THE ABANDONMENT DOCTRINE AND *UNITED STATES V. SPARKS*

I. INTRODUCTION

Many of us[1] have experienced that sinking feeling before: the moment you realize that your cell phone is missing. First, it is the frenzy of retracing your steps. Then, it is the annoyance and cost of ordering a new phone, and the frustration while you live your life for a few days without the most essential tool[2] in the modern world. But, in the back of your mind, there is always that sense of violation: the idea that someone, somewhere, could be looking through all of your pictures, text messages, social media accounts, and other personal information that smart cell phones contain today.[3]

What if, in addition to all of those headaches, losing your cell phone could also have negative legal ramifications? If a court determines that you legally abandoned your lost cell phone, then you lose your possessory rights in the phone, and the privileges that are associated with them.[4] This is referred to as the abandonment doctrine, and it often arises in the context of Fourth Amendment searches and seizures.[5] The Fourth Amendment ensures 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."[6]

Recently courts experienced trouble reconciling the reasonableness clause of the Fourth Amendment and whether it applies to a personal item that someone either lost or purposefully left behind.[7] If a court determines that someone legally abandoned an item of their personal property, then that person does not have standing to raise any Fourth Amendment challenges with regards to that piece of property.[8] If however, a court decides that the person did not abandon their

property, then that person still has a reasonable expectation of privacy in the item, and therefore has standing to challenge any unreasonable search or seizure under the Fourth Amendment.[9]

Federal courts have ruled on cases regarding the abandonment of boats,[10] briefcases,[11] bags,[12] and other personal belongings, the outcome differing depending on the circumstances surrounding the defendant becoming separated from their property. Most recently, in *United States v. Sparks*, the Eleventh Circuit decided an abandonment case with particularly sensitive privacy interests: a cell phone accidentally left in a shopping cart at a Walmart.[13] Deciding the smartphone was abandoned, the Court determined that the defendants did not have standing to challenge a twenty-three day delay between their cell phone being placed into evidence and the officer obtaining a search warrant.[14]

This note discusses the incorrect use of the abandonment doctrine that the Eleventh Circuit applied in *United States v. Sparks*. Part II briefly address the evolution of privacy and the Fourth Amendment, and then discusses the abandonment doctrine and its development through case law. Part III of this note provides an explanation of *Sparks*, reviewing the procedural history as well as the majority and dissenting opinions. Part IV addresses how *Sparks* differs from other abandonment cases, and how the court failed to consider important privacy concerns in the context of cell phones and the Fourth Amendment. Part V offers a final conclusion.

II. EXPECTATIONS OF PRIVACY AND THE ABANDONMENT DOCTRINE

A. MOVING THE FOCUS FROM PLACES TO PEOPLE[15]

The Supreme Court in *Katz v. United States* ruled that a trespass by the government is not needed to trigger a Fourth Amendment violation, because the true purpose of the Fourth Amendment is to protect people's privacy, not just their physical dwelling.[16] Justice Harlan's concurrence in the opinion created the new test to determine if a search occurred in the context of

the Fourth Amendment.[17] First, the test asks whether or not the defendant has "a subjective expectation of privacy" in the place or object that was searched.[18] Then, it asks if the defendant's expectation is one that "society considers objectively reasonable."[19]

B. (YET ANOTHER) EXCEPTION TO THE RULE: ABANDONMENT DOCTRINE

Katz set forth the two-prong subjective and objective expectation of privacy test.[20] But how does a court actually determine when a defendant has a legitimate expectation of privacy in something they own? The abandonment doctrine has become a part of that determination.[21] To conclude if a defendant abandoned an item, the test used is "whether the defendant 'voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question.'"[22] The idea is that people have a privacy interest in their home and their personal belongings; however, if a person abandons an object of their personal belongings, then they surrender their privacy interest in it.[23] It then follows that, if a person does not have a privacy interest in an item, that person will not have standing to challenge any subsequent government search of that item that they believe is unreasonable.[24]

C. ABANDONMENT ISSUES: THE DOCTRINE USED IN CASE LAW

The Supreme Court has yet to decide on "what should factor into a determination that an item is abandoned or not."[25] Justice Sotomayor's concurring opinion in *United States v. Jones* provides some insight when she states "'privacy expectations [are] inherent in items of property that people possess or control.'"[26] However, "both the majority opinion and Justice Sotomayor's concurrence fail to address how courts determine possession for Fourth Amendment purposes."[27]

Because of this ambiguity, courts from different circuits are tackling abandonment cases with slightly different approaches.[28] Most courts seem to agree that abandonment is "'a question of intent,'" and is decided objectively by looking at the actions of the defendant to see what a

reasonable person would think the defendant's subjective intentions were at the time he left an object.[29] But when reviewing the actual case law, the federal circuits seem to almost arbitrarily deem objects abandoned or not abandoned, in lack of a concrete, workable abandonment test.

Basinski gives a good start to an abandonment framework by setting out the three kinds of abandonment cases that arise.[30] The first type of abandonment is when a "fleeing defendant" rids himself of an item "to make his flight easier or because discarding the item might make it easier for him to claim that he never possessed it."[31] In *United States v. Edwards,* the defendant left his car during a police chase and continued to flee on foot.[32] The Court determined that because the defendant left his car "on a public highway, with the engine running, keys in the ignition, lights on, and fled on foot," that the defendant voluntarily abandoned his car and "accepted the risk that the officer would search the car, thus losing his right to constitutional protection."[33] In a similar case, the Fifth Circuit found that a defendant abandoned his privacy interest in a trailer when he unhooked the trailer from his tractor and drove away, leaving it "unguarded and unlocked in a roadside rest area" when he knew the police were following him.[34]

The second type of abandonment case, which *Basinski* states is closely related to the first type, are the "'garbage cases.'"[35] In these cases, the defendant puts his personal item "in or near a refuse receptacle that is readily accessible to the public, and in which he usually places other discarded materials."[36] In other words, the defendant threw the object away in a manner that makes it seem like trash to the outside world.[37]

The third type of abandonment is when a defendant is "caught red-handed" with a personal item, and denies the item belongs to him.[38] The denial must cause a reasonable person to "conclude that the defendant claims no possessory interest" in the object.[39] In *United States v. Pirolli,* the Eleventh Circuit ruled that the defendant abandoned a set of bags.[40] When an officer asked Pirolli

about the bags, he responded "'I never saw them before in my life.'"[41] The Court took this assertion by Pirolli as him relinquishing his privacy interests in the bags, allowing the police to search the bags without a warrant.[42]

While *United States v. Basinski* set forth the three different types of abandonment, it also set a disclaimer: if the case at hand does not fit into one of the three categories of abandonment, then that "strongly suggests that no abandonment occurred."[43] In *Basinski*, the defendant gave a briefcase containing incriminating information to a trusted friend to hold for him.[44] Basinski later asked his friend to destroy the briefcase so that the police would never see the contents.[45] The friend told Basinski that he destroyed it, but instead handed the briefcase over to law enforcement.[46]

Basinski's case did not neatly fit into one of the three abandonment categories that the Court laid out.[47] Basinski did not leave the briefcase while fleeing from the police, nor did he throw the case away.[48] Basinski also did not relinquish his interest in the case by claiming it was not his or that he knew nothing about it.[49] For these reasons, the Court determined that he must not have abandoned the briefcase and therefore retained his privacy interest in the contents.[50]

The Court pointed to several signs showing that the defendant never intended to abandon the case.[51] Basinski asked his friend to keep the briefcase in a private place, and never gave him the combination to the briefcase; nor did he give the friend permission to open it or tell him what was inside.[52] Basinski also requested that his friend burn the briefcase.[53] All of these factors led the Court to believe that Basinski still cared about the existence of the briefcase and wanted to keep the contents hidden from the outside world.[54]

III. THE ELEVENTH CIRCUIT'S MOST RECENT TAKE ON ABANDONMENT

Basinski explained that if a certain case does not fit into one of the three categories of abandonment, then that strongly shows a defendant did not relinquish his privacy interest in an item.[55] In *United States v. Sparks*, a case from the Eleventh Circuit, the Court determined that a couple who left their cell phone in a shopping cart did not have standing to challenge a potential Fourth Amendment violation regarding a long delay in obtaining a search warrant.[56] The Eleventh Circuit's reasoning in *Sparks* took an unorthodox approach to reach this determination by not following the *Basinski* rule, and differing in other ways as well from the abandonment case law set forth in the other circuits.[57]

A. UNITED STATES V. SPARKS: PROCEDURAL HISTORY

Jennifer Sparks and Alan Johnson were shopping at a Walmart in Cape Coral, Florida, and mistakenly left their cell phone in a shopping cart at the store.[58] Linda Vo, a Walmart employee, picked up the phone.[59] In an attempt to recover the cell phone, Sparks dialed the number and Vo answered.[60] Vo agreed to Sparks' request to hold onto the phone so Sparks could retrieve it directly from Vo.[61] While Vo was in possession of the phone, she went through the pictures in the photo album and discovered several images that she believed to be child pornography.[62] Vo showed the images to her fiancée, David Widner, who took the phone to the police.[63] The police viewed the images as well,[64] placed the phone into evidence, and waited twenty-three days before getting a search warrant.[65] From the day Sparks misplaced the phone until three days later when it was entered into evidence, Sparks repeatedly called and texted the phone in an attempt to retrieve it from Vo.[66]

The case originated in the United States District Court for the Middle District of Florida.[67] In the District Court, the defendants filed a motion to suppress evidence discovered on the phone

and in their house due to the officers' delay in obtaining the search warrant.[68] The motion to suppress was denied, and the defendants pleaded guilty to possession and production of child pornography.[69] The defendants appealed the denial of the motion to suppress in the Eleventh Circuit.[70]

B. THE MAJORITY OPINION

The majority in *Sparks* used a totality of the circumstances approach "to determine whether an intent to abandon may be objectively discerned."[71] The opinion pointed to several factors that, when viewed together in totality, led the Court to believe that Sparks and Johnson intended to abandon their cell phone.[72] One of the main determining factors was that the defendants gave up searching for the phone.[73] The majority realized that just accidentally losing a phone in a public place does not mean someone intended to abandon all of their property rights.[74] However, the opinion states that the defendants did abandon their rights when they stopped making a concerted effort to retrieve their cell phone from Vo within three days of losing it.[75]

For three days after the phone went missing, the defendants did make a reasonable effort to find it.[76] Sparks originally returned to the Walmart to retrieve the phone, but could not find it at the store.[77] Sparks then called the phone, got in contact with Vo, and arranged to pick it up at the store.[78] Sparks was even texting the phone in order to locate it while Widner was at the police station showing law enforcement the images on the phone.[79]

What happened after this three day period is what caused the majority to determine that Sparks and Johnson intended to abandon their interest in the cell phone.[80] At this time, they stopped contacting Vo through the phone, and ordered a new cell phone for themselves.[81] The majority felt that the defendants "did not want the phone back at all expenses" because they did not try hard enough to retrieve the phone from Vo.[82]

Sparks knew Vo was in possession of the phone, but did not return to the Walmart after Vo failed to meet her as they had originally agreed.[83] Also, Sparks did not file a report with Walmart customer service or the police department to complain that a Walmart employee refused to return their phone.[84] The opinion also noted that the phone was not password protected, and concluded that if the defendants were truly concerned with their private information being viewed, they would have put a passcode on their phone.[85] These factors, looked at in totality, led the majority to believe that the defendants were no longer concerned with what happened to their cell phone, and therefore abandoned their privacy interests in it.[86] Because the cell phone was abandoned, it follows that the defendants' Fourth Amendment rights could not be violated by the delay between the seizure of the phone and the procurement of the search warrant, so the defendants therefore did not have standing to challenge that delay.[87] For these reasons, the majority affirmed the judgement of the District Court.[88]

C. THE DISSENTING OPINION

The dissenting opinion agrees with the majority's determination that the officer's search went beyond the scope of the search done by Widner and Vo.[89] However, the dissent disagrees that Sparks and Johnson abandoned their phone.[90] Because of this, the dissent thinks the defendants should have had standing to challenge the delay in obtaining the search warrant.[91]

The dissent believed that the defendants' actions did not indicate intent to abandon their phone.[92] Sparks immediately returned to the store when she realized the phone was missing, and for the next three days made several attempts to retrieve her phone, as mentioned above.[93] The dissent also states that the police turned off the phone once they submitted it to evidence, so Sparks could no longer contact the phone from that point on even if she wanted to.[94] The dissent feels that the defendants made a reasonable effort to reunite with their lost cell phone, and the fact that they

could have done just a little bit more is insufficient to say that they abandoned their privacy rights in the phone altogether.[95]

The majority also points to the fact that the defendants bought a new phone as evidence that they abandoned their old one, but the dissent feels this is unfair; a phone is so necessary to modern life, that the defendants likely just bought a new phone because they needed one immediately, not because they no longer cared what happened to their old one.[96] The dissent felt that "this is not the typical case of abandonment, in which a person's 'only conceivable purpose…was to rid himself of the [item] with its incriminating contents.'"[97] The dissent also mentions that "no other Circuit has *ever* found abandonment for Fourth Amendment purposes where property was lost and the owner made reasonable efforts to recover it," as further evidence that the majority used too strict of an interpretation of the abandonment doctrine.[98]

IV. WAS THE *SPARKS* MAJORITY TOO HARSH?

A. WHEN ENOUGH ISN'T ENOUGH

The dissenting judge in *Sparks* points out a curious fact of the majority's opinion: neither the Eleventh Circuit[99] nor any other federal circuit court has decided an abandonment case using the reasoning that the majority used in *Sparks*.[100] In *Basinski*, the Court determined that because the defendant did not fit into one of the three types of abandonment, the defendant could not have abandoned his phone.[101] In *Sparks* we find another scenario where the defendants' case did not neatly apply into one of the three types of abandonment. Sparks and Johnson were not fleeing, as they just accidentally left their phone in a shopping cart.[102] Nor did the defendants throw their phone in the trash, or deny the phone belonged to them. But, instead of the Court noting this and deciding that the phone must not be abandoned, it still ruled that Sparks and Johnson relinquished their privacy interests in the phone,[103] seeming to go directly against the rule set forth in *Basinski.*

This makes it seem as if the Eleventh Circuit created its own definition of the abandonment doctrine: one with a much lower threshold to meet. Not only did the defendants' case not fit into one of the *Basinski* abandonment categories, but the defendants also did put forth quite a bit of evidence that they attempted to retrieve their phone.[104] So, clearly the Court does not think Sparks and Johnson's efforts were enough to retain their privacy interest in their cell phone[105], but the Court also never definitively sets forth what actions it would consider sufficient to overcome abandonment.

One of the only suggestions that the Court provides is that the defendants did not file a report with Walmart or the police for their missing phone.[106] While this would have provided a concrete record of the defendants searching for their phone, it is hardly fair to say not filing a police report means Sparks and Johnson had no interest in their lost cell phone. Most people would not think to contact the police when they lose their cell phone, an item with a relatively low monetary value. Most people would probably just search for their phone on their own, as the defendants did in *Sparks*. Another suggestion from the Court is that the defendants should have had a passcode on their phone to protect their private information.[107] The Court is forgetting, however, that if the defendants did have a password on their phone, then the person who found it would not be able to open the phone to find its rightful owner.

But even if the defendants did in fact file a police report or put a password on their cell phone, would that have been enough to retain their interest in the phone? What if the defendants searched for four days instead of three? Or what if they went back to the Walmart three times instead of twice? Though the Court is free to interpret the abandonment doctrine in the way it sees fit, here it did not establish a strong precedent to follow. The decision seems to only give us the

idea that if you lose something, you must always continue searching for it for fear of losing your privacy interest in the item.

B. CELL PHONES AND THEIR UNIQUE PRIVACY CONCERNS

The majority opinion in *Sparks* seemed to overlook another important factor in the case, regarding the nature of the item the defendants left at the Walmart. The majority was quick to determine that the defendants stopped looking for their phone, and therefore they no longer retained any privacy interests in it.[108] While this theory of abandonment may be appropriate for searching just one item of someone's personal belongings, it might not be appropriate for cell phones, which can serve several functions and therefore have special privacy concerns associated with them.[109]

Riley v. California notes that "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."[110] This is because cell phones function as "cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps"[111] and much more. Therefore, when the police search a cell phone, it is as if they are searching all of these things at once.[112] Searching a cell phone gives the officer unprecedented access into the personal life of the phone's owner.[113]

The *Sparks* majority used a "totality of the circumstances" approach to determine whether or not Sparks and Johnson abandoned their cell phone.[114] But shouldn't the Court have taken into account the fact that the object the defendants lost was a cell phone? In *Riley*, the Court determined that officers may not search the contents of a cell phone in a search incident to arrest.[115] The *Riley* Court understood that this would provide the government with so much more private information than searching any other item on the person.[116] Just as the *Riley* Court recognized that cell phones are a special case,[117] the *Sparks* majority should have as well. The Court should have included the

nature of the item into its determination of abandonment, and assigned the government a higher burden of proof for demonstrating the abandonment of a cell phone versus another personal object.

V. CONCLUSION

The Eleventh Circuit in *United States v. Sparks* was faced with an unusual abandonment case[118], one that the other federal circuits had not yet come across. The Court took a different approach to deciding this case, deviating from *Basinski* and other abandonment cases from the federal circuits. The *Sparks* majority seemed to place a low burden on the government to show the defendants abandoned their privacy interests in their cell phone. The Court also failed to consider the particular privacy concerns[119] that arise in Fourth Amendment cases involving cell phones and how much information they contain. The *Sparks* decision as an example of why the federal courts need a more concrete framework of abandonment. Hopefully, the next circuit faced with an abandonment case will set forth a more practical abandonment test, one in which the *entire* totality of the circumstances is considered.

[1] Aaron Smith, *U.S. Smartphone Use in 2015*, PEW RESEARCH CENTER, Apr. 1, 2015, at 1 ("nearly two-thirds of Americans now own a smartphone.").

[2] *Id.* at 2 ("smartphones are widely used navigating numerous important life activities, from researching a health condition to accessing educational resources. A majority of smartphone owners use their phone to follow along with breaking news, and to share and be informed about happenings in their local community.").

[3] 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, 587-588 (2012) ("a smartphone's ability to store and process enormous amounts of data in real time opens up a plethora of advanced functionalities to the handler of such phones.").

[4] Maureen E. Brady, *The Lost "Effects" of the Fourth Amendment: Giving Personal Property Due Protection*, 125 YALE L.J. 946, 962 (2016) ("effects in public spaces…can lose their constitutional protection if deemed 'abandoned.'").

[5] *Id.*

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

[7] *See* Brady, *supra* at 956.

[8] United States v. Sparks, 806 F.3d 1323, 1324 (11th Cir. 2015).

[9] *Id.*

[10] United States v. Edwards, 644 F.2d 1 (5th Cir. 1981).

[11] United States v. Ramos, 12 F.3d 1019 (11th Cir. 1994).

[12] United States v. Pirolli, 673 F.2d 1200 (11th Cir. 1982).

[13] Sparks, 806 F.3d at 1323.

[14] United States v. Sparks, 806 F.3d 1323, 1324 (11th Cir. 2015).

[15] *See* Maureen E. Brady, *The Lost "Effects" of the Fourth Amendment: Giving Personal Property Due Protection*, 125 YALE L.J. 946, 949 (2016).

[16] *Id.* at 950 (Katz v. United States "expanded Fourth Amendment protections to places in which individuals had privacy interests, but no property interests.").

[17] *Id.*

[18] Brief for Petitioner at 19, Sparks v. United States (2016) (No. 05-7733).

[19] *Id.*

[20] *Id.*

[21] *E.g.*, United States v. Basinski, 226 F.3d 829 (7th Cir. 2000).

[22] United States v. Edwards, 644 F.2d 1, 2 (5th Cir. 1981) (quoting United States v. Colbert, 474 F.2d 174, 176 (5th Cir. 1973) (en banc)).

[23] *Id.*

[24] *Id.*

[25] Maureen E. Brady, *The Lost "Effects" of the Fourth Amendment: Giving Personal Property Due Protection*, 125 YALE L.J. 946, 963 (2016).

[26] *Id.* (quoting United States v. Jones, 132 S. Ct. 945, 955 (2012) (Sotomayor, J., concurring)).

[27] *Id.*

[28] *See Id.*

[29] United States v. Williams, 569 F.2d 823, 826 (5th Cir. 1978) (quoting United States v. Colbert, 474 F.2d 174, 176 (5th Cir. 1973)).

[30] United States v. Basinski, 226 F.3d 829, 837 (7th Cir. 2000).

[31] *Id.* (citing California v. Hodari D., 499 U.S. 621, 624 (1991); Hester v. United States, 265 U.S. 57, 58 (1924)).

[32] United States v. Edwards, 441 F.2d 749 (5th Cir. 1971).

[33] *Id.* at 751.

[34] United States v. Williams, 569 F.2d 823 (5th Cir. 1978).

[35] United States v. Basinski, 226 F.3d 829, 837 (7th Cir. 2000).

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] United States v. Pirolli, 673 F.2d 1200 (11th Cir. 1982).

[41] *Id.* at 1202.

[42] *Id.*

[43] United States v. Basinski, 226 F.3d 829, 837 (7th Cir. 2000).

[44] *Id.* at 832.

[45] *Id.*

[46] *Id.* at 833.

[47] *Id.* at 837.

[48] United States v. Basinski, 226 F.3d 829, 837 (7th Cir. 2000).

[49] *Id.*

[50] *Id.*

[51] *Id.* at 832.

[52] *Id.*

[53] United States v. Basinski, 226 F.3d 829, 832 (7th Cir. 2000).

[54] *Id.* at 837.

[55] *Id.*

[56] United States v. Sparks, 806 F.3d 1323, 1326 (11th Cir. 2015).

[57] *E.g.*, Basinski, 226 F.3d at 837.

[58] Sparks, 806 F.3d at 1329.

[59] *Id.*

[60] *Id.*

[61]United States v. Sparks, 806 F.3d 1323, 1329 (11th Cir. 2015).

[62] *Id.*

[63] *Id.* at 1331.

[64] *Id.* at 1335 (The majority determined that the officer's scope of the search at the police station did exceed the scope of the private search done by Winder. However, the majority nevertheless determined "that the error had no effect on the state court's determination of probable cause supporting the issuance of the two search warrants.").

[65] *Id.* at 1332.

[66] United States v. Sparks, 806 F.3d 1323, 1329-31 (11th Cir. 2015).

[67] *Id.* at 1323-1324.

[68] *Id.* at 1324.

[69] *Id.*

[70] *Id.*

[71] United States v. Sparks, 806 F.3d 1323, 1328 (11th Cir. 2015).

[72] *Id.* at 1329.

[73] *Id.*

[74] *Id.* at 1343.

[75] *Id.*

[76] *Id.*

[77] United States v. Sparks, 806 F.3d 1323, 1343 (11th Cir. 2015).

[78] *Id.*

[79] *Id.* at 1331.

[80] *Id.* at 1343.

[81] *Id.*

[82] United States v. Sparks, 806 F.3d 1323, 1343 (11th Cir. 2015).

[83] *Id.*

[84] *Id.*

[85] *Id.* at 1329.

[86] United States v. Sparks, 806 F.3d 1323, 1343 (11th Cir. 2015).

[87] *Id.* at 1326.

[88] *Id.* at 1350.

[89] *Id.*

[90] *Id.*

[91] United States v. Sparks, 806 F.3d 1323, 1351 (11th Cir. 2015). (The dissent also states that "the officers searched the Johnson/Sparks home based on what they found during what I view as their unreasonable seizure of the phone, so I would suppress that search as well.").

[92] *Id.* at 1353.

[93] *Id.* at 1351.

[94] *Id.* at 1352.

[95] *Id.* at 1353-54.

[96] United States v. Sparks, 806 F.3d 1323, 1354 (11th Cir. 2015).

[97] *Id.* at 1351.

[98] *Id.* at 1354.

[99] *Id.* at 1351 ("to my knowledge, this court has not previously deemed property 'abandoned' for Fourth Amendment purposes when it was accidentally lost and reasonable efforts were made to find it.").

[100] *Id.* at 1354.

[101] United States v. Basinski, 226 F.3d 829, 837 (7th Cir. 2000).

[102] United States v. Sparks, 806 F.3d 1323, 1329 (11th Cir. 2015).

[103] *Id.*

[104] *Id.* at 1330.

[105] *Id.* at 1329.

[106] *Id.*

[107] United States v. Sparks, 806 F.3d 1323, 1329 (11th Cir. 2015).

[108] *Id.*

[109] Riley v. California, 134 S. Ct. 2473, 2489 (2014).

[110] *Id.* at 2488-89.

[111] *Id.* at 2489.

[112] *Id.*

[113] *See* 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, 578 (2012).

[114] United States v. Sparks, 806 F.3d 1323, 1328 (11th Cir. 2015).

[115] Riley v. California, 134 S. Ct. 2473, 2475 (2014).

[116] *Id.* at 2489.

[117] *Id.*

[118] *Sparks*, 806 F.3d at 1323.

[119] *See* 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, 578 (2012).

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 [849862].