Upholding the trial court’s ruling, the appellate court cited U.S. v. Finley, 490 U.S. 545 (1989). In Finley, the Fifth Circuit emphasized that the scope of a search incident to arrest extends to containers found on an arrestee. It further noted that a search could legally be undertaken as a search incident to arrest once the arrestee was detained away from the site of the arrest, because it was still substantially contemporaneous to his arrest.

In Smith, the appellate court held that the cell phone was part of the arrestee’s person, rather than a separate possession within the arrestee’s control. Based upon this reasoning, the court held that the body of law concerning searches incident to arrest controlled. The fact that the cell phone may not have been searched until later was irrelevant, as long as the search was substantially contemporaneous to the arrest.

On December 15, 2009, the Ohio Supreme Court reversed the court of appeals’ decision and held that a person has a heightened expectation of privacy in the contents of his cell phone, and, therefore, police are required to obtain a warrant before searching it. Because the officers did not have a warrant, the Court found that the search violated the Fourth Amendment.

On the spectrum describing a person’s expectation of privacy in his belongings, the Court placed a cell phone within the category of personal effects, such as a backpack and a briefcase. The Court ruled that the expectation of privacy is heightened when a person has a reasonable expectation of privacy in the contents of his cell phone. 

In conclusion, the Ohio Supreme Court’s decision in Smith highlights the importance of balancing the need for law enforcement to protect the community with the individual’s right to privacy. The Court’s ruling emphasizes the need for a reasonable expectation of privacy in the contents of a cell phone, and the importance of obtaining a warrant before searching it.
phone somewhere between an address book and a laptop computer, with a laptop computer giving rise to a very high level of privacy expectations and an address book at a lower level. The Court noted that cell phones have varying capabilities and declined to issue a bright-line rule about privacy expectations in these devices or require law enforcement to determine the exact capabilities of a particular phone before deciding how to search it.

The Ohio Supreme Court distinguished the case from Finley because the defendant in Finley admitted that his cell phone was analogous to a closed container found on the arrestee’s person, triggering the search incident to arrest exception. In Smith, however, the defendant made no such concession. The Ohio Supreme Court further ruled that a cell phone is not analogous to a closed container because it is not capable of holding another physical object.

The Ohio Supreme Court held that the search incident to arrest exception did not apply because the justifications underlying it, such as officer safety and the preservation of evidence, were inapplicable to the facts presented. The officers’ safety was not threatened in this case, and the state failed to show that the cell phone’s contents were subject to imminent destruction, necessary to justify the search incident to arrest exception.

1 Law Clerk, NDAA’s National Center for Prosecution of Child Abuse
2 Ohio v. Smith, 2009 Ohio LEXIS 3496, at *2-*3.
4 Id. at *12.
5 Id. at *13-*16.
6 Id. at *15.
7 Id. at *19.
8 See id. at *13.
9 See id. at *15.
10 Id. at *18-*19.
11 Id. at *19-*20.
12 Id. at *20.
14 Id.
15 Id. at *16.
16 Id. at *15-*16.
17 Id. at *9-*10.
18 Id.
19 Id. at *13.
20 Id. at *16-*17.
21 Id.