FROM A TINY SPARK MAY BURST A MIGHTY FLAME: THE LOSS OF A CELL PHONE MAY MEAN THE LOSS OF CONSTITUTIONAL RIGHTS

I. INTRODUCTION

Imagine you are shopping for your weekly groceries at a Walmart Supercenter, and you are looking at your list of items you need to purchase for the week. If you are like many Americans,[1] then you are looking at a list on your phone. You grab the last item on your list then proceed to checkout where your two-year-old attempts to scan the candy aisle for some tasty pre-dinner snacks. You immediately distract him with a Mickey's Clubhouse video on your cell phone and place him in the shopping cart. You pay for your groceries, proceed to your car, put the baby in his car seat, and then load the trunk with all the bags. Finally, you enter the car, strap in, and head home. As you're driving, your kid asks for another Mickey video so you reach for your phone, but it's not there. You start to panic because your phone is not password protected, and you immediately think the worst—someone has stolen it. Unfortunately, that's no longer the worst-case scenario.

The worst-case scenario may now be that law enforcement has your phone and can use its contents as evidence against you. As seen in *United States v. Sparks*,[2] if the phone is lost and cannot be reclaimed after reasonable efforts, then law enforcement may search a phone without a warrant subsequent to a private citizen's search. While the Fourth Amendment was not written to explicitly protect privacy on smartphones "as the technological boundaries of smartphones were beyond the Framers imagination,"[3] the Supreme Court has made clear that cell phones are generally constitutionally protected from warrantless searches.[4] However, the Supreme Court has not ruled on whether that protection extends to seizures of cell phones. Courts today have

developed "an incoherent doctrinal landscape"[5] out of the Fourth Amendment, but one instruction stands clear: all searches and seizures must be reasonable.[6]

"Distorted through the shaping effect of police power and judiciary acquiescence,"[7] the Fourth Amendment continues to shrink in power as courts create a litany of exceptions to its authority. In *United States v. Sparks*, the Eleventh Circuit recognized two of the many exceptions in Fourth Amendment jurisprudence: the private search and abandonment of property.[8] The court correctly followed precedent in its application of the private search doctrine,[9] but then deviated from precedent in its analysis of whether or not defendants abandoned their cellphone.[10] Following from its error in its abandonment analysis, the majority in *United States v. Sparks* then sidestepped controlling precedent when it did not reach the issue of officer-imposed delay in obtaining a search warrant.[11] Rather than supplement the Supreme Court's ruling on privacy in cell phones,[12] the Eleventh Circuit chose to further law enforcement's goals and broaden one of the litany of exceptions to the Fourth Amendment's protections.

This Note will analyze the errors behind the Eleventh Circuit's abandonment analysis and how those errors could be prevented in future challenges to Fourth Amendment protection in personal property. This Note will also discuss technology's role in Fourth Amendment jurisprudence and how constitutional protection can be better served to prevent "conflict with essential rights of individuals."[13] Part II will explain the development of both the private search and abandonment of personal property doctrines as exceptions to Fourth Amendment protection. Part II will also discuss the newfound expansion of constitutional protection in cellphones. Part III reviews the *Sparks* case in detail, particularly the conflicting analysis of the majority and dissenting opinions. Part IV analyzes the blunders of the Eleventh Circuit's reasoning and

proposes solutions to future Fourth Amendment challenges. Part V will offer a reflection and some final thoughts.

II. PRIOR LAW

Every discussion of the Fourth Amendment should begin with its direct text:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[14]

Although there's debate on how the Reasonableness Clause and Warrant Clause interact,[15] the law is fairly clear in that all searches and seizures must be reasonable[16] and warrantless searches are "presumptively unreasonable."[17] Nevertheless, the judiciary has crafted a litany of exceptions to the reasonableness doctrine[18] presumably to satisfy the needs of law enforcement.[19] One such exception is the private party search doctrine.[20]

A. Get the (Private) Party Started!

After *Katz v. United States*, the Supreme Court redefined the Fourth Amendment to mean protection of a person's privacy, not just his property.[21] But the Fourth Amendment is only implicated when government authorities, not private parties, interfere with a person's privacy.[22] Privacy invasions by private parties, whether accidental or deliberate, "d[o] not violate the Fourth Amendment because of their private character."[23] Although sometimes compared with items found in plain view,[24] the private search doctrine extends to permitting law enforcement to conduct an independent search so the agents may "merely avoid[] the risk of a flaw in the [private party's] recollection."[25] The reasoning behind this extension is that the independent search "enable[s] the agent to learn nothing that had not previously been learned during the private search."[26] Thus, law enforcement's separate search does not violate any reasonable

expectation of privacy, and hence is not a "search within the meaning of the Fourth Amendment."[27] Constitutional protection arises only if the government agents use information to which the person's expectation of privacy has yet to be diminished.[28]

B. When You Find Yourself in Times of Trouble, Let It Be Abandoned

Effects in public spaces lose Fourth Amendment protection if the effects are considered abandoned.[29] While the Supreme Court has yet to outline a test for abandonment,[30] many courts deviate from its property-law definition when analyzing Fourth Amendment challenges.[31] Under property-law, an item is abandoned when "the owner intentionally and voluntarily relinquishes all right, title, and interest in it."[32] Rather than focus on an owner's intent to relinquish title, courts focus on whether the owner's actions constituted an abandonment of privacy.[33] In its decisions, courts consider the nature of the item, the owner's acts and words, and location of the alleged abandonment.[34] For example, in *United States v. Edwards* a defendant's constitutional protection against warrantless search and seizures came to an end when he left his car on a public highway, with the engine running and lights still on.[35] At the moment the defendant ditched his car to flee from the police on foot, the court found he had "no reasonable expectation of privacy with respect to his automobile" because he abandoned it.[36]

However, not all questions of abandonment are so clear-cut. Efforts to hide effects do not just hint at the owner's expectation of privacy, but also indicate an intention to later return to retrieve the item.[37] Efforts to conceal items signal constructive possession that may cloud a clear finding of abandonment.[38] In *United States v. Williams*,[39] a defendant did not have standing to complain of a search and seizure of his trailer because he voluntarily unhooked the trailer from his tractor and left it at a rest stop to return for it later.[40] In his concurring opinion where he disagreed on a finding of abandonment, Judge Goldberg reasoned, "merely leaving a car or a

trailer parked in a rest area cannot mean that one relinquishes his interest in the property."[41] Judge Goldberg considered the defendant's actions as evidence of "intent to *retain* control of the trailer rather than to abandon it."[42] But if an owner relinquishes an item to evade his capture and later deny culpability, courts will tend to consider the item abandoned and find the item to no longer carry constitutional protection.[43]

C. When That Hotline Bling That Could Only Mean One Thing for Cops—Evidence

With limitless possibilities of technology in the 21st century leading to 64% of American adults owning a smartphone of some kind,[44] it's almost laughable that the law can never keep up with the country's technological advancement. Until the Supreme Court's decision in *Riley v. California*,[45] lower courts were unsure of how to categorize an item many Americans couldn't live without.[46] As Chief Justice Roberts noted in his opinion for the majority, "modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet or a purse."[47] Rather than viewing a cell phone as personal property falling into the "effects" category of the Fourth Amendment,[48] the Supreme Court sought to create a new category in its realization that "a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house."[49] With that high standard, the court boldly declared that a warrant is generally required before a cell phone can be searched, even when seized incident to arrest.[50] This ruling sparked a new life into the Supreme Court's stance on privacy in the digital age that lower courts now have a duty to follow rigorously.

III. UNITED STATES V. SPARKS: STOP, LOCK (IN CASE YOU) DROP IT!

Around June 4, 2012, Linda Vo found a smart phone in a shopping cart at Walmart in Cape Coral, Florida.[51] Vo then saw a text message from "Jennifer" asking for the phone's return.[52] Vo called the number from the text message and spoke to Jennifer Sparks, who

explained that the phone belonged to her and her boyfriend, Alan Johnson.[53] Vo agreed to meet Jennifer to return the phone.[54] In order to identify the woman she planned to meet, Vo looked at the phone's photos.[55] Because the phone was not password protected, Vo had access to all the photos stored in the phone.[56] While viewing the phone's photos, she found some "pretty weird" and "questionable" pictures involving a young girl.[57] She showed some of the photos to her then fiancé, now husband, David Widner.[58] In particular, Vo showed Widner thumbnail images on one of the phone's photo album and then zoomed in to a full sized picture of a girl sitting in the back seat of a car wearing pink shorts.[59] Vo then enlarged another photo of three prepubescent girls standing naked and posing in a sexually suggestive manner.[60] Widner recalled another full sized photo that centered on a little girl's nude genital area and what appeared to be semen on her stomach.[61] After showing these pictures to Widner, Vo gave the cell phone for him to take to law enforcement.[62]

Widner took the phone to the Fort Meyers Police Department, where he first spoke with a Community Service Aide named Cassie Coleman.[63] He attempted to show Coleman the "questionable" photos, but the phone's battery died.[64] He then charged the phone at the police department while he explained to two other Community Service Aides, Sarah Gallegos and Amanda Janetzke, how he had the phone in his possession.[65] Afterwards, Gallegos removed the phone from where it was recharging for Widner to show them the images.[66] While Gallegos, Widner, and Janetzke observed the pictures together, text-message notifications appeared from Jennifer insisting on the phone's return.[67] After viewing the pictures, Gallegos took the phone to Sergeant O'Reilly and told him what she had observed and what Widner had told her.[68] Sergeant O'Reilly then verified the pictures constituted child pornography and submitted the phone into

evidence.[69] During Sergeant O'Reilly's search, he briefly watched two videos, one Widner had seen and one he had not.[70]

On June 7, 2012, Agent Patricia Enterline answered a phone call from Sergeant Steve Barnes where he assigned Agent Enterline the case involving Sparks and Johnson's phone.[71] Agent Enterline was on her way to the first of many training classes she scheduled for the next three weeks, but Sergeant Barnes reassured her there was no urgency in pursuing the case.[72] Agent Enterline finally returned to work for more than a few days on June 26, 2012, but had meetings with the federal prosecutor on another case.[73] She did not prepare the search warrant until June 27, 2012, when she contacted Sergeant O'Reilly, who gave her the facts she later incorporated into the search warrant affidavit.[74] After obtaining the search warrant, the phone underwent a forensic analysis that shed light on Alan Johnson that Agent Enterline then used to obtain a search warrant to search Johnson's home.[75] Agent Enterline executed the search warrant on Johnson's home where she encountered Johnson.[76] He acknowledged that he lost his cell phone at Walmart and told Agent Enterline that he had filed an insurance claim with his phone company three days after he lost it.[77] 1,322 pictures and 45 videos of child pornography were recovered from Johnson's cell phone and another 508 pictures and 58 more videos were found at Johnson's house.[78] Both Johnson and his girlfriend, Jennifer Sparks, were indicted and pleaded guilty for possession of child pornography and production of child pornography.[79]

Subsequently, Johnson and Sparks each filed motions to suppress evidence arguing that law enforcement's search exceeded the scope of Widner's search and Agent Enterline's delay in obtaining the search warrant interfered with their possessory interests.[80] The district court denied both motions, finding that some images were literally within the scope of the private search and the delay was not unconstitutional.[81] The court further noted that the delay was not

unconstitutional because the "defendants' possessory interest in the cell phone was diminished."[82] As support, the court mentioned that the phone was not password protected, neither defendant could retrieve the phone because it contained contraband, and the defendants replaced the phone within a couple days of losing it.[83]

Both Johnson and Sparks appealed to the Eleventh Circuit.[84] The Eleventh Circuit affirmed and held that Johnson and Sparks abandoned their possessory interests in the smart phone because neither party took action to retrieve the phone despite knowing who found it and where she worked.[85] The Eleventh Circuit did not reach the issue of whether the 23-day period between the seizure of the phone and obtaining the search warrant was reasonable because both parties lost standing when they abandoned their possessory interests in the phone.[86] The court reasoned that a person without a possessory interest in a seized cell phone "lacks standing to object to the length of the period between the seizure and the search because the length of the seizure cannot inflict injury on that person."[87] In a dissenting opinion, Judge Martin disagreed with the majority's characterization of abandonment, believing Johnson and Sparks did not abandon their phone.[88] Judge Martin pointed to the pair's repeated efforts to retrieve the phone (such as returning to Walmart immediately after discovering it was left behind) and reasoned that their purchase of a replacement phone did not equate with an abandonment of their lost phone.[89] Sparks has since filed a petition for writ of certiorari to contest the Eleventh Circuit's finding.[90]

IV. OH FOURTH AMENDMENT, THE COURT WAS BLIND TO LET YOU GO

The majority's opinion in *Sparks* was correct to find that Sgt. O'Reilly's independent search exceeded the scope of Widner's private search—Sgt. O'Reilly definitely viewed a video Widner had never seen and possibly photos he had also never seen. The majority was also right in finding that this error did not disturb the state court's determination of probable cause because

probable cause existed regardless of Sgt. O'Reilly independent search. Where the majority severely deviated from precedent lies in the remainder of the court's holding. Not only do Sparks's actions to retrieve the phone negate any notion of abandonment, but also Agent Enterline's lack of urgency in her pursuit of a search warrant constituted an unconstitutional delay of the couple's prevalent possessory interests.

A. You Cannot Abandon What Is Lost

"It does not matter whether an individual locks his doors—the home is protected whether or not they are locked."[91] As unmistakably indicated in *Riley v. California*, a cell phone can store and thus expose far more intimate details as "the most exhaustive search of a house."[92] Before smart phones, people did not normally carry so much sensitive personal information in their pocket or purse.[93] As ubiquitous as the modern cell phone is, so too is the loss of privacy. If courts follow *Sparks* and find abandonment in cases where phones are lost but not retrieved, then any time anyone loses a phone will beckon an opportunity for law enforcement to sift through photos, text messages, or browser history to find evidence of wrongdoing. The government will no longer bear the burden of proving abandonment, and any case with similar facts to *Sparks* will turn on whether the phone was password protected to establish the owner's expectation of privacy.

The majority's reasoning in *Sparks* is flawed on the issue of abandonment for two reasons: (1) the court did not recognize Johnson and Spark's reasonable efforts to retrieve their phone; and (2) the court allowed a finding of abandonment without a preponderance of the evidence as support.[94] First of all, the couple did not "voluntarily discard" the cell phone nor did they "relinquish [their] interest . . . *at the time of the search*."[95] Neither Johnson nor Sparks ditched the phone to evade capture from law enforcement.[96] Rather, they lost the phone and

made reasonable efforts to retrieve it.[97] As Widner showed Gallegos and Janetzke the "questionable" photos, Sparks concurrently texted the cell phone and begged for its safe return.[98] Sparks's relentless requests emphasized her and Johnson's intent to retrieve the phone and reclaim their possessory interest. These facts resemble the Eleventh Circuit case *United States v. Ramos*, where the defendant failed to move out of his condominium in time and left his briefcase of cocaine for the cleaning crew to find.[99] The rental manager notified state police, who then unlocked the briefcase with a pocketknife to verify its contents.[100] The court found that the locked briefcase was not abandoned based on all the circumstances, "including the fact that [defendant] telephoned the . . . office the following day" to make arrangements to reclaim his possessions.[101] Although the briefcase in *Ramos* was locked,[102] as opposed to Sparks and Johnson's unlocked phone,[103] the Eleventh Circuit should have acknowledged the higher expectation of privacy that emanates from a cell phone with boundless storage capacity. An unlocked phone is similar to an unlocked home—both deserve the highest expectation of privacy the Fourth Amendment can offer.

Additionally, the Eleventh Circuit decided an issue of fact that never appeared in the lower court's ruling. While the district court did find that "defendants' possessory interest in the cell phone was diminished,"[104] that does not equate with a finding that the government proved by a preponderance of the evidence that Jones and Sparks abandoned their phone. In fact, the word "abandon" as a root is not mentioned once in the lower court's opinion.[105] Precedent well establishes that abandonment is a question of fact regarding intent;[106] thus, the Eleventh Circuit overstepped its bounds when it evaluated the facts to determine whether the cell phone was abandoned.

With such a high expectation of privacy in cell phones, it's a wonder how the majority in *Sparks* could blithely ignore possessory interests to find that the couple abandoned their privacy when they lost their phone. In a modern age where even the more mundane aspects of life are posted on social media, courts should reconsider how to analyze questions of abandonment. While privacy is relevant in every Fourth Amendment analysis, the law will be better served if guidance from personal-property law was incorporated.[107] Even when personal property is unattended, the owner retains a right to exclude others from using the item.[108] Johnson and Sparks had a right to exclude Vo and Widner from possession and subsequently a right to prevent Widner from giving the phone to law enforcement. Johnson and Sparks did not abandon their possessory interest because "the act of abandonment must not vest ownership of the abandoned object in any specific person."[109] Accordingly, Widner should not have had the authority to give the phone to law enforcement nor should law enforcement have seized it indefinitely.

B. Rewarding Procrastination Means Narrowing Fourth Amendment Protection

Well-versed in the binding precedent related to delays in obtaining search warrants, the Eleventh Circuit majority chose to ignore *United States v. Mitchell* in holding that the exclusionary rule did not pertain to Agent Enterline's untimely pursuit of a search warrant for Sparks and Johnson's phone.[110] In *Mitchell*, "there was no compelling justification for the delay" when law enforcement took twenty-one days to apply for a search warrant for a hard drive with suspected child pornography.[111] The officer responsible for the delay argued that "he didn't see any urgency" and he "felt there was no need to get a search warrant for the content of the hard drive until [he] returned back from training."[112] The court in *Mitchell* found the detention of the hard drive to be a "significant interference with Mitchell's possessory interest."[113]

The relevant facts of *Mitchell* are almost identical to the facts of *Sparks* in that both cases involved law enforcement valuing training over an individual's possessory interest. In fact, the delay in *Sparks* was two days more than the unreasonable delay in *Mitchell*, yet the majority considered Agent Enterline's inaction not unconstitutional.[114] The majority evaded the issue of unreasonable delay by finding that both Johnson and Sparks lost standing "because they abandoned their possessory interest in the phone by, at the latest, June 7, 2012."[115] However, the dissent rightfully acknowledged precedent and reasoned that Agent Enterline's justification for the delay "was precisely the type of justification for delay this court rejected in *Mitchell*."[116] The Eleventh Circuit was wrong to find the phone had been abandoned, and it was wrong again to find that the parties lacked standing to contest the search warrant's unreasonable delay.

V. CONCLUSION

"If the abandonment concept is employed with much more abandon, the Fourth Amendment itself will be abandoned."[117] The Eleventh Circuit daringly exceeded its reach when it decided that Johnson and Sparks abandoned their phone after they accidentally left it without password protection in a Walmart shopping cart.[118] Because Johnson and Sparks made reasonable efforts to retrieve their lost cell phone, the court should have conceded that the pair had standing to contest Agent Enterline's unreasonable delay in obtaining the search warrant. Instead, the court improperly found abandonment in order to avoid its own precedent in *Mitchell* and advance the goals of law enforcement. Hopefully, the Supreme Court will grant certiorari for Sparks's case and rebuild the shambles that Fourth Amendment jurisprudence has accumulated because "privacy comes at a cost"[119] and it's a cost that law enforcement should pay.

[1] *See U.S. Smartphone Use in 2015*, PEW RESEARCH CTR., 26 (Apr. 1, 2015),

[2] United States v. Sparks, 806 F.3d 1323, 1324 (11th Cir. 2015), *aff'g* United States v. Johnson, No. 2:12–cr–92–FtM–29DNF, 2013 WL 3992254, at *1 (M.D. Fla. Aug. 2, 2013), *petition for cert. filed*, (U.S. Jan. 6, 2016) (No. 15–7733) (holding "defendants abandoned their possessory interests in phone, and thus they lacked standing to assert that delay in obtaining search warrant intruded upon their constitutional rights").

[3] Dr. Saby Ghoshray, *Doctrinal Stress or in Need of a Face Lift: Examining the Difficulty in Warrantless Searches of Smartphones Under the Fourth Amendment's Original Intent*, 33 WHITTIER L. REV. 571, 593 (2012) (footnote omitted).

[4] *See* Riley v. California, 134 S. Ct. 2473, 2493 (2014) (holding that the information on a cell phone generally requires a warrant before a search, even when a cell phone is seized incident to arrest).

[5] Ghoshray, *supra* note 3, at 589.

[6] *Id.* at 592 ("We need to read the amendment's words and take them seriously: they do not require warrants, probable cause, or exclusion of evidence, but they do require all searches and seizures be reasonable.").

[7] *Id.* at 601.

[8] United States v. Sparks, 806 F.3d 1323, 1324 (11th Cir. 2015), *aff'g* United States v. Johnson, No. 2:12–cr–92–FtM–29DNF, 2013 WL 3992254, at *1 (M.D. Fla. Aug. 2, 2013), *petition for cert. filed*, (U.S. Jan. 6, 2016) (No. 15–7733).

[9] *Id.* at 1335-36.

[10] *Id.* at 1340-47.

[11] *Id.* at 1340.

[12] Riley v. California, 134 S. Ct. 2473, 2493 (2014).

[13] Ghoshray, *supra* note 3, at 598.

[14] U.S. CONST. amend. IV.

[15] Ghoshray, *supra* note 3, at 594 ("The assertion that the Framers' of the Fourth Amendment intended to impose both a warrant preference rule and a reasonableness requirement on search and seizure encapsulates a broader, flawed interpretation of the original understanding.").

[16] *Id.* at 592.

[17] *Id.* at 608.

[18] *Id.* at 590.

[19] *Id.* at 607.

[20] United States v. Jacobsen, 466 U.S. 109, 115 (1984) (finding that invasions of privacy by private parties do not violate the Fourth Amendment).

[21] Maureen E. Brady, *The Lost "Effects" of the Fourth Amendment: Giving Personal Property Due Protection*, 125 YALE L.J. 946, 949-50 (2016) (citing Katz v. United States, 389 U.S. 347, 351 (1967)).

[22] *Jacobsen*, 466 U.S. at 113-14.

[23] *Id.* at 115 (alteration added).

[24] *Id.* at 130 (White, J., concurring) ("The private-search doctrine thus has much in common with the plain-view doctrine, which is 'grounded on the proposition that once police are lawfully in a position *to observe an item firsthand*, its owner's privacy interest in that item is lost . . . .'" (quoting Illinois v. Andreas, 463 U.S. 765, 771 (1983))).

[25] *Id.* at 119 (alteration added).

[26] *Id.* at 120 (footnote omitted).

[27] *Id.*

[28] *See id.* at 117 ("The Fourth Amendment is implicated only if the authorities use information with respect to which the expectation of privacy has not already been frustrated.").

[29] Brady, *supra* note 21, at 962.

[30] *Id.* at 963.

[31] *Id.* at 969; *see, e.g.*, United States v. Ramos, 12 F.3d 1019, 1023 (11th Cir. 1994) ("While 'arcane' concepts of property law do not control an individual's ability to claim Fourth Amendment protection, ownership is a factor which may be considered.") (citing Rakas v. Illinois, 439 U.S. 128, 143 (1979)).

[32] Eduardo M. Penalver, *The Illusory Right to Abandon*, 109 MICH. L. REV. 191, 196 (2010).

[33] Brady, *supra* note 21, at 1007.

[34] *Id.*

[35] United States v. Edwards, 441 F.2d 749, 750 (5th Cir. 1971) (holding the search of the automobile trunk and the seizure of the contraband whiskey to be reasonable in constitutional terms).

[36] *Id.* at 751.

[37] Brady, *supra* note 21, at 1009.

[38] *Id.* at 965.

[39] United States v. Williams, 569 F.2d 823 (5th Cir. 1978) (holding defendant had abandoned the trailer after he unhooked it from his tractor and drove away in the tractor, leaving the trailer unguarded and unlocked in a roadside rest area).

[40] *Id.* at 826 ("His only conceivable purpose in leaving the trailer unguarded and unlocked in the parking area was to rid himself of the vehicle with its incriminating contents.").

[41] *Id.* at 827 (Goldberg, J., concurring).

[42] *Id.* (Goldberg, J., concurring).

[43] *See* United States v. Pirolli, 673 F.2d 1200, 1204 (11th Cir. 1982) ("The fact that Pirolli abandoned the articles in an effort to evade his being caught with them does not amount to his abandonment being the product of police misconduct." (citation omitted)).

[44] *U.S. Smartphone Use in 2015*, *supra* note 1, at 2.

[45] *See* Riley v. California, 134 S. Ct. 2473, 2493 (2014) (holding that a warrant is generally required before officers search a cell phone seized incident to arrest).

[46] *See U.S. Smartphone Use in 2015*, *supra* note 1, at 28 (finding that 46% of smartphone owners say they "couldn't live without" their smartphone).

[47] *Riley*, 134 S. Ct. at 2488-89.

[48] U.S. CONST. amend. IV.

[49] *Riley*, 134 S. Ct. at 2491.

[50] *Id.* at 2493.

[51] United States v. Sparks, 806 F.3d 1323, 1330 (11th Cir. 2015), *aff'g* United States v. Johnson, No. 2:12–cr–92–FtM–29DNF, 2013 WL 3992254, at *1 (M.D. Fla. Aug. 2, 2013), *petition for cert. filed*, (U.S. Jan. 6, 2016) (No. 15–7733).

[52] Brief for Appellee at 3, *Sparks*, 806 F.3d (No. 14–12075–FF & 14–12143–FF).

[53] *Id.*

[54] *Sparks*, 806 F.3d at 1330.

[55] *Id.*

[56] *Id.*

[57] United States v. Johnson, No. 2:12–cr–92–FtM–29DNF, 2013 WL 3992254, at *1 (M.D. Fla. Aug. 2, 2013), *aff'd sub nom.* United States v. Sparks, 806 F.3d 1323 (11th Cir. 2015), *petition for cert. filed*, (U.S. Jan. 6, 2016) (No. 15–7733).

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] United States v. Sparks, 806 F.3d 1323, 1331 (11th Cir. 2015), *aff'g* United States v. Johnson, No. 2:12–cr–92–FtM–29DNF, 2013 WL 3992254, at *1 (M.D. Fla. Aug. 2, 2013), *petition for cert. filed*, (U.S. Jan. 6, 2016) (No. 15–7733).

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Johnson*, 2013 WL 3992254, at *4.

[67] *Sparks*, 806 F.3d at 1331.

[68] *Johnson*, 2013 WL 3992254, at *4.

[69] *Sparks*, 806 F.3d at 1331-32.

[70] *Id.* at 1332.

[71] *Id.*

[72] *Johnson*, 2013 WL 3992254, at *9.

[73] *Id.*

[74] *Id.*

[75] *Id.* at *10.

[76] *Sparks*, 806 F.3d at 1333.

[77] *Id.*

[78] *Id.*

[79] *Id.* at 1330.

[80] *Johnson*, 2013 WL 3992254, at *6-7, *12.

[81] *See id.* at *8, *13.

[82] *Id.* at *12.

[83] *Id.*

[84] *Sparks*, 806 F.3d at 1324.

[85] *Id.* at 1349.

[86] *Id.* at 1341.

[87] *Id.* at 1340.

[88] *Id.* at 1350 (Martin, J., dissenting).

[89] *Id.* at 1354 (Martin, J., dissenting).

[90] Petition for Writ of Certiorari, *Sparks*, 806 F.3d 1323 (No. 15–7733).

[91] Brady, *supra* note 21, at 961.

[92] Riley v. California, 134 S. Ct. 2473, 2491 (2014).

[93] *See id.* at 2490.

[94] *See Sparks*, 806 F.3d at 1339-49.

[95] United States v. Ramos, 12 F.3d 1019, 1022 (11th Cir. 1994) (quoting United States v. Winchester, 916 F.2d 601, 608 (11th Cir. 1990) (citation omitted)).

[96] *Cf.* United States v. Pirolli, 673 F.2d 1200, 1204 (11th Cir. 1982) (finding that defendant abandoned his incriminating bags after his response to an officer's inquiry of the bags was, "I never saw them before in my life").

[97] *See Sparks*, 806 F.3d at 1354 (Martin, J., dissenting).

[98] *Id.* at 1331.

[99] *Ramos*, 12 F.3d at 1021-22.

[100] *Id.*

[101] *Id.* at 1026.

[102] *Id.* at 1024.

[103] *Sparks*, 806 F.3d at 1330.

[104] United States v. Johnson, No. 2:12–cr–92–FtM–29DNF, 2013 WL 3992254, at *12 (M.D. Fla. Aug. 2, 2013), *aff'd sub nom.* United States v. Sparks, 806 F.3d 1323 (11th Cir. 2015) *petition for cert. filed*, (U.S. Jan. 6, 2016) (No. 15–7733).

[105] *See id.*

[106] *See Sparks*, 806 F.3d at 1342 ("We assess objectively whether abandonment has occurred, based primarily on the prior possessor's intent, as discerned from statements, acts, and other facts." (citation omitted)); *see also Ramos*, 12 F.3d at 1022 ("Because the concept of abandonment involves a 'factual issue,' a district court's finding of abandonment is reviewed under the clearly erroneous standard." (quoting United States v. McKennon, 814 F.2d 1539, 1545 (11th Cir. 1987))).

[107] Brady, *supra* note 21, at 952-53 ("[I]f guidance from personal-property law is incorporated into Fourth Amendment analyses, the law will better protect the expectations and interests that

individuals have with respect to their personal property and that society recognizes as reasonable under the circumstances.").

[108] *Id.* at 1008.

[109] Penalver, *supra* note at 32, at 197 (footnote omitted).

[110] *Sparks*, 806 F.3d at 1324.

[111] United States v. Mitchell, 565 F.3d 1347, 1351 (11th Cir. 2009) (per curiam).

[112] *Id.*

[113] *Id.*

[114] *Id.*; *see also Sparks*, 806 F.3d at 1339 ("the delay was not unreasonable under the circumstances of this case").

[115] *Sparks*, 806 F.3d at 1339.

[116] *Id.* at 1356 (Martin, J., dissenting).

[117] United States v. Williams, 569 F.2d 823, 827 (5th Cir. 1978) (Goldberg, J., concurring).

[118] *Sparks*, 806 F.3d at 1349.

[119] Riley v. California, 134 S. Ct. 2473, 2493 (2014).

I hereby certify that I have completed this submission in accordance with the Competition rules and in accordance with the collaboration and academic integrity requirements of the University of Miami School of Law Honor Code.

Signed 588512