

WE'VE GOTTA HOLD ON TO WHAT WE'VE GOT: SMARTPHONES AND THE FOURTH AMENDMENT

I. INTRODUCTION

Chief Justice Roberts once quipped, “[t]he term ‘cell phone’ is itself misleading . . . ; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.”¹ Foreseeably, Americans are taking advantage of these devices.² Almost “two-thirds of American adults (64%) now own a smartphone of some kind.”³ That represents a six percent increase over the previous year.⁴ Given their capabilities and prevalence, it’s not surprising that smartphones now interact with almost every aspect of our lives, and that includes the law.

One of the unintended consequences of compiling such an incredible collection of functions into such a small and portable package is the ease with which that package can be misplaced. A lost phone presents an almost unparalleled view into someone’s private life.⁵ In such cases of potential exposure, what protections against government intrusion are legally afforded to the owner of the lost phone?

A logical first step in answering this question might be to look to the Fourth Amendment. Unfortunately, the law is rarely able to keep step with the advancement of technology.⁶ Fourth Amendment jurisprudence is no different. Some courts might be tempted to use the well-established abandonment exception to the Fourth Amendment when dealing with a lost phone.⁷ But should a smartphone, with the incredible amount of personal data on it, be exempted from Fourth Amendment protection just because it is lost in a public place?

This note will address the Eleventh Circuit’s recent error in applying the abandonment exception to the Fourth Amendment to a cellphone accidentally lost at a Walmart in the *Sparks*

decision.⁸ Part II makes a brief examination of the history of the abandonment exception and two, often times confused, approaches adopted by courts in deciding on the issue. Part III takes an in-depth look at the events leading up to, and opinion and dissent in *Sparks*. Part IV provides an analysis of the court's failure to adequately take into account the significance played by smartphones in modern life, as well as an alternative approach. Part V offers closing thoughts.

II. I THINK WE AGREE, THE PAST IS OVER

An early argument for adopting a bill of rights was a failure on the part of the Constitution to protect the privacy of the individual from the prying eyes of the government.⁹ This failure was eventually corrected by the inclusion of the Fourth Amendment within the Bill of Rights. The Fourth Amendment states:

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 Warrant's 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.¹⁰

The original understanding of the Fourth Amendment was limited to “[p]rotection from trespass into an individual's dwelling and a fundamental possessory interest in an individual's own belongings.”¹¹

This understanding controlled Fourth Amendment jurisprudence through the 1960's.¹² In response to technological advances making electronic eavesdropping possible, the Supreme Court expanded the Fourth Amendment beyond trespass to also encompass an individual's reasonable expectation of privacy.¹³

Even under this expanded definition, property subject to Fourth Amendment protection can be abandoned, forfeiting any such protection.¹⁴ In determining whether or not legal abandonment has occurred, the critical question is “whether the person prejudiced by the search

. . . voluntarily discarded, left behind, or otherwise *relinquished his interest in the property* in question so that he could no longer retain a reasonable expectation of privacy with regard to it *at the time of the search.*”¹⁵ “Whether abandonment occurred is a question of intent which may be inferred from acts, words and ‘other objective facts.’”¹⁶ Unfortunately, the Supreme Court has provided scant guidance in regards to the Fourth Amendment and effects.¹⁷ This “has given lower courts considerable latitude to shape their own views on how effects in public spaces are treated.”¹⁸

A. LOCATION, LOCATION, LOCATION!

Despite this expansion of the Fourth Amendment to include reasonable expectation of privacy, personal property has been held by some courts subject to narrow protections that focus on the location of personal property in deterring an individual’s reasonable expectation of privacy.¹⁹ Many courts have required the owner have physical custody of the property or an expectation of privacy in the personal property’s location.²⁰ Where both of these conditions are missing, then the personal property is afforded no protection from search and seizure.²¹

In *United States v. Ramos*, the court focused almost entirely on the location in question. That court held that when a renter overstayed a two-month condominium rental by four hours, he had not intended to abandon the condo, and its contents.²² The court noted that it is settled law that a person retains Fourth Amendment protections while staying in a hotel or motel room, even if only for a single night.²³ As such, an even greater reasonable expectation of privacy exists for a condo rented for two months.²⁴ Ramos did not forfeit his reasonable expectation of privacy in the condo, nor in a locked briefcase (albeit one containing cocaine) stored under one of the beds.²⁵

In *United States v. Edwards*, the court held that another appellant lacked standing due to abandonment.²⁶ This time, the analysis focused heavily on the fact that the personal property was left on the side of a public highway. Following a car chase which with a 1961 Pontiac, carrying five gallons of illegal whiskey, parked in a ditch alongside a public highway, the appellant decided to continue the three mile chase, this time afoot, and jumped from his car and took off running, leaving the keys in the ignition, the engine running, and the headlights on.²⁷ Even though the pursuing officer conducted a warrantless search of the Pontiac's trunk and found the whiskey, the court held that the appellant had no reasonable expectation of privacy under the circumstances in regards to his car.²⁸

B. INTENT AFFECTS EFFECTS

Some courts have applied an alternative approach which provides greater protection for personal property in public spaces.²⁹ Those courts look at the overall environment of the item.³⁰ Location is but one factor taken into consideration, and intent definitely matters.³¹ As such, they “ask whether the circumstances of the item should indicate a person's intention and expectation that the item would remain private.”³²

In *United States v. Edwards*, the court held that the appellant lacked standing to challenge the search and seizure of a sinking ship run aground off the coast of the Florida Keys.³³ The appellant had radioed the Coast Guard when his ship, the “Lady Barbara” began to take on water.³⁴ Shortly after being rescued by a Coast Guard cutter, the crew of a second Coast Guard cutter boarded and searched the “Lady Barbara” without a warrant, finding 30,000 pounds of marijuana aboard.³⁵ The court found it dispositive that the appellant had requested, and accepted aid, and voluntarily abandoned his ship.³⁶ The appellant fully intended to abandon his personal

property by way of an affirmative action, with no hope of recovering it (albeit to save his own life).³⁷ As such, there was no reasonable expectation of privacy in the “Lady Barbara.”³⁸

Similarly, in *United States v. Pirolli*, the critical determination was that Pirolli affirmatively denied ownership of a tan zippered bag containing a package of cocaine.³⁹ A police officer had found the bag (and two others) discarded over a fence behind Pirolli’s home.⁴⁰ When confronted with the bag, Pirolli said, “I never saw them before in my life.”⁴¹ Given this affirmative denial, that court ruled that “[a]ny contention . . . that these bags were not abandoned . . . would be frivolous.”⁴²

In *United States v. Williams*, a case involving a tractor-trailer filled with drugs left at a rest area, the concurrence found fault with the way in which the majority applied the abandonment doctrine.⁴³ Instead choosing to apply the more holistic approach of an intent-based analysis, Judge Goldberg concluded:

The trailer was left in a rest area where cars and tractor-trailers presumably were parked all the time. Merely leaving a car or a trailer parked in a rest area cannot mean that one relinquishes “his interest in the property in question so that he [can] no longer retain a reasonable expectation of privacy with regard to it at the time of search.”⁴⁴

Goldberg goes on to conclude that the appellant clearly did not intend to relinquish control of, or abandon his tractor trailer, also evident by the fact that he later returned and attempted to retrieve it.

United States v. Basinski is an example of a case where both intent and location are considered as factors in determining abandonment.⁴⁵ Basinski, a jewel thief, went through extraordinary efforts to hide evidence of his crimes by entrusting a locked briefcase to a lifelong friend, to be hidden on private property, “in a locked barn, surrounded by a locked gate, in a remote part of Wisconsin which was visited only infrequently” by the friend.⁴⁶ Unlike in *Pirolli*,

or *Edwards*, the appellant in *Basinski* never explicitly renounced, through words or actions, his interests.⁴⁷ The court concluded that Baskinski's conduct demonstrated "a strong desire to preserve both his possessory and privacy interests."⁴⁸

Unfortunately, this approach suffers from its own set of problems. Most glaring is the fact that most courts have failed to outline the factors "that should be considered in constructing an individual's reasonable expectation of privacy with respect to items There are few clear definitions, tests, or steps for courts to follow in deciding how to approach an effect search."⁴⁹

III. UNITED STATES V. SPARKS: FINDERS KEEPERS, LOSERS WEEPERS

While out shopping, Alan R. Johnson, and his girlfriend, Jennifer Sparks, accidentally left a smartphone behind at a Walmart.⁵⁰ Upon discovering the phone was missing, the couple returned to the store and attempted to find it, but were unable to do so.⁵¹ Linda Vo, an employee at the Walmart did find the phone.⁵² The phone was unlocked, and Vo was able to access the text messages stored on it.⁵³ She noticed a text message from Sparks.⁵⁴ Sparks asked that Vo not turn the phone over to customer service, and hold on to it herself.⁵⁵ The two women arranged to meet so that Sparks could get the phone.⁵⁶ Before the meeting, Vo decided to look through the images on the phone.⁵⁷ While doing so, she discovered sexually suggestive images of naked young girls.⁵⁸ Instead of meeting with Sparks, Vo showed the images to her husband, David Widner.⁵⁹

On June 4, 2012, Widner showed the images to members of the Fort Myers Police Department.⁶⁰ Throughout this time, the phone continued to receive text messages from Sparks.⁶¹ After the police confirmed that the phone contained child pornography, the phone was turned off and submitted into evidence.⁶² The phone was then transferred to the Cape Coral Police Department due to jurisdictional issues.⁶³ On June 18, Agent Patricia Enterline, the sole member of the Cape Coral Police Department assigned to the FBI's Innocent Images Task Force,

transferred the phone to the FBI.⁶⁴ During this time, the phone remained off.⁶⁵ Unable to recover the phone, Johnson filed an insurance claim with his provider to receive a replacement.⁶⁶ He purchased a new phone for himself, and gave the replacement to Sparks.⁶⁷

On July 27, a state-court judge found probable cause and issued a warrant for a search of the phone.⁶⁸ Enterline conducted a forensic examination and was able to identify Johnson as the phone's owner.⁶⁹ A warrant was issued for Johnson and Spark's mutual home.⁷⁰

At trial, Sparks and Johnson made several motions, including one to suppress evidence found on the phone. They argued that a warrantless search undertaken by the Fort Meyer's Police Department exceeded in scope the search conducted by Widner and Vo.⁷¹ The district court denied their motions.⁷² Subsequently, Sparks and Johnson both pled guilty to possession and production of child pornography.⁷³ They did so conditional to their ability to raise Fourth Amendment claims on appeal.⁷⁴ They appealed.⁷⁵

A. LONG GONE AND MOVED ON: THE MAJORITY OPINION

In hearing the appeal, the Eleventh Circuit Court of Appeals weighed in heavily on the issue of whether or not the phone had been abandoned.⁷⁶ Citing a variety of cases, including *Edwards*,⁷⁷ the court ruled that, for the sake of Fourth Amendment protection, Sparks and Johnson had abandoned their phone:⁷⁸

Law enforcement was not chasing them, nor were their lives at risk when they decided to abandon their cell phone. Instead, knowing who had their cell phone and where she could be found through minimal effort, Johnson and Sparks made a voluntary and calculated decision over a period of three days to cease all efforts to reclaim their phone.⁷⁹

As such, neither had standing in regards to the lost smartphone.⁸⁰

The court looked to the fact that Johnson and Sparks did not attempted to locate Vo and their phone, even though they knew where to find her. At no point did they seek either the

assistance of Walmart or the police in recovering the phone, either before or after they knew that Vo had it:⁸¹

This decision is consistent with the earlier instruction that Vo not leave the phone with customer service . . . and betrays the intent to abandon the phone. In other words, Johnson and Sparks made a conscious choice to allow a complete stranger (Vo) to keep their phone and everything on it—without so much as a password to protect the phone’s contents—rather than make reasonable further efforts to obtain its return, even though they knew who had the phone and where she was . . . Johnson’s and Sparks’s intent to allow Vo to keep the phone is clear on the record.⁸²

The majority found further evidence of the couple’s intent to abandon by the affirmative acts they undertook to replace the phone.⁸³ “Within a few days of losing the phone in question, Johnson purchased an upgraded phone for himself, filed an insurance claim for the lost phone, and obtained and provided a replacement phone to Sparks.”⁸⁴

B. ABANDONING AN ABANDONMENT ARGUMENT: THE DISSENT

The *Sparks* case ended with a 2-1 split amongst the judges.⁸⁵ The lone dissenting judge, Judge Martin, concluded that Sparks and Johnson had not abandoned their phone, and as such, the twenty-three days the police took in applying for and receiving a search warrant constituted an unreasonable seizure under the Fourth Amendment.⁸⁶ As such, the evidence on the phone should have rightly been suppressed.⁸⁷

Amongst the behavior identified by Martin as not indicative of abandonment was the immediate return trip to the store in an attempt to recover the phone, the phone call, and the barrage of text messages by Sparks to Vo.⁸⁸ Martin noted that “[t]hese text messages ‘would automatically pop up’ even as the police were examining the phone, stating that ‘we need the phone back’ and even ‘giving information as to where they could meet to get the phone back.’”⁸⁹ It was only when an officer at the Fort Meyer’s Police Department “turned the phone off and submitted it to evidence [that] further efforts by Mr. Johnson and Ms. Sparks to successfully

communicate with their cell phone” were finally blocked.⁹⁰ Because Vo never testified at trial, and when her husband did, he seemed confused as to the extent of her interaction with the defendants, for Martin, it was “a mistake to think that we can know the full extent of Mr. Johnson and Ms. Sparks’s efforts to retrieve their cell phone . . . [t]he fact that they could have conceivably done more is simply not sufficient . . . to constitute abandonment under the Fourth Amendment.”⁹¹

In regards to the replacement phone, the dissent notes the current status of cell phones.⁹² “When Mr. Johnson and Ms. Sparks lost their cell phone, they lost troves of information necessary for navigating modern life. Buying a replacement phone . . . does not mean they abandoned their interest in the unique information contained in the last phone.”⁹³

IV. CONCLUDING THAT A LOST SMARTPHONE IS ABANDONED VIOLATES THE FOURTH AMENDMENT

The court in *Sparks* took a rather myopic approach to determining whether or not the smartphone was abandoned. For them, the most significant factor seemed to be that the phone was left in the possession of a complete stranger without being password protected.⁹⁴ However, one does not abandon their constitutional rights merely because they opt to not use an optional security feature. The majority goes on to pay special attention to the supposed affirmative acts of abandonment undertaken by Sparks and Johnson, mainly replacing the phone.⁹⁵ As the dissent points out, this view demonstrates a complete ignorance of the significance that smartphones play in modern life.⁹⁶

A. THE PHONE NUMBER OF THE BEAST

While 64% of adult Americans own some kind of smartphone, for approximately a tenth (7%) of them, their smartphone represents their only means of accessing the internet.⁹⁷ This

number is substantially higher among poor, younger, non-Whites.⁹⁸ There is plentiful evidence of the extent to which these devices have penetrated our lives:

62% of smartphone owners have used their phone in the past year to look up *information about a health condition*. 57% have used their phone to do *online banking*. 44% have used their phone to look up *real estate listings* or other information about a place to live. 43% to look up *information about a job*. 40% to look up *government services or information*. 30% to take a class or get educational content. 18% to *submit a job application* 68% of smartphone owners use their phone at least occasionally to *follow along with breaking news events*, with 33% saying they do this “frequently.” 67% use their phone to *share pictures, videos, or commentary about events happening in their community*, with 35% doing so frequently. 56% use their phone at least occasionally to *learn about community events or activities*, with 18% doing this “frequently.”⁹⁹

In fact, almost half (46%) of smartphone users say that they couldn’t live without their smartphone.¹⁰⁰ Given this attitude, it is not surprising that Johnson and Sparks sought to replace their phone once police rendered it *incommunicado*.¹⁰¹ It became clear to them that Vo wouldn’t be giving it back. As the dissent pointed out, “getting a new phone does not mean [Sparks and Johnson] abandoned their interest in the . . . lost phone.”¹⁰² Rather, they “took all the reasonable steps a responsible owner of lost property would have taken to recover it. That being the case, they did not ‘abandon’ their lost cell phone.”¹⁰³

By jumping to the quick conclusion that the phone had been abandoned, the courts have opened up a backdoor allowing government intrusion into all aspects of our lives without the traditional protection afforded to us by the Fourth Amendment. The significant I place here on cellphones is not just a culturally recognized one, but also a legally recognized one. As Chief Justice Roberts told that court in *Riley v. California*, if police wish to search a cellphone, they should “get a warrant.”¹⁰⁴

MUCH ADO ABOUT SOMETHING

Having outlined the majority's utter failure to grasp the role and significance of cellphones in modern life, I will now examine a possible alternative approach using concepts found in property law to the problems presented by effects, abandonment, and the Fourth Amendment.

A good starting point is determining what constitutes an effect.¹⁰⁵ “[T]he Court generally looks to the Founding-era meaning and fills it with modern content Effects meant, and means ‘personal property.’”¹⁰⁶ Turning now to property law for a definition of personal property, for at least the last hundred years, personal chattel has been defined “by three features: (1) the ability to exclude others, (2) the ability to transfer the object, and (3) control over its use.”¹⁰⁷

Having determined whether or not the item in question is an effect (and a smartphone clearly is an effect under this definition), the next step involves determining whether or not the property's circumstances and the owner's actions have placed it outside of the scope of the Fourth Amendment.¹⁰⁸ Here is where the issue of abandonment arises. Property law requires both actual intent to abandon, and an act manifesting that intent.¹⁰⁹ “Despite this ‘‘actual intent’ requirement, judges and juries remain free to determine that the circumstances indicate no intent to continue possessing the property, notwithstanding the former owner's protestations to the contrary.”¹¹⁰ This results in an objective test that looks to the nature of the item and its circumstance.¹¹¹

Determinations as to the nature of the property rely on the condition of the item, and any efforts that may have been undertaken to protect or conceal the item.¹¹² Determinations as to the circumstances of the property rely on whether it is located in a public or private area, the length of time in which property is left unattended, and the properties proximity to other items.¹¹³ In

judging these factors, the key question remains whether the property's circumstances would manifest, to a third party, the owner's intent to maintain ownership or abandon the property.¹¹⁴

Analyzing the case at hand based on these factors, it should be clear to a third party observer that neither Sparks, nor Johnson intended to abandon the lost cellphone. There is no evidence that the phone was in anything but good condition. Additionally, modern smartphones are often quite expensive. Though they did not password protect their phone, they did take additional steps to protect their property, such as insuring it.¹¹⁵ Though the phone was lost in a public area, the couple had placed it in an area they had control over, specifically, their shopping cart.¹¹⁶ In regards to length of separation, they were only away from the phone for a short while before they attempted to recover it.¹¹⁷ In fact, as soon as they realized it was missing, they returned to the Walmart to attempt to get it back.¹¹⁸

V. CONCLUSION

In choosing to apply the abandonment exception to the Fourth Amendment to a lost smartphone, the court in *Sparks* completely failed to look at the couple's reasonable expectation of privacy as well as the pervasiveness, and unique nature of smartphones. The court goes on to synthesize a conclusion that the couple did not do enough to try and recover their lost property, while simultaneously paying only lip service to the actual facts of the case, and the efforts the couple did make to recover their lost phone.¹¹⁹ Since the Supreme Court has not provided much in the way of guidance concerning the issue of abandonment,¹²⁰ the Fourth Amendment, and effects, it would be reasonable to look to another area of the law. Specifically, a property-based approach might provide courts with a clear set of rules and avoid future judicial missteps, like the one in *Sparks*.

¹ Riley v. California, 134 S. Ct. 2473, 2489 (2014).

² *Id.* at 2484 (“[M]odern cell phones . . . are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.”).

³ PEW RESEARCH CTR., U.S. SMARTPHONE USE IN 2015 13 (2015).

⁴ *Id.*

⁵ *See* Riley v. California, 134 S. Ct. 2473, 2489 (2014) (“[A] cell phone collects in one place many distinct types of information . . . that reveal much more in combination than any isolated record . . . The sum of an individual’s private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions.”).

⁶ 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, 572 (2012).

⁷ Maureen E. Brady, *The Lost “Effects” of the Fourth Amendment: Giving Personal Property Due Protection*, YALE L. REV. 946, 962 (2016) (citing *United States v. Rem*, 984 F.2d 806, 810 (7th Cir. 1993) (“A person may possess a privacy interest in the contents of personal luggage. However, that privacy interest can be forfeited where the person abandons the luggage.” (citations omitted))).

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

⁹ *See* Maureen E. Brady, *The Lost “Effects” of the Fourth Amendment: Giving Personal Property Due Protection*, YALE L. REV. 946, 990 (2016) (“Every thing the most sacred [might] be searched and ransacked by the strong hand of power” (quoting 3 JONATHAN ELLIOT, THE

DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 588 (Washington, Elliot 2d ed. 1836)).

¹⁰ U.S. CONST. amend. IV.

¹¹ 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, 595 (2012).

¹² Maureen E. Brady, *The Lost "Effects" of the Fourth Amendment: Giving Personal Property Due Protection*, YALE L. REV. 946, 949 (2016) (citing *Katz v. United States*, 389 U.S. 347, 351 (1967)).

¹³ *United States v. Jacobsen*, 466 U.S. 109, 139 (1984) ("What a person knowingly exposes to the public ... is not a subject of Fourth Amendment protection.... But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected" (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967))).

¹⁴ *See U.S. v. Ramos*, 12 F.3d 1019, 1024 (11th Cir. 1994).

¹⁵ *Id.* at 1022 (quoting *United States v. McKennon*, 814 F.2d at 1546 (citation omitted)).

¹⁶ *Id.* at 1023 (quoting *United States v. Pirollo*, 673 F.2d 1200, 1204 (11th Cir. 1982)).

¹⁷ Maureen E. Brady, *The Lost "Effects" of the Fourth Amendment: Giving Personal Property Due Protection*, YALE L. REV. 946, 964 (2016).

¹⁸ *Id.*

¹⁹ *Id.* at 950.

²⁰ *Id.*

²¹ *Id.*

²² *U.S. v. Ramos*, 12 F.3d 1019, 1025 (11th Cir. 1994).

²³ See *U.S. v. Ramos*, 12 F.3d 1019, 1023 (11th Cir. 1994).

²⁴ *Id.*

²⁵ *Id.* at 1026.

²⁶ *United States v. Edwards*, 441 F.2d 749, 753 (5th Cir. 1971).

²⁷ *Id.* at 750.

²⁸ *Id.* at 751.

²⁹ Maureen E. Brady, *The Lost “Effects” of the Fourth Amendment: Giving Personal Property Due Protection*, YALE L. REV. 946, 972 (2016).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *United States v. Edwards*, 644 F.2d 1, 1-2 (5th Cir. Unit B May 1981).

³⁴ *Id.* at 1.

³⁵ *Id.* at 2.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *United States v. Pirollo*, 673 F.2d 1200, 1204 (11th Cir. 1982).

⁴⁰ *Id.* at 1202.

⁴¹ *Id.*

⁴² *Id.* at 1204.

⁴³ *United States v. Williams*, 569 F.2d 823, 827 (5th Cir. 1978) (Goldberg, J., concurring) (“If the abandonment concept is employed with much more abandon, the fourth amendment itself will be abandoned.”).

⁴⁴ *Id.* (quoting *United States v. Colbert*, 474 F.2d at 176 (5th Cir. 1973)).

⁴⁵ *United States v. Basinski*, 226 F.3d 829, 837 (7th Cir. 2000).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Maureen E. Brady, *The Lost “Effects” of the Fourth Amendment: Giving Personal Property Due Protection*, *YALE L. REV.* 946, 978-80 (2016).

⁵⁰ *United States v. Sparks*, 806 F.3d 1323, 1329 (11th Cir. 2015).

⁵¹ *United States v. Sparks*, 806 F.3d 1323, 1351 (11th Cir. 2015) (Martin, J., dissenting).

⁵² *United States v. Sparks*, 806 F.3d 1323, 1329 (11th Cir. 2015).

⁵³ *Id.* at 1329-30.

⁵⁴ *Id.* at 1330.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 1329.

⁵⁸ *See United States v. Sparks*, 806 F.3d 1323, 1330-31 (11th Cir. 2015).

⁵⁹ *Id.* at 1331.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 1332.

⁶³ *See* United States v. Sparks, 806 F.3d 1323, 1332 (11th Cir. 2015).

⁶⁴ *Id.*

⁶⁵ *See Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 1333

⁶⁹ United States v. Sparks, 806 F.3d 1323, 1333 (11th Cir. 2015).

⁷⁰ *Id.*

⁷¹ *Id.* (One officer exceed the scope of Vo and Widner’s private search by viewing a video that the couple had not).

⁷² *Id.*

⁷³ *Id.* at 1323-24.

⁷⁴ United States v. Sparks, 806 F.3d 1323, 1351 (11th Cir. 2015) (Martin, J., dissenting).

⁷⁵ United States v. Sparks, 806 F.3d 1323, 1324 (11th Cir. 2015).

⁷⁶ *See Id.* at 1341-47.

⁷⁷ United States v. Edwards, 644 F.2d 1 (5th Cir. Unit B May 1981).

⁷⁸ United States v. Sparks, 806 F.3d 1323, 1342 (11th Cir. 2015).

⁷⁹ *Id.* at 1342-43.

⁸⁰ *Id.* at 1347.

⁸¹ *See Id.* at 1343.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ United States v. Sparks, 806 F.3d 1323, 1343 (11th Cir. 2015).

⁸⁵ United States v. Sparks, 806 F.3d 1323, 1350 (11th Cir. 2015).

⁸⁶ *Id.* at 1350-51.

⁸⁷ *Id.* at 1351.

⁸⁸ United States v. Sparks, 806 F.3d 1323, 1351-52 (11th Cir. 2015) (Martin, J., dissenting).

⁸⁹ *Id.* at 1352.

⁹⁰ *Id.*

⁹¹ *Id.* at 1352-54.

⁹² *Id.* at 1354.

⁹³ *Id.*

⁹⁴ United States v. Sparks, 806 F.3d 1323, 1339 (11th Cir. 2015).

⁹⁵ *Id.*

⁹⁶ *See* United States v. Sparks, 806 F.3d 1323, 1354 (11th Cir. 2015) (Martin, J., dissenting).

⁹⁷ PEW RESEARCH CTR., U.S. SMARTPHONE USE IN 2015 18 (2015).

⁹⁸ *Id.*

⁹⁹ *Id.* at 5, 6.

¹⁰⁰ *Id.* at 7.

¹⁰¹ *See* United States v. Sparks, 806 F.3d 1323, 1354 (11th Cir. 2015) (Martin, J., dissenting).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Riley v. California, 134 S. Ct. 2473, 2495 (2014).

¹⁰⁵ Maureen E. Brady, *The Lost “Effects” of the Fourth Amendment: Giving Personal Property Due Protection*, YALE L. REV. 946, 1000 (2016).

¹⁰⁶ Maureen E. Brady, *The Lost “Effects” of the Fourth Amendment: Giving Personal Property Due Protection*, YALE L. REV. 946, 1000-01 (2016).

¹⁰⁷ *Id.* 1002 (2016) (citing WILLIAM BLACKSTONE, COMMENTARIES 389).

¹⁰⁸ *Id.* at 1004.

¹⁰⁹ *Id.* at 1002 (citing *United States v. Brown*, 663 F.2d 229, 232 (D.C. Cir. 1981)).

¹¹⁰ *Id.* (citing 1 AM. JUR. 2D *Abandoned, Lost, and Unclaimed Property* §§ 55, 58 (2005)).

¹¹¹ *Id.* at 1007.

¹¹² Maureen E. Brady, *The Lost “Effects” of the Fourth Amendment: Giving Personal Property Due Protection*, YALE L. REV. 946, 1009 (2016) (citing *Benjamin v. Lindner Aviation, Inc.*, 534 N.W.2d 400, 406 (Iowa 1995)).

¹¹³ *Id.* at 1008-09.

¹¹⁴ *Id.* at 1009.

¹¹⁵ *United States v. Sparks*, 806 F.3d 1323, 1333 (11th Cir. 2015).

¹¹⁶ Brief of Appellant Johnson at 5, *United States v. Sparks*, 806 F.3d 1323, 1339 (11th Cir. 2015) (No. 14-12143).

¹¹⁷ *See United States v. Sparks*, 806 F.3d 1323, 1343 (11th Cir. 2015).

¹¹⁸ *Id.*

¹¹⁹ *See United States v. Sparks*, 806 F.3d 1323, 1352-54 (11th Cir. 2015) (Martin, J., dissenting).

¹²⁰ Maureen E. Brady, *The Lost “Effects” of the Fourth Amendment: Giving Personal Property Due Protection*, YALE L. REV. 946, 964 (2016).

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 918140.