

Md. high court upholds search warrants of cellphones

By: [Steve Lash](#) Daily Record Legal Affairs Writer August 31, 2017



(Leonore Schick/AP photo)

Maryland's top court Thursday upheld warrants to search suspected criminals' cellphones based on the training and experience of police officers who said evidence related to drug and violent activities are often found on the devices.

In a pair of 5-2 decisions, the final of its current term, the Court of Appeals equated the contents of a cellphone to items in a person's house, which can be constitutionally searched with a valid warrant based on probable cause to suspect evidence of a crime will be found. The court rejected arguments that cellphone search warrants are so inherently broad as to violate the suspects' Fourth Amendment protection against unreasonable searches.

"It would not be an overstatement to characterize cellphones as the repository of personal effects in digital form that heretofore would be found in physical form in the home or at the office," Chief Judge Mary Ellen Barbera wrote for the majority. "It therefore follows that regardless of the 'broad array' of information a cellphone may hold, the police nonetheless may seize a cellphone and search its digital contents with a duly authorized warrant that complies in all respects with the dictates of the Fourth Amendment."

The Maryland attorney general's office said in a statement that it was pleased with the court's decisions.

"We agree with the court's emphasis on the deference due a warrant-issuing judge's determination of probable cause and the application of the good-faith exception to officers executing a warrant," the office stated.

Nature of crime

The high court rendered its decisions in upholding warrants to search the phones of suspected drug distributor Timothy Moats and suspected robber Timothy Stevenson.

The search of Moats' phone revealed sexually explicit photos of his 15-year-old girlfriend, according to the court's opinion. A drug-distribution charge was dropped as Moats subsequently pleaded guilty to possession of child pornography; was sentenced to 18 months in prison, with all suspended but time served; and was required to register as a sex offender.

Though having pleaded guilty, Moats retained his right to challenge the cellphone search on appeal.

On Stevenson's phone, police found photos of the robbery victim after the attack. With the photos in evidence at trial, Stevenson was convicted of first- and second-degree assault, robbery, reckless endangerment and theft of property under \$1,000.

The Court of Appeals, in affirming the convictions, said deference is owed to the training and expertise to officers seeking search warrants and the judges who issue them.

Judges could validly infer "that persons use cellphones to communicate and that evidence of the crimes being investigated, and any related crimes, would be found on (the suspect's) cellphone," Barbera wrote. "This was not an unreasonable inference to draw, considering not only the prevalence of cellphones but also the degree of detail of one's daily life that is often contained in a cellphone."

Barbera added, however, that "not every affidavit will (or should) result in issuance of a warrant" to search a cellphone.

"We can imagine situations in which the nature of the crime will not support a warrant to search the suspect's cellphone; examples might include traffic offenses, public nuisance crimes, and the like," Barbera wrote. "The judge will necessarily consider the nature of the crime being investigated, the facts provided in support of the connection between that crime and the cell phone to be searched, and, depending upon the (officer's) demonstrated training and experience, the degree to which the deference owed to the (officer) adds to the ultimate decision. The decision of the warrant-issuing judge will ultimately rest on whether, in its totality, the affidavit sets forth a fair probability that the information will be found in the cellphone to be searched."

Lack of specificity

Judge Sally D. Adkins, in disagreeing with the majority, said the search warrants were so broad and supported by mere generalities linking cellphone use to criminal activity as to violate the suspects' constitutional rights. To be valid, a warrant must state more specifically the evidence expected to be found on the devices and not a temporal or general description, she added.

"I fear that the majority has paved the way for law enforcement to search a cellphone without a nexus between the criminal activity and the phone to be searched," Adkins wrote in a minority opinion Judge Clayton Greene Jr. joined.

"We should not condone a warrant authorizing police to search the entirety of a cellphone absent any temporal limitation on the information to be searched," Adkins added. "A warrant of such generality raises the same concerns our framers sought to address by crafting the Fourth Amendment."

But Adkins and Greene said they would have upheld the searches of the cellphones because the police relied on their good-faith belief that the warrants were constitutionally valid.

Brian S. Saccenti, chief of the Maryland public defender's appellate division, said he and his colleagues "share the concerns that were set forth by Judge Adkins."

The public defender's office, which represents Stevenson, has not decided whether to seek review by the U.S. Supreme Court, Saccenti added.

Moats' attorney, Rockville solo practitioner John N. Sharifi, declined to comment Thursday on the court's decision. He said no decision has been made regarding a request for Supreme Court review.

The Court of Appeals rendered its decisions in *Timothy Moats v. State of Maryland*, No. 89 September Term 2016, and *Timothy Stevenson v. State of Maryland*, No. 92 September Term 2016.