot locker in *Chadwick* because they're not necessarily worn on the

person.

But in an opinion written by Justice Ming Chin, the majority said the high court has held that it doesn't matter what the item is — it can be searched without a warrant if it's been properly seized.

"Nothing in these decisions even hints that whether a warrant is necessary for a search of an item properly seized from an arrestee's person incident to a lawful custodial arrest depends in any way on the character of the seized item," Chin wrote in *People v. Diaz*, S166600.

Werdegar, joined by Justice Carlos Moreno in the dissent, argued there's no need to search a cell phone immediately if it's in police control, and that instead a warrant can be obtained to conduct the search properly. She wrote that the majority gave "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."

And, in a footnote, Werdegar reasoned that the facts of the case — because of increasingly ubiquitous cell phones and handheld computers — differ enough that the precedents the majority cites "provide no basis for evading this court's independent responsibility to determine the constitutionality of the search at issue."

But if the U.S. Supreme Court's decisions should be revisited "in light of modern technology," Chin wrote, "then that reevaluation must be undertaken by the high court itself."