# APPENDIX

# APPENDIX

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## APPENDIX A

**THE STATE OF SOUTH CAROLINA**
**In the Supreme Court**

**Opinion No. 27814**

**[Filed June 13, 2018]**

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| LAMAR SEQUAN BROWN, | ) |
| Petitioner, | ) |
| | ) |
| v. | ) |
| | ) |
| THE STATE, Respondent. | ) |

Appellate Defender David Alexander, of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Assistant Attorney General William M. Blitch Jr., both of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston; all for Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

**JUSTICE FEW**: In this appeal we address whether the digital information stored on a cell phone may be abandoned such that its privacy is no longer protected by the Fourth Amendment. The trial court determined the information on the cell phone in this case had been abandoned, and admitted it into evidence. A divided panel of the court of appeals affirmed. *State v. Brown*, 414 S.C. 14, 776 S.E.2d 917 (Ct. App. 2015). We affirm the court of appeals.

## I. Facts and Procedural History

On December 22, 2011, one of the victims and his girlfriend returned from dinner to his condominium on James Island in the city of Charleston. The victim testified they went straight to the living room because "I had arranged all of her Christmas presents . . . on the center coffee table." While she was opening the presents, he heard a phone ringing down the hall toward the bedrooms. Initially, he assumed the phone belonged to his roommate or her boyfriend. After the phone rang a few times, he saw a light and feared it might be someone with a flashlight. He testified, "I got a little nervous so I got up and told my girlfriend to stay in the living room and I walked down the hall and [saw] the ringing phone . . . on my bedroom floor." When he turned on his bedroom light, he realized his home had been burglarized. His "window had been broken out" and there was "glass everywhere." The burglar stole his television, his laptop computer, two of his roommate's laptops, and some of her jewelry.

The victim called the police. The first officer on the scene took the cell phone to the police station and secured it in a locker in the evidence room. Six days later, Detective Jordan Lester retrieved the cell phone and was able to observe "a background picture of a black male with dreadlocks." Considering the phone to be "abandoned property," he guessed the code to unlock the screen—1-2-3-4—and opened the phone without a warrant. Detective Lester looked through the "contacts" stored on the phone and found a person listed as "Grandma." He entered "Grandma's" phone number into a database called Accurint and identified a list of her relatives, which included a man matching the age of the person pictured on the background

screen of the cell phone—Lamar Brown. Detective Lester then entered Brown's name into the South Carolina Department of Motor Vehicles database and looked at Brown's driver's license photograph. After comparing the photographs, Detective Lester determined Brown was the man pictured on the screen of the cell phone.

Detective Lester sent other officers to Brown's home to question him. The officers showed Brown the cell phone and informed him it was found at the scene of a burglary. Brown admitted the phone belonged to him, but claimed he lost it on December 23rd—one day after the burglary occurred. Brown also admitted that no one else could have had his cell phone on December 22nd. After questioning Brown, the police charged him with burglary in the first degree.

At trial, Brown's counsel moved to suppress all evidence obtained from the cell phone on the ground Detective Lester conducted an unreasonable search of the phone in violation of Brown's Fourth Amendment rights. The trial court found Brown had no reasonable expectation of privacy in the information stored on the phone because he abandoned it. The jury convicted Brown of first-degree burglary, and the trial court sentenced him to eighteen years in prison. We granted Brown's petition for a writ of certiorari to review the court of appeals' opinion affirming his conviction.

## II. Analysis

The Fourth Amendment guarantees us the right to be free from unreasonable searches and seizures. U.S. CONST. amend. IV; *see also* S.C. CONST. art. I, § 10. "Abandoned property," however, "has no protection

from either the search or seizure provisions of the Fourth Amendment." *State v. Dupree*, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995) (citing *California v. Greenwood*, 486 U.S. 35, 40-41, 108 S. Ct. 1625, 1628-29, 100 L. Ed. 2d 30, 36-37 (1988)). Under a standard abandonment analysis, "the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy." *Dupree*, 319 S.C. at 457, 462 S.E.2d at 281 (quoting *City of St. Paul v. Vaughn*, 237 N.W.2d 365, 371 (Minn. 1975)). As the Fourth Circuit has described it, "When a person voluntarily abandons his privacy interest in property, his subjective expectation of privacy becomes unreasonable . . . ." *United States v. Stevenson*, 396 F.3d 538, 546 (4th Cir. 2005); *see also id.* ("'[T]he proper test for abandonment is ... whether the complaining party retains a reasonable expectation of privacy in the [property] alleged to be abandoned.'" (quoting *United States v. Haynie*, 637 F.2d 227, 237 (4th Cir. 1980))). In any Fourth Amendment challenge, "defendants must show that they have a legitimate expectation of privacy in the place searched." *State v. Missouri*, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004) (citing *Rakas v. Illinois*, 439 U.S. 128, 143, 99 S. Ct. 421, 430, 58 L. Ed. 2d 387, 401 (1978)). When the reasonable expectation of privacy is relinquished through abandonment, the property is no longer protected by the Fourth Amendment. *Dupree*, 319 S.C. at 457, 462 S.E.2d at 281.

Brown contends, however, the reasoning of the Supreme Court of the United States in *Riley v. California*, 573 U.S. ___, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014), fundamentally alters the abandonment analysis when the property in question is the digital

information stored on a cell phone. In *Riley*, the Supreme Court described in extensive detail the manner in which "[c]ell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person." 573 U.S. at ___, 134 S. Ct. at 2489, 189 L. Ed. 2d at 446. Among the many observations the Court made to explain these differences, the Court stated, "many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate," 573 U.S. at ___, 134 S. Ct. at 2490, 189 L. Ed. 2d at 447, "Data on a cell phone can also reveal where a person has been[,] ... and can reconstruct someone's specific movements down to the minute, ... within a particular building," 573 U.S. at ___, 134 S. Ct. at 2490, 189 L. Ed. 2d at 448, and "a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house," 573 U.S. at ___, 134 S. Ct. at 2491, 189 L. Ed. 2d at 448. The Court concluded, "Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans 'the privacies of life.'" 573 U.S. at ___, 134 S. Ct. at 2494-95, 189 L. Ed. 2d at 452 (quoting *Boyd v. United States*, 116 U.S. 616, 630, 6 S. Ct. 524, 532, 29 L. Ed. 746, 751 (1886)).

We certainly agree with Brown that the reasoning of *Riley* is important to the Fourth Amendment analysis any time the police conduct a warrantless search of the digital information on a cell phone. We find, however, that *Riley* does not alter the standard

abandonment analysis.[1] Rather, the unique character of cell phones described in *Riley* is one factor a trial court should consider when determining whether the owner has relinquished his expectation of privacy.

Turning to the abandonment analysis the trial court conducted in this case, we review the trial court's decision for clear error. *State v. Moore*, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016). This means we "must affirm if there is any evidence to support the trial court's [factual] ruling," 415 S.C. at 251, 781 S.E.2d at 900, but we "review[] questions of law de novo," *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014).

We begin our review of the trial court's finding that Brown abandoned his phone with the factual premise of *Riley*, that cell phones hold "the privacies of life." 573 U.S. at ___, 134 S. Ct. at 2494-95, 189 L. Ed. 2d at 452. Brown's expectation that this privacy would be honored—at least initially—is supported by the fact he put a lock on the screen of the phone. As the court of appeals in this case stated, "the act of locking the

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[1] Other courts have considered whether the digital information stored on a cell phone may be abandoned for purposes of the Fourth Amendment and found that it had been abandoned. *See United States v. Crumble*, 878 F.3d 656, 659-60 (8th Cir. 2018) (holding the warrantless search of a cell phone did not violate the Fourth Amendment because the defendant abandoned it); *United States v. Sparks*, 806 F.3d 1323, 1347 (11th Cir. 2015) (same); *State v. Samalia*, 375 P.3d 1082, 1089 (Wash. 2016) (same); *but see State v. K.C.*, 207 So. 3d 951, 956 (Fla. Dist. Ct. App. 2016) (holding that "a categorical rule permitting warrantless searches of abandoned cell phones, the contents of which are password protected, is . .. unconstitutional" (relying on *Brown*, 414 S.C. at 32, 776 S.E.2d at 927 (Konduros, J., dissenting))).

container . . . demonstrates to a law enforcement officer that the owner of the container *started out* with an expectation of privacy in the container's contents." 414 S.C. at 27, 776 S.E.2d at 924. At least until the time of the burglary, therefore, Brown enjoyed Fourth Amendment protection for the digital information stored on his phone.

Additionally, we can presume Brown did not intentionally leave his cell phone at the scene of the crime, for he must have known that doing so would lead to the discovery that he was the burglar. Thus, it is unlikely a police officer would believe the mere act of leaving the phone at the scene of the crime was an intentional relinquishment of his privacy. For at least a short period of time after the crime, therefore, the phone might not yet have been abandoned. However, when a person loses something of value—whether valuable because it is worth money or because it holds privacies—the person who lost it will normally begin to look for the item. In this case, the phone sat in the evidence locker at the police station for six days. The record contains no evidence Brown did anything during this time to try to recover his phone. While Brown might have taken action to protect his privacy before he left it at the victim's condominium, there is no evidence he did anything after that to retain the privacy he previously had in the phone's digital contents. There is no evidence he tried to call the phone to see if someone would answer. There is no evidence he attempted to text the phone in hopes the text would show on the screen, perhaps with an alternate number where Brown could be reached, or perhaps even with a message that he did not

relinquish his privacy in the contents of the phone.[2] There is no evidence he attempted to contact the service provider for information on the whereabouts of the phone. Instead, he contacted his service provider and canceled his cellular service to the phone. And there is certainly no evidence he went back to the scene of the crime to look for it, or that he attempted to call the police to see if they had it.

We would expect that a person who lost a cell phone that has value because of the privacies it holds would look for the phone in one or more of the ways described above. On the other hand, the reason a burglar would not look too hard to find a phone he lost during a burglary is obvious. Brown put himself in the difficult position of having to balance the risk that finding the phone would incriminate him against the benefit of retrieving the private digital information stored in it. Looking at these facts objectively, any police officer would assume after six days of no efforts by the owner to recover this phone—especially under the circumstance that the owner left the phone at the scene of a burglary—that the owner had decided it was too risky to try to recover it. Brown's decision not to attempt to recover the phone equates to the abandonment of the phone.

"A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable." *Missouri*, 361 S.C. at 112,

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[2] Brown's phone received numerous calls and texts after Brown left it at the scene of the burglary. However, there is no evidence Brown made or initiated any of those calls or texts.

603 S.E.2d at 596 (citing *Oliver v. United States*, 466 U.S. 170, 177, 104 S. Ct. 1735, 1741, 80 L. Ed. 2d 214, 223 (1984)). As to the first point, Brown's decision to forego looking for his phone demonstrates he did not expect to maintain his privacy in the information stored on his phone. In addition—although it is not clear Detective Lester knew this when he opened the phone—Brown told the officer who first interviewed him that he canceled cellular service to the phone when he realized "someone has [my] phone."[3] Considering these facts, Brown clearly had no "subjective expectation" that his privacy in the digital information on the phone would be preserved.

Brown even more clearly fails on the second point. Here, we pause to consider the reasoning of Judge Konduros—the dissenting judge at the court of appeals. Judge Konduros correctly points out that *Riley* "recognized the unique nature of modern cell phones, their capacity for storage of vast amounts of personal information on devices easily carried, and the resulting privacy concerns triggered," and "the decision provides guidance on the protection of privacy interests under the Fourth Amendment given substantial advancements in technology." 414 S.C. at 30, 776 S.E.2d at 926 (Konduros, J., dissenting). With this reasoning, Judge Konduros properly brings our focus back to the factual premise of *Riley*—cell phones hold "the privacies of life." 573 U.S. at ___, 134 S. Ct. at 2494-95, 189 L. Ed. 2d at 452. From this premise, Judge Konduros correctly concludes "the Court's language indicates law enforcement must obtain

[3] Brown's statement is inconsistent with the records of his cell phone provider, which indicate the service was not officially canceled until later.

warrants to search cell phones, even in cases when a person's expectation of privacy is diminished." 414 S.C. at 32, 776 S.E.2d at 927 (Konduros, J., dissenting).

In our abandonment analysis, however, the question is not whether Brown's expectation of privacy was "diminished." Rather, the question before us is whether Brown could reasonably expect to maintain any privacy interest in his phone after he chose to cancel cellular service and stop looking for it. More specifically, the question on this second point from *Missouri* is whether society will recognize as reasonable that a burglar who leaves his cell phone in a home he just robbed, and thereafter cancels service to the phone and makes no effort to recover it, nevertheless maintains a privacy interest under the Fourth Amendment in the digital information stored on the phone. Viewing the question in this posture, even considering the valid reasoning of Judge Konduros, the answer to the question is clearly, "No." The idea that a burglar may leave his cell phone at the scene of his crime, do nothing to recover the phone for six days, cancel cellular service to the phone, and then expect that law enforcement officers will not attempt to access the contents of the phone to determine who committed the burglary is not an idea that society will accept as reasonable.

To summarize, we turn to the majority opinion from the court of appeals, which we believe correctly concludes the abandonment analysis,

> When Detective Lester made the decision to unlock the phone several days later, he was aware of these

> circumstances, all of which, when considered together, provided sufficient objective facts to support his belief that any expectation of privacy in the phone and its data had been abandoned.

414 S.C. at 26, 776 S.E.2d at 924.

## III. Conclusion

Modern cell phones are not just another item of property, and the extent to which they "differ in both a quantitative and a qualitative sense from other objects" is an important factor to be considered in any abandonment analysis. Nevertheless, the standard abandonment analysis applies to cell phones. There is evidence in the record to support the trial court's finding that Brown abandoned his cell phone. The decision of the court of appeals is **AFFIRMED**.

**KITTREDGE, HEARN and JAMES, JJ., concur.**
**BEATTY, C.J., dissenting in a separate opinion.**

**CHIEF JUSTICE BEATTY**: I respectfully dissent. I would reverse the decision of the Court of Appeals and find, as did Judge Konduros in her well-reasoned dissent, Brown did not abandon his expectation of privacy in the contents of his cell phone. Accordingly, I would conclude that law enforcement's warrantless search of Brown's cell phone violated the Fourth Amendment.

The Fourth Amendment to the United States Constitution protects a person's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. "Warrantless searches and seizures are

unreasonable absent a recognized exception to the warrant requirement." *State v. Brown*, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012) (citation omitted). The State bears the burden of establishing "the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures." *State v. Gamble*, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013).

We have recognized the doctrine of abandonment as an exception to the Fourth Amendment warrant requirement. *State v. Dupree*, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995). In determining whether the defendant abandoned property for Fourth Amendment search and seizure purposes,

> the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure and search is reasonable within the limits of the Fourth Amendment. In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein.

*Id.* (citation omitted). To answer this question, a court "must determine from an objective viewpoint whether property has been abandoned." 79 C.J.S. *Searches* § 43, at 70 (2017). "[A]bandonment is a question of intent and exists only if property has been voluntarily discarded under circumstances indicating no future expectation of privacy with regard to it." 68 Am. Jur. 2d *Searches and Seizures* § 23, at 135 (2010). Intent in this context is "inferred from words, acts, and other objective facts." 79 C.J.S. *Searches* § 43, at 70 (2017).

In my view, this case presents the Court with an opportunity to consider the continued validity of the doctrine of abandonment with respect to passcode-protected digital information in a post-*Riley* era. In *Riley*, the Supreme Court of the United States consolidated two cases to determine "whether the police may, without a warrant, search digital information on a cell phone seized from an individual who has been arrested." *Riley v. California*, 134 S. Ct. 2473, 2480 (2014). In a unanimous decision authored by Chief Justice Roberts, the Court answered this question in the negative. *Id*. at 2485. More specifically, the Court concluded "[o]ur answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—*get a warrant*." *Id*. at 2495 (emphasis added).

In reaching this conclusion, the Court prefaced its analysis by stating:

> Absent more precise guidance from the founding era, we generally determine whether to exempt a given type of search from the warrant requirement "by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Wyoming v. Houghton*, 526 U.S. 295, 300, 119 S. Ct. 1297, 143 L. Ed. 2d 408 (1999).

*Id*. at 2484. Using this analytical framework, the Court reasoned that:

> while *Robinson*'s[4] categorical rule strikes the appropriate balance in the context of physical objects, neither of its rationales has much force with respect to digital content on cell phones. On the government interest side, *Robinson* concluded that the two risks identified in *Chimel*[5]—harm to officers and destruction of evidence—are present in all custodial arrests. There are no comparable risks when the search is of digital data. In addition, *Robinson* regarded any privacy interests retained by an individual after arrest as significantly diminished by the fact of the arrest itself. Cell phones, however, place vast quantities of personal information

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[4] *United States v. Robinson*, 414 U.S. 218 (1973) (concluding that, following a custodial arrest, the warrantless search of defendant's person, the inspection of a crumpled cigarette package found on defendant's person, and the seizure of heroin capsules found in the package were permissible under the Fourth Amendment).

[5] *Chimel v. California*, 395 U.S. 752, 763 (1969) (holding that a search incident to an arrest may only include "the arrestee's person and the area 'within his immediate control'–construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence"), *abrogated by Arizona v. Gant*, 556 U.S. 332 (2009) (concluding search of defendant's vehicle, while defendant was handcuffed and locked in the back of a patrol car following an arrest for driving with a suspended license, did not fall within the search incident to arrest exception to the Fourth Amendment's warrant requirement as the safety and evidentiary justifications underlying *Chimel*'s reaching-distance rule were not present).

> literally in the hands of individuals. A search of the information on a cell phone bears little resemblance to the type of brief physical search considered in *Robinson*.
>
> We therefore decline to extend *Robinson* to searches of data on cell phones, and *hold instead that officers must generally secure a warrant before conducting such a search*.

*Id*. at 2484–85 (emphasis added).

Although the Court issued this categorical rule, it noted that "other case-specific exceptions," primarily the exigent circumstances exception, "may still justify a warrantless search of a particular phone." *Id*. at 2494. The Court explained, "[t]he critical point is that, unlike the search incident to arrest exception, the exigent circumstances exception requires a court to examine whether an emergency justified a warrantless search in each particular case." *Id*.

In my view, the majority fails to appreciate the full import of the *Riley* decision. While the majority discusses *Riley*, it concludes that "*Riley* does not alter the standard abandonment analysis." By narrowly construing the holding, the majority finds "the unique character of cell phones described in *Riley* is one factor a trial court should consider when determining whether the owner has relinquished his expectation of privacy."

In contrast to the majority, I believe *Riley* creates a categorical rule that, absent exigent circumstances,

law enforcement must procure a search warrant before searching the data contents of a cell phone. Even though the decision in *Riley* arose out of a search incident to an arrest, I discern no reason why the Supreme Court's rationale is not equally applicable with respect to the abandonment exception to the Fourth Amendment. I believe the defendant's expectation of privacy in the digital contents of a cell phone remains the same in either context.

As one legal scholar explained:

> the logic behind the Supreme Court's need to protect cell phones during arrests applies just as convincingly to cell phones left behind by their users. Categorically, the Supreme Court clearly identified that cell phones "implicate privacy concerns far beyond those implicated by the search" of any other nondigital physical item or container because of cell phones' immense storage capacity and variety of detailed information. The same invasion of privacy occurs during a warrantless search of a cell phone, regardless of whether that phone is found during an arrest or left behind by its owner. In light of the modern developments of personal technological devices and the Court's analysis in *Riley*, courts should develop a carve-out for cell phones from the abandonment exception to the Fourth Amendment and require police officers to obtain a

> search warrant before searching cell phones left behind by their owners.

Abigail Hoverman, Note, *Riley and Abandonment: Expanding Fourth Amendment Protection of Cell Phones*, 111 Nw. U. L. Rev. 517, 543 (2017) (footnote omitted).

I agree with this assessment and believe that any interpretation limiting the holding in *Riley* effectively negates its precedential value. *See State v. K.C.*, 207 So. 3d 951, 956 (Fla. Dist. Ct. App. 2016) (analyzing *Riley* and holding that "a categorical rule permitting warrantless searches of abandoned cell phones, the contents of which are password protected, is . . . unconstitutional (relying on *Brown*, 414 S.C. at 32, 776 S.E.2d at 927 (Konduros, J., dissenting) and *State v. Samalia*, 375 P.3d 1082, 1091-96 (Wash. 2016) (*en banc*) (Yu, J., dissenting))).

However, even accepting the majority's narrow interpretation of *Riley*, I would find the State failed to establish the abandonment exception to the Fourth Amendment warrant requirement.

As the majority recognizes, Brown did not voluntarily discard his cell phone. Brown also placed a passcode on his cell phone to protect his personal information from unauthorized access. *See K.C.*, 207 So. 3d at 955 (concluding that contents of defendant's cell phone, which was left in a stolen vehicle, were still protected by a password given "the password protection that most cell phone users place on their devices is designed specifically to prevent unauthorized access to the vast store of personal information which a cell phone can hold when the

phone is out of the owner's possession"). Brown never relinquished this passcode.

Further, unlike the majority, I believe there is evidence that Brown attempted to locate his phone. Notably, the victim was drawn to the bedroom by the sound of the ringing cell phone. During his testimony, the victim stated that the phone rang "over and over and over." The cell phone records reflect that these calls and text messages were initiated by individuals known to Brown as they were identified in the contact list stored on his cell phone. The cell phone records also reflect that the phone received calls and text messages from the evening of December 22, 2011, until at least January 3, 2012. Without evidence to the contrary, one can only infer that Brown initiated these contacts in order to find his cell phone. Additionally, on January 22, 2012, Brown contacted the cell phone service provider to discontinue service on the cell phone. By discontinuing cell phone service, Brown deactivated the lost cell phone to prevent the use of and access to the phone. Also, when questioned by law enforcement, Brown never disclaimed ownership of the cell phone.

In my view, these objective facts demonstrate Brown's intent to retain his expectation of privacy in the contents of his cell phone. *See* 79 C.J.S. *Searches* § 43, at 70 (2017) (noting that a court, when determining whether property has been abandoned in the context of search and seizure analysis, must look at the "totality of the circumstances, paying particular attention to explicit denials of ownership and to any physical relinquishment of the property"). Because there were no exigent circumstances presented, I

would find law enforcement was required to obtain a warrant prior to the search of Brown's cell phone.

This decision in no way limits the ability of law enforcement to access the data contents of a cell phone that is unintentionally discarded near or at the scene of a crime. Rather, as explained by Chief Justice Roberts in *Riley*, it "is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest." *Riley*, 134 S. Ct. at 2493.

Finally, I believe my conclusion effectuates the intent of *Riley*, but, even more importantly, ensures the heightened level of protection afforded by the express right to privacy found in the South Carolina Constitution. *See* S.C. Const. art. I, § 10 ("The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated . . . ."); *State v. Weaver*, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007) ("By articulating a specific prohibition against 'unreasonable invasions of privacy,' the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution. Accordingly, the South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment." (citation omitted)).

Based on the foregoing, I would find the trial court erred in denying Brown's motion to suppress as law enforcement's warrantless search violated the Fourth

Amendment. Accordingly, I would reverse the decision of the Court of Appeals.

## APPENDIX B

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

| | |
|---|---|
| STATE OF SOUTH CAROLINA, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| LAMAR SEQUAN BROWN | ) |
| | ) |
| Defendant. | ) |

Appellate Case No. 2013-000725

APPEAL FROM CHARLESTON COUNTY
J. C. NICHOLSON JR., CIRCUIT COURT JUDGE

Opinion No. 5355
Heard May 5, 2015 — Filed September 23, 2015

**AFFIRMED**

Appellate Defender David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General Salley W. Elliott, both of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

**THOMAS, J.:** Lamar Sequan Brown appeals his conviction for first-degree burglary, arguing the trial court erred in admitting evidence obtained from a warrantless search of the contents of his code-locked cell phone. We affirm.

Facts And Procedural History

The two victims shared a first-floor condominium in Charleston County. Neither was home during the evening of Thursday, December 22, 2011. Sometime after 10:30 p.m. that night, one of the victims heard a phone ring after he returned to the residence. When he went to investigate, he saw an unfamiliar cell phone on the floor and noticed a window had been broken, his television was gone, and his bedroom had been ransacked. The victim claimed he "immediately knew that [the cell phone] was none of ours."

When the police arrived, the victim who discovered the burglary gave Officer Matthew Randall the unfamiliar cell phone. Officer Randall took the phone to the police station and placed it inside a secure box by the evidence desk. Fingerprints could not be obtained from the phone because the victim had handled it. Attempts to take fingerprint evidence from the crime scene were also unsuccessful.

Jordan Lester, the lead detective assigned to the case, began his investigation on December 28, 2011, and learned nobody had claimed the phone found at the crime scene. Considering the phone abandoned, Detective Lester opened the phone and noticed the background picture portrayed a black male with

dreadlocks.[1] Detective Lester then searched the contacts list to look for a possible relative. He found an entry for "Grandma," took the corresponding number, entered it into a comprehensive database maintained by the Charleston Police Department, and obtained a list of relatives and their age ranges. Using this information, Detective Lester accessed records of the South Carolina Department of Motor Vehicles (DMV), found a driver's license photograph that matched the image on the phone, and obtained a name and address for the individual in question. The individual was identified as Lamar S. Brown.

Later the same day, Officer Dustin Thompson visited Brown at the address Detective Lester obtained from the DMV records. After Officer Thompson informed Brown he was investigating a burglary, Brown agreed to speak with him privately. The two went into Officer Thompson's vehicle to discuss the matter. Although Brown was given *Miranda*[2] warnings, he was not handcuffed or placed under arrest.

While questioning Brown, Officer Thompson did not initially disclose that the burglary he was investigating had taken place on December 22, 2011. Brown told Officer Thompson he lost his phone on Friday, December 23, 2011. Brown claimed he had the phone with him when he drove to the store but could not find it when he returned to his vehicle. Brown stated he disconnected service to the phone when he

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[1] The phone was protected by a passcode, but Detective Lester unlocked the phone by entering "1-2-3-4," which he described as a "lucky guess."

[2] *Miranda v. Arizona,* 384 U.S. 436 (1966).

learned from a friend that someone else had it. When Officer Thompson asked Brown whether he left his home between 6:00 p.m. and midnight on December 22, 2011, Brown answered he did not. Brown also told Officer Thompson no one else had possession of his phone during that time. When Officer Thompson showed Brown the phone found at the victims' residence on the night of the burglary, he acknowledged the phone belonged to him.

During the meeting, Brown signed a form with printed language indicating he had been advised of his *Miranda* rights but chose to waive them and answer questions concerning a possible burglary charge. The form also included a handwritten "witness statement" on which Officer Thompson's questions and Brown's answers were recorded. Some of the responses were written by Brown himself.

Subsequently, police obtained consent to search Brown's residence but did not recover any of the stolen items. A warrant for Brown's arrest was issued on December 29, 2011, and he was arrested a few weeks later.

On November 5, 2012, Detective Lester obtained a search warrant for records from T-Mobile, the service provider for Brown's phone. The warrant directed T-Mobile to provide its records from December 9, 2011, to January 3, 2012, for the number assigned to the phone. The information T-Mobile provided revealed the phone was deactivated on January 22, 2012, apparently later than when Brown indicated he

cancelled his service.[3] T-Mobile's records also showed activity on the phone during the interval the victims were away from the residence.

On November 13, 2012, a grand jury indicted Brown for first-degree burglary, and he proceeded to trial on March 6, 2013. During a pretrial hearing, Brown moved to suppress all evidence obtained from his cell phone, arguing his Fourth Amendment rights were violated because the police did not obtain a search warrant before unlocking the phone. In the jury's absence, the trial court heard testimony from Detective Lester and Officer Thompson on the motion.[4]

The trial court initially found Brown had a Fourth Amendment expectation of privacy in the phone because it was passcode-protected. However, the court denied Brown's motion to suppress, concluding that regardless of whether the phone was inadvertently dropped or deliberately discarded at the victims' residence, this expectation of privacy had been abandoned. During the State's case-in-chief, Brown made several unsuccessful motions based on his

---

[3] A T-Mobile representative testified the phone would not have been automatically deactivated; an individual would have to call T-Mobile to deactivate the phone.

[4] The trial court also heard a motion in limine from Brown regarding the admission of testimony from the clerk of court that Brown had two prior burglary convictions. The State advised that Brown actually had six prior convictions but it would limit the evidence to two convictions pursuant to *State v. Benton*, 338 S.C. 151, 526 S.E.2d 228 (2000), to satisfy a required element of burglary in the first degree. The court allowed the State to present evidence of the convictions but prohibited evidence on the underlying facts. Brown has not appealed this ruling.

pretrial objection to suppress evidence obtained directly or indirectly from the warrantless search of his cell phone.

After the State rested, Brown declined to testify and did not call any witnesses. The jury found Brown guilty as charged, and Brown moved for a new trial based on his previous Fourth Amendment objections. The trial court denied the motion and sentenced Brown to eighteen years' imprisonment. This appeal followed.

## Issue On Appeal

Did the trial court's admission of evidence obtained from the warrantless search of Brown's code-locked cell phone violate Brown's Fourth Amendment rights?

## Standard Of Review

When reviewing a trial court's ruling on the admissibility of evidence in a Fourth Amendment search and seizure case, the appellate court "will review the trial court's ruling like any other factual finding and reverse if there is clear error." *State v. Brockman*, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). The appellate court "will affirm if there is any evidence to support the ruling." *Id.*; *see also Robinson v. State*, 407 S.C. 169, 180-81, 754 S.E.2d 862, 868 (2014) ("On appeal from a motion to suppress on Fourth Amendment grounds, [appellate courts] appl[y] a deferential standard of review and will reverse only if there is clear error.").

Law/Analysis

Brown argues the police needed a warrant to search his phone and no exception to the warrant requirement applied to the facts of this case. He disputes the trial court's finding that he abandoned his expectation of privacy in his phone, asserting he maintained this expectation by locking the phone with a passcode. The purpose of the passcode, Brown claims, was to protect sensitive personal information contained within the phone rather than to protect the phone itself.

The State argues the trial court properly found the police could search the phone without a warrant because it was abandoned property left at the scene of a crime. We agree with the State.

The Fourth Amendment to the United States Constitution recognizes "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Our state constitution also recognizes this right. *See* S.C. Const. art. I, § 10 (containing language nearly identical to that in the Fourth Amendment). "[Title ultimate measure of the constitutionality of a governmental search is 'reasonableness." *Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646, 652 (1995). "Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant." *Id.* at 653.

In *Riley v. California,* 134 S. Ct. 2473 (2014), a decision issued after Brown's trial, the Supreme Court

of the United States addressed the constitutionality of a warrantless search of a cell phone seized incident to a lawful arrest. Although the present case does not involve such a search, we are mindful of the Court's recognition that the immense storage capacity of modern cell phones presents privacy concerns that have not arisen in searches of other physical items:

> The storage capacity of cell phones has several interrelated consequences for privacy. First, a cell phone collects in one place many distinct types of information . . . that reveal much more in combination than any isolated record. Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible. . . . Third, the data on a phone can date back to the purchase of the phone, or even earlier. . . .
>
> Finally, there is an element of pervasiveness that characterizes cell phones but, not, physical records. Prior to the digital age, people did not typically carry a cache of sensitive personal information with them as they went about their day. Now it is the person who is not carrying a cell phone, with all that it' contains, who is the exception...
>
> Although the data stored on a cell phone is distinguished from physical records by quantity alone, certain types of data are also qualitatively different.

*Id.* at 2489,-90.[5]

Based on these considerations, the Court refused to extend its holding in *United States v. Robinson,* 414 U.S. 218, 224 (1973), that &Spite the absence of any concern about loss of evidence or weapons within the defendant's reach, the arresting officer's actions in (1) removing a crimpled cigarette package from the defendant's person during the arrest, (2) opening it, and (3) discovering capsules of white powder that later proved to be heroin "did not offend the limits imposed by the Fourth Amendment." The Court in *Riley* expressly "decline[d] to extend *Robinson* to searches of data on cell phones:" *Riley,* 134 S. Ct. at 2485. Rather, the Court stated:

> Modern cell phones are not just another technological convenience. With all they contain and all they may

[5] The Court actually considered two cases that were consolidated for appeal, both of which raised the question of whether the police had the right to perform a warrantless search of digital information on a cell phone seized from an arrestee. Riley, 134 S. Ct. at 2480. One case involved a "smart phone," which: had "a broad range of other functions based on advanced computing capability, large storage capacity, and Internet connectivity." *Id* The cell phone at issue in the companion appeal was a "flip phone," which the Court described as "a kind of phone that is flipped open for use and that generally has a smaller range of features than a smart phone." *Id.* at 2481. Although the Court's analysis-appears to focus on privacy concerns arising from the more contemporary smart phones, the Celia expressed-similar concerns regarding basic, older model phones such as the phone at-issue in the present appeal. *See id.* at 2489 ("Even the most basic phones that sell for less than $20 might hold photographs, picture messages, text messages, Internet browsing history, a calendar, a thousand-entry phone book, and so on.").

> reveal, they hold for many Americans "the privacies of life[.]" The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.

*Id.* at 2494-95 (citation omitted).

Despite the decisive tone in these statements, the Court did not require law enforcement officers to obtain a warrant to search every cell phone that falls into their possession. *See id.* at 2494 ("[E]ven though the search incident to arrest exception does not apply to cell phones, other case-specific exceptions may still justify a warrantless search of a particular phone."). Although "a warrantless search is per se unreasonable and violative of the Fourth Amendment," there are "several well-recognized exceptions to the warrant requirement." *State v. Morris,* 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015). Our supreme court has recognized the doctrine *23 of abandonment as one such exception to the Fourth Amendment warrant requirement. *State v. Dupree*, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995). Under this doctrine, "[a]bandoned property has no protection from either the search or seizure provisions of the Fourth Amendment." *Id.; see also United States v. Tugwell,* 125 F.3d 600, 602 (8th Cir.1997) ("A warrantless search of abandoned property does not implicate the Fourth Amendment, for any expectation of privacy in

the item searched is forfeited upon its abandonment.").

"[T]he Fourth Amendment is not triggered unless a person has an actual and reasonable expectation of privacy or unless the government commits a common-law trespass for the purpose of obtaining information." *State v. Robinson,* 410 S.C. 519, 527, 765 S.E.2d 564, 568 (2014) (citation omitted). Whether such an expectation of privacy has been abandoned "is determined on the basis of the objective facts available to the investigating officers, not on the basis of the owner's subjective intent." *Tugwell,* 125 F.3d at 602; *see also State v. Taylor,* 401 S.C. 104, 119, 736 S.E.2d 663, 670-71 (2013) ("Whether a Fourth Amendment violation has occurred turns on an objective assessment of [an officer's] actions in light of the facts and circumstances confronting him at the time . . .." (alteration by court) (internal quotation marks omitted)). Moreover, in determining whether property has been abandoned in the Fourth Amendment context, the inquiry is not whether the owner of the property has relinquished his or her interest in it such that another, having acquired possession, may successfully assert a superior interest. *Dupree,* 319 S.C. at 457, 462 S.E.2d at 281. Rather, "'the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure and search is reasonable within the limits of the Fourth Amendment. In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein.'" *Id.* (quoting *City of St. Paul v. Vaughn,* 237 N.W.2d 365, 371 (Minn. 1975)).

Here, during the suppression hearing, the State advised the trial court of case law supporting the proposition that Brown's apparent lack of effort to locate his phone after it was discovered at the crime scene was objective evidence establishing he abandoned any reasonable expectation of privacy in the phone and its data. Among the cases the State cited to the trial court was *United States v. Oswald,* 783 F.2d 663 (6th Cir. 1986), which concerned the denial of a motion to suppress drugs found during a warrantless search of a locked metal briefcase taken by the police from the locked trunk of a burned-out automobile the defendant left on the berm of an interstate highway. The trial court found the defendant had already abandoned both the car and the items left inside before responding law enforcement officers found and searched the briefcase inside the car trunk. *Id.* at 664-65. In affirming the finding of abandonment, the United States Court of Appeals for the Sixth Circuit stated:

> [A] guilty conscience cannot create an expectation of privacy that would not otherwise exist. Where an ordinary person could fairly be said to have abandoned his privacy interests by failing to come forward, a reasonable expectation of privacy cannot be thought to have been retained solely by virtue of the fact that the person happens to be guilty of a crime.

*Id.* at 667. Although the court expressly noted Oswald locked both the briefcase and car trunk, these precautions were not mentioned as possible reasons to support a finding that he continued to maintain an

expectation of privacy after fleeing from the burning automobile. *Id.* On the contrary, the court determined Oswald's flight "provided objective abandonment evidence." *Id.* at 669.

The State also cited *People v. Daggs,* 34 Cal. Rptr. 3d 649 (Cal. Ct. App. 2005), during the suppression hearing. *Daggs* involved the warrantless search of the defendant's cell phone, which was found shortly after a robbery at a drug store. *Id.* at 650. After no one came forward to claim the phone during the twenty to thirty minutes the officers remained at the store, the phone was booked into evidence at the police station, where it remained unclaimed for one week. *Id.* A passcode had been installed on the phone, but a detective discovered the phone's electronic serial number and other numbers by removing the battery. *Id.* at 650-51. Using these numbers, the detective procured a search warrant to release the subscriber's name, telephone number, and telephone records; however, the detective did not obtain a search warrant before removing the battery. *Id.* at 651. The subscriber was the defendant's brother, who told the police he had given the phone to the defendant. *Id.*

After the trial court denied the defendant's motion to suppress this evidence, the defendant entered a plea of no contest to one count of robbery. *Id.* at 650. The California Court of Appeal affirmed the trial court's finding the defendant abandoned his phone at the scene of the robbery. *Id.* The court held no unlawful search took place when the police removed the battery to view the numbers identifying the phone and gave the following explanation for its decision:

Defendant contends . . . that since it was undisputed that he *accidentally* dropped the phone at Walgreen's, the court could not find that he intentionally or voluntarily discarded it. Defendant's testimony, assuming it were credited, would support an inference that at the moment he first dropped the phone he did not subjectively intend to discard it. Nonetheless, his own testimony also unequivocally established that as soon as he realized he had left the phone behind, he made a conscious and deliberate decision not to reclaim his phone, and never did. He therefore voluntarily abandoned it.

In any event, the intent to abandon is determined by objective factors, not the defendant's subjective intent. Abandonment is primarily a question of intent, and intent may be inferred from words, acts, and other *objective* facts. Abandonment here is not meant in the strict property-right sense, but rests instead on whether the person so relinquished his interest in the property that he no longer retained a reasonable expectation of privacy in it at the time of the search. [The victim] informed the officers who found the phone at the scene that he had not seen the cell phone in that area prior to his confrontation with the robber. No one else at the scene claimed the phone, nor

> did anyone assert a claim to it in the week after the robbery. Therefore, when the police seized the phone, and certainly by the time [police] finally performed the challenged search, these circumstances were all objective indications that defendant had discarded the phone, and would not reclaim it.

*Id.* at 651-52 (citations and internal quotation marks omitted).

*Oswald* and *Daggs* establish that an individual can abandon an expectation of privacy in the contents of a locked container, including a cell phone, when objective facts support law enforcement's belief the owner of the container has forgone his intent to protect the container or its contents. *See also Wilson v. State,* 966 N.E.2d 1259, 1264 (Ind. Ct. App. 2012) (rejecting a defendant's argument that he did not abandon a car when he locked the car before fleeing from police and holding "the fact that the vehicle was locked does not necessarily negate a reasonable inference that [the defendant] abandoned it"); *State v. Smith,* 681 So. 2d 980, 989 (La. Ct. App. 1996) (same); *State v. List,* 636 A.2d 1097, 1100-01 (N.J. Super. Ct. Law Div. 1990) *aff'd,* 636 A.2d 1054 (N.J. Super. Ct. App. Div. 1993) (holding the defendant abandoned any expectation of privacy in a locked desk and file cabinets inside his house when law enforcement were aware of the following objective facts before searching the desk and cabinets: defendant's neighbors had not seen or heard from the defendant or his family in weeks, light bulbs in the defendant's house were burning out and not being replaced, and the defendant

left an envelope on the desk containing the keys to the desk and file cabinets and a note instructing the finder of the note to "contact the proper authorities").

In the case *sub judice,* the trial court admitted evidence obtained from Brown's cell phone, finding any expectation of privacy Brown had in the phone had been abandoned by the time the police searched it. All the evidence presented during the suppression hearing supports the trial court's conclusion. The State's witnesses testified the phone had been in police custody for at least five days. Brown did not dispute that the phone was found in a private residence shortly after the residence was burglarized. The phone did not belong to anyone who lived at or frequented the residence, and no evidence of any attempts to reclaim the phone after it was confiscated by the police was presented. When Detective Lester made the decision to unlock the phone several days later, he was aware of these circumstances, all of which, when considered together, provided sufficient objective facts to support his belief that any expectation of privacy in the phone and its data had been abandoned. *See Tugwell,* 125 F.3d at 602 (explaining whether one has abandoned an expectation of privacy "is determined on the basis of the *objective facts available to the investigating officers, not on the basis of the owner's subjective intent"* (emphasis added)); *Daggs,* 34 Cal. Rep. at 652 ("[T]he intent to abandon is determined by objective factors, not the defendant's subjective intent. Abandonment is primarily a question of intent, and intent may be inferred from words, acts, and other *objective* facts." (internal quotation marks omitted)).

The dissent distinguishes *Oswald* on the basis that a cell phone contains much more information than a locked briefcase is capable of containing. However, this misses the point because it is not the volume of a locked container's contents that determines whether or not the container and its contents have been abandoned under the Fourth Amendment, *See Riley,* 134 S. Ct. at 2494 (discussing the massive storage capabilities of modern cell phones but acknowledging "case-specific exceptions may still justify a warrantless search of a" cell phone). Rather, it is the objective indicia of the owner's intent, viewed from the perspective of law enforcement, to forgo protecting the container or its contents that determines whether the owner has abandoned them. *See Tugwell,* 125 F.3d at 602 (explaining whether one has abandoned an expectation of privacy "is determined on the basis of the *objective facts available to the investigating officers, not on the basis of the owner's subjective intent"* (emphasis added)); *Taylor,* 401 S.C. at 119, 736 S.E.2d at 670-71 (stating "[w]hether a Fourth Amendment violation has occurred turns on an *objective assessment* of [an officer's] actions in light of the facts and circumstances confronting him at the time" (second alteration by court) (emphasis added) (internal quotation marks omitted)). Locking a container does not erase these objective indicia because the act of locking the container merely demonstrates to a law enforcement officer that the owner of the container *started out* with an expectation of privacy in the container's contents. One may start out with a desire to protect the container's contents only to later abandon the container and its contents upon experiencing a superior desire to avoid being arrested for a crime. *See Oswald,* 783 F.2d at 667 ("[A] guilty conscience cannot create an expectation of

privacy that would not otherwise exist."). This is precisely what the circuit court held when it ruled that Brown had a reasonable expectation of privacy in the phone but later abandoned that expectation by discarding the phone.

Whether a container is locked or unlocked, once a reasonable amount of time in which to claim the container and its contents has passed, an objective assessment of the circumstances leads a law enforcement officer to the inescapable conclusion that the owner of the container has abandoned the container and its contents. *See United States v. Basinski,* 226 F.3d 829, 836 (7th Cir. 2000) ("Because this is an objective test, it does not matter whether the defendant harbors a desire to later reclaim an item; we look solely to the external manifestations of his intent as judged by a reasonable person possessing the same knowledge available to the government agents."); *Oswald,* 783 F.2d at 667 ("Where an ordinary person could fairly be said to have abandoned his privacy interests by failing to come forward, a reasonable expectation of privacy cannot be thought to have been retained solely by virtue of the fact that the person happens to be guilty of a crime."). More specifically, in the case of a smartphone, the mere use of a passcode does not always lead law enforcement to conclude the owner of the phone retained an expectation of privacy in the phone and its contents when other objective facts to the contrary are available.

Accordingly, consistent with our standard of review, we hold the trial court properly admitted evidence obtained from Brown's cell phone because all the evidence offered at the suppression hearing

established that at the time Detective Lester searched Brown's cell phone, objective facts supported his belief that Brown had abandoned any expectation of privacy in the phone and its data, and therefore, Detective Lester was not required to obtain a warrant before searching the phone. *See Brockman,* 339 S.C. at 66, 528 S.E.2d at 666 (explaining a trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence); *Dupree,* 319 S.C. at 457, 462 S.E.2d at 281 (explaining [a]bandoned property has no protection from *either the search or seizure provisions* of the Fourth Amendment" (emphasis added)). As a result, we affirm the trial court's denial of Brown's motion to suppress evidence obtained from the warrantless search of his cell phone based on the abandonment exception to the warrant requirement.

## Conclusion

We hold, based on our standard of review, the State presented evidence at the suppression hearing that supported the trial court's finding of abandonment. Thus, we affirm the trial court's decision to admit evidence obtained from the warrantless search of Brown's cell phone.[6]

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[6] The State also argues the evidence obtained from Brown's cell phone was admissible pursuant to the independent source doctrine. Because we conclude the evidence was admissible under the abandonment exception to the warrant requirement, we need not address the State's independent source argument. *See Futch v. McAllister Towing of Georgetown, Inc.,* 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues on appeal when its determination of a prior issue is dispositive).

**AFFIRMED.**

**GEATHERS, J.**, concurs.

**KONDUROS, J.:** I respectfully dissent. I would find Brown did not abandon his expectation of privacy in the contents of his cell phone and therefore, law enforcement's warrantless search violated the Fourth Amendment.

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." U.S. Const. amend. IV. Generally, "a warrantless search is per se unreasonable and violative of the Fourth Amendment," unless an exception applies. *State v. Morris,* 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015).

The doctrine of abandonment, which our supreme court has recognized as an exception to the warrant requirement, provides "[a]bandoned property has no protection from either the search or seizure provisions of the Fourth Amendment." *State v. Dupree,* 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995). In determining whether property has been abandoned in the Fourth Amendment search and seizure context,

> the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure and search is reasonable within the limits of the Fourth Amendment. In essence, what is abandoned is not necessarily the defendant's property,

> but his reasonable expectation of privacy therein.

*Id.* (internal quotation marks omitted).

The United States Supreme Court recently held law enforcement must generally obtain a warrant before searching the contents of a cell phone seized pursuant to a search incident to arrest. *Riley v. California,* 134 S. Ct. 2473, 2493-95 (2014). The Court's "answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant." *Id.* at 2495. In distinguishing other physical objects obtained during searches incident to arrest, the Court recognized the unique nature of modern cell phones, their capacity for storage of vast amounts of personal information on devices easily carried, and the resulting privacy concerns triggered. *Id.* at 2488-91. Although *Riley* focused on how the search incident to arrest doctrine applies to modern cell phones, the decision provides guidance on the protection of privacy interests under the Fourth Amendment given substantial advancements in technology. *Id.* (noting modern cell phones may store an immense range of sensitive personal information and a search of a cell phone "would typically expose to the government far *more* than the most exhaustive search of a house").

In my opinion, Brown did not relinquish his reasonable expectation of privacy in the *contents* of the phone merely by its discovery at the scene of a crime, especially in light of the presence of a passcode on the phone. In addition, the lack of any exigency justifying a warrantless search and the ease with which law enforcement could have obtained a warrant

demonstrates further the need to comply with the warrant requirement.

I disagree with the majority's reliance on *United States v. Oswald,* 783 F.2d 663 (6th Cir. 1986), and on *People v. Daggs,* 34 Cal. Rptr. 3d 649 (Cal. Ct. App. 2005), in affirming the trial court's conclusion. The events in *Oswald* do not involve a cell phone and occurred decades before the technology on which modern cell phones are based was fully conceivable. 783 F.2d at 663-65; *see also Riley,* 134 S. Ct. at 2484 ("Both phones [at issue in the case] are based on technology nearly inconceivable just a few decades ago."). What the defendant in *Oswald* abandoned—a locked briefcase inside the trunk of a burned-out automobile left next to the interstate—is substantially different from a cell phone discovered at the scene of a crime. 783 F.2d at 663-64. While tangible items similar to those digitally contained on a cell phone, such as photographs, contact information, and correspondence, may be stored in a briefcase, it is significantly limited compared to what may be stored on a cell phone. *Riley,* 134 S. Ct. at 2489-90.

In addition, the law enforcement officers in *Daggs* did not access the data contained on the cell phone discovered at the scene of a crime but instead procured the phone's electronic serial number by removing the battery. 34 Cal. Rptr. 3d at 650-51. Unlike opening a passcode-locked phone without first obtaining a warrant, removing the battery to the cell phone to discover a serial number does not intrude upon a person's extensive private information that may be stored therein. *Id.* Moreover, the officers in *Daggs* used the serial number to obtain a warrant for

the subscriber's name, telephone number, and telephone records, which led to the identification of the defendant. *Id.* at 651.

By contrast, the officers in the present case possessed the phone for nearly a week before unlocking it by a "lucky guess," yet did not seek a warrant, which likely would have been granted given that the cell phone was discovered at the scene of a burglary and did not belong to any of the residents. The officers' delay in accessing the cell phone belies the presence of any exigent circumstances justifying the warrantless intrusion. *See Riley,* 134 S. Ct. at 2494 (stating exigent circumstances may justify a warrantless search of a cell phone). As the majority notes, after unlocking the phone six days after the burglary, the lead detective searched through the contacts list until he found a relative, "Grandma," from whose number he then obtained a list of relatives and age ranges from a comprehensive database. The detective then compared photographs for driver's licenses in the records of the DMV to the background picture on the cell phone until he discovered a match. This match directly identified and led the officers to Brown. The evidence leading the officers to Brown was found entirely through the warrantless search of the phone and is the only evidence connecting Brown to the burglary. Law enforcement did not find Brown's fingerprints on the cell phone or at the crime scene, nor did a search of Brown's residence uncover any of the stolen items.

The Court in *Riley* made clear its holding "is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, *even* when a cell phone

is seized incident to arrest." *Id.* at 2493 (emphasis added). In my opinion, the Court's language indicates law enforcement must obtain warrants to search cell phones, even in cases when a person's expectation of privacy is diminished, absent the applicability of an exception. *See id* at 2488 ("[W]hen privacy-related concerns are weighty enough a search may require a warrant, notwithstanding the diminished expectations of privacy of the arrestee." (internal quotation marks omitted)). The existence of the passcode also displays an expectation of privacy in the contents of the phone, and the simplicity of Brown's passcode of "1-2-3-4" does not negate law enforcement's need to obtain a warrant. While under these circumstances I would not find a reasonable expectation of privacy existed in the physical object of the phone, I believe a person preserves their reasonable expectation of privacy in its *contents,* which is precisely what provides a phone its significance.

For the foregoing reasons, I believe Brown did not abandon his reasonable expectation of privacy in the contents of the phone and law enforcement's warrantless search violated the Fourth Amendment. The trial court therefore erred in failing to exclude the evidence obtained from the warrantless search, and I would reverse and remand for a new trial.

# APPENDIX C

## COURT OF GENERAL SESSIONS
## NINTH JUDICIAL CIRCUIT

| | |
|---|---|
| STATE OF SOUTH CAROLINA, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| LAMAR SEQUAN BROWN | ) |
| | ) |
| Defendant. | ) |

INDICTMENT #: 2012-GS-10-7545

JURY TRIAL
State v Lamar S. Brown

(2012-GS-104545)
March 6, 2013

VOLUME 1 OF 3

Held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit in the Charleston County Courthouse
Charleston, South Carolina on March 6, 2013,
Commencing at 9:55 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM

Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417
1-706-231-6028

**[p.72]**

THE COURT: The suppression -- motion to suppress?

MR. SIMPSON: Yes, Your Honor.

THE COURT: Is it okay if we hear that one first?

MS. ANDERSON: Yes, Your Honor.

THE COURT: Okay. Is he here?

MR. SIMPSON: He's here.

MS. FLYNN: Yes, Your Honor.

THE COURT: All right. Let me hear you on the motion to suppress.

[Whereupon, all counsel confer]

THE COURT: Is that the -- are we going to hear the motion to suppress?

MS. FLYNN: That's correct, Your Honor.

THE COURT: Okay. I'll be glad to hear you.

Motion To Suppress

MS. ANDERSON: The defendant moves to suppress all the evidence obtained from his cell phone. Just briefly, there was a cell phone found at the scene of the burglary and that's how they connected it to Mr. Brown.

THE COURT: The cell phone was found at the scene of the burglary?

MS. ANDERSON: Yes. It was found at the scene of the burglary --

THE COURT: --- where at the scene?

MS. ANDERSON: In the bedroom according to the

**[p.73]**

victims.

THE COURT: In the bedroom?

MS. ANDERSON: Yes, Your Honor.

THE COURT: Okay.

MS. ANDERSON: After that time it was collected and taken into evidence and a few days later Detective Lester pulled it from evidence and started going through the cell phone. He pulled -- from my understanding of it he pulled -- he pulled phone numbers, the ones that had family attached to it, put those into the -- database and used that ---

THE COURT: --- he pulled phone numbers and what else?

MS. ANDERSON: Phone numbers from individuals in the contact list that were identified as family members.

THE COURT: Okay.

MS. ANDERSON: And he put those into, the accurate data base and used that to find the home address and developed Mr. Brown as a suspect.

THE COURT: Okay.

MS, ANDERSON: He did not get a warrant before going into that cell phone. And we believe that it violates Mr. Brown's 4th Amendment rights to go into that phone without a warrant. And that's pretty much --

THE COURT: You got any cases that address the cell

**[p.74]**

phone and the 4th Amendment?

MS. ANDERSON: We have a recent case from the 7th Circuit.

THE COURT: You got anything from the 4th Circuit?

MS. ANDERSON: No, Your Honor. It's a fairly new -- may I approach?

THE COURT: You got any State court cases?

MS. ANDERSON: I'm Sorry?

THE COURT: You got any State court cases?

MS. ANDERSON: No.

[Whereupon, documents are proffered to the court]

THE COURT: None. Not in South Carolina, Georgia, or North Carolina?

MS. ANDERSON: It's new -- it's a new issue about cell phones --

THE COURT: -- okay.

MS. ANDERSON: So basically what this case argues is -- United States v Lawrence Lopez. It comes out of the 7th circuit. What happened in that case is the defendant was arrested. He had a cell phone in his pocket. The police seized it, went through it and got the phone number; just the phone number that was attached to the phone and used that to get a search warrant and get phone numbers from the carrier. And that Court held that that was minimally intrusive because all they did

**[p.75]**

was get the information and they didn't address the issue of what else they could have gotten from there. And we argue that due to the fact that there are -- cell phones are becoming increasingly personal. We can get a lot of personal information -- there is a lot of information in there; not just phone numbers, not just contacts.

And that gives Mr. Brown a right to privacy to a cell phone that is his. And by going in without a warrant that the police violated that right and violated the requirement of ---

THE COURT: --- let me ask you this. And I haven't heard from the State yet but I assume they were investigating a burglary. They go into the house

and they find a phone. They have no idea who it belongs to. I assume the residents of the apartment or the building said it is not their phone.

MS. ANDERSON: That's correct, Your Honor.

THE COURT: So in the course of the investigation they start looking at phone numbers and people trying to determine who owns the phone, is that correct, during the course of the investigation?

MS. ANDERSON: That's what they did. There was a time period -- the cell phone was entered into evidence either the night of the 22nd or the early morning of the 23rd and Detective Lester went in into the phone on the

**[p.76]**

28th of December. So several days later ---

THE COURT: --- when did they finally focus on Mr. Brown?

MS. ANDERSON: That same day, the 28th.

THE COURT: They focused on him for what reason; from information from the phone or what?

MS. ANDERSON: Information from the phone. And it wasn't that this phone says this phone belongs to Lamar Brown. There was a picture of him on the screen of the phone. But what they did is go into the contacts and get information on different people that were identified as family members. And we argue that is the information that is entitled to privacy. Not

the number of the phone; that would be minimally intrusive. But ---

THE COURT: --- how? ---

MS. ANDERSON: --- just going in and getting it ---

THE COURT: --- I don't know if there are any cases but are there any cases concerning the right of privacy to Facebook on the Internet and Twitter and all the information that is out there on the Internet? I mean because basically we talking to something very similar.

MS. ANDERSON: It's a new thing ---

THE COURT: --- I just question the expectation of privacy to begin with. And you've got to cross that hurdle before you get to the seizure.

**[p.77]**

MS. ANDERSON: Yes, sir. Legally he had an expectation of privacy and we may be able to get this from the ---

THE COURT: --- because I'm -- that's why I asked you about Facebook in particular. Are there any cases about expectation on Facebook from your -- you probably haven't researched that issue. I think it's a similar type issue.

MS. ANDERSON: I haven't seen anything on Facebook but the way that people make things on Facebook private is they put privacy controls on it. They control who may or may not be able to get into

their Facebook. Mr. Brown had a lock on his phone. He had to unlock the screen and then he had to put in a code to get into the phone to even look at the contact list.

THE COURT: Okay.

MS. ANDERSON: And so by putting that lock on there he asserted his right to privacy is all I'm saying. I don't want anybody who doesn't know --

THE COURT: -- I guess it's a, simple matter to probably bypass the lock; I don't know.

MS. ANDERSON: It was not a very complicated code but he put one on there and that's why --

THE COURT: -- well how did the police bypass the code?

**[p.78]**

MS. ANDERSON: That would be a question I would have to ask the detective --

THE COURT: -- you don't know yet?

MS. ANDERSON: I don't.

THE COURT: You're getting ready to find out? So basically your argument because of the code you think he had an expectation of privacy. They should have gotten a search warrant before they examined the phone.

MS. ANDERSON: They should have and there is no reason not to. There weren't any exigent

circumstances; nothing was going to happen to that phone. It was sitting in evidence.

They could have easily protected his rights, gone about it the right way if they needed to go into it to get the phone number to get the search warrant to subpoena the records that would have been the right path to go. But instead he bypassed it ---

THE COURT: --- at that point in time during the investigative process did they even have enough information to obtain a search warrant?

MS. ANDERSON: Uh huh. I think so. That's why ---

THE COURT: --- I mean just the fact it was found on the scene of the crimes probably sufficient to get a search warrant.

MS. ANDERSON: Well, it's the same stuff they used

....

**[p.80]**

something like that and took those -- and rather than them have to look for it they took those and put those into a database and researched these people and got their personal information, you know address and contact information and then used that to develop Mr. Brown's ---

THE COURT: --- they were getting other people other than the defendant?

MS. ANDERSON: But ---

THE COURT: --- but what did they ultimately get about the defendant off the phone?

MS. ANDERSON: Who he was; his identity.

THE COURT: Pardon?

MS. ANDERSON: They got his identity from all that. That's how they identified him. Other than that there is nothing to connect him to this. It's strictly what they got from the cell phone that way.

THE COURT: Anything else?

MS. ANDERSON: Beg the court's indulgence.

[Whereupon, Ms. Anderson and Ms. Proctor confer]

MS. ANDERSON: We also wanted to argue the sufficiency of the evidence supporting the search warrant. Do you want to hear that a little bit later or do you just ---

THE COURT: --- I'm sorry, want to argue what?

MS. ANDERSON: The sufficiency of the affidavit of

....

**[p.87]**

expectation of privacy when you put a code on that phone and then the police come in and circumvent that code to get into that phone to retrieve

information. Now why isn't that an expectation of privacy? I don't think that has anything to do with abandoned property.

MR. SIMPSON: Well, Your Honor ---

THE COURT: --- now I understand the analogy you are making but I guess my question to you in my opinion the only reason that this could possibly be an expectation of privacy is that he put a code on it.

Now if the phone didn't have a code on it he may not have an expectation of privacy. But obviously why didn't he have an expectation of privacy with the code? Then the police take it and circumvent the code.

MR. SIMPSON: Well Your Honor, I would draw the analogy ---

THE COURT: --- I need to hear some testimony on that. You said you're not going to call him but I suggest you call him to find out how he circumvented it, why he circumvented, and what he obtained as a result of that.

MR. SIMPSON: I'd be happy to. The code was 1-2-3-4.

THE COURT: Okay. Well, that was probably easy to figure out to begin with. But it's still a code.

**[p.88]**

MR. SIMPSON: That's correct, Your Honor. And I would draw the analogy between the legal situation. I've got to go back to get the case name but there is a

case where an individual is transporting a large amount of cocaine in a locked suitcase.

THE COURT: Okay.

MR. SIMPSON: What happened; very unlucky for him, is his car breaks down and catches on fire. Knowing the situation he runs from the scene. When the police arrive and at the scene is a burning car and a suitcase. They circumvent the lock on that suitcase and find the cocaine.

I believe the holding of that case in so doing is abandoned property. He can't leave it at the scene and then later assert that because the suitcase was locked that it was a 4th Amendment violation.

THE COURT: Do you have that case?

MR. SIMPSON: If I can have a moment, I will. I didn't expect we would go here. I do have a case ---

THE COURT: --- why didn't you expect we were going here?

MR. SIMPSON: Well, I have the case here of People v Daggs, which is a California case. This involves a dropped cell phone---

THE COURT: --- where else would we be going?

....

**[p.96]**

A. Yes, sir.

Q. And were you informed that a phone had been found?

A. Yes, sir.

Q. And it had been found in the residence of the victim?

A. Yes, sir.

Q. And that the victim did not know whose phone that was?

A. No.

Q. Did you think perhaps this phone found on the scene might further your investigation?

A. Yes.

Q. And so how did you proceed?

A. I turned on the phone. There was a pass code on it, 1-2-3-4; lucky guess. When I opened the phone up and unlocked the device a picture of a black male with dreadlocks was in the background of the phone as soon as you flipped it open; the same as the background photo.

We then went to the contacts list and looked through the contacts looking for a relative. I believe we found a Grandmother in the contact list. We took her phone number and ran it in a database in Accrete [ph] it gives a list of everyone, relatives, associates, neighbors; things of that nature. And we were looking for a black male roughly in his 20's. We wanted to determine who the

**[p.97]**

owner of the phone was. So with the number of Grandma putting that in the database we got the list of relatives. It also gives an age range in Accrate and we began to look those people up in South Carolina D-M-V to get their license picture. And we matched the background of the phone with the South Carolina D-M-V.

Q. Now, this phone when you are looking at this phone -- and it's already been logged into evidence at the Charleston Police Department correct?

A. Yes.

Q. And you know that -- you have knowledge at that point that this phone was left at a crime scene?

A. Yes.

Q. So why open the phone? Why not obtain a warrant right then?

A. It's abandoned property. No one is claiming it.

Q. So I understand that a legal conclusion but under your understanding at the time?

A. We didn't know whose phone it was.

Q. And you later -- we came up to court and later you met with the Solicitor's office and we discussed obtaining some further records?

A. Yes, we did.

Q. And at that time we -- you obtained a search warrant for those ---

**[p.98]**

A. --- yes ---

Q. ---records. And a Magistrate signed that search warrant?

A. Yes.

Q. Detective, I'm handing you what has been marked for I.D. only as State's exhibit 1. Do you recognize that? [Whereupon, the witness is shown item.]

A. Yes, sir.

Q. And what is that?

A. It's a search warrant for the cell phone that I obtained.

Q. And what date was that approved by the Magistrate?

A. November 5, 2012.

Q. Could you flip to the affidavit supporting that search warrant?

[Whereupon, the witness complies]

Q. I believe the defense pointed out that in your affidavit you put on December 22, 2011 between 19:00 hours and 22:30 hours.

A. Yes.

Q. Is that -- now is that the suspected time of the crime or is that when the police responded?

A. It was the suspected time of the incident -- the crime.

Q. And when did police respond?

**[p.99]**

A. I believe they responded shortly after 22:30.

Q. Okay. So technically -- in the strictest sense of the word that is incorrect, correct?

A. Yes.

Q. They responded shortly after 22:30, not between 19:00 and 22:00?

A. Yes.

Q. Also you referred to the defendant as a suspect. Is there any real significance to that word suspect?

A. No.

Q. Had he been proven convicted of this crime at that time?

A. No.

Q. Did you later -- taking this information from the cell phone did it later lead you to the defendant?

A. Yes.

Q. You didn't personally speak with the defendant did you?

A. I did not.

Q. But as the lead agent do other officers report back to you on the progress in this case?

A. Yes.

Q. Is it your understanding that this was the defendant's phone?

A. Yes.

....

**[p.101]**

Q. So the only connection to whoever may or may not have been in that apartment was the phone?

A. Yes, ma'am.

Q. The cell phone that was in evidence?

A. The lost cell phone, yes.

Q. And the evidence -- and the cell phone was in evidence that entire time?

A. Uh huh.

Q. You thought that whoever had been in that apartment and left the phone they didn't do it on purpose did they? You didn't think so?

A. Probably not.

Q. But that was your understanding. You didn't think that they had just thrown in the phone, here's my phone. You thought it was left behind.

A. Yes.

Q. So when you pulled it from evidence you activated it and went through it and you unlocked it to get into it. There was a lock on there.

And you would not have been able to figure out the owner of the cell phone without getting into that phone; without getting into that contact list.

A. At the time, no.

Q. Okay. Well, why didn't you get a search warrant?

A. Because it was lost property. It was in the middle

**[p.102]**

of the scene, you know.

Q. But you just said you thought he hadn't dropped it on purpose. Why would you think something maybe not dropped on purpose wouldn't need a search warrant for?

A. I'm sorry; what's the question?

Q. Sorry. Let me -- you just said that you didn't think that the phone had been left on purpose, that it had been left behind by accident. So why wouldn't you

just get a search warrant for something left behind by accident?

A. Because it's lost property.

Q. Because all you knew is that it didn't belong to the resident. You just did not know who it belonged to?

A. Uh huh.

Q. So you went into the phone and you got the list of relatives. And by doing that you got -- I'm sorry, let me backup. You got the Grandmother's phone number and looked her up in the database right?

A. Uh huh.

Q. You went through and put her in that database with a list of relatives?

A. Yes. Her number came up with her name and then the relatives.

Q. And one of the relatives that came up was Lamar Brown, correct?

**[p.103]**

A. Yes, ma'am.

Q. And you used his name and went into the D-M-V database to pull up his driving record and photo; mainly for the photo reasons?

A. Yes.

Q. And used that to identify him?

A. Yes.

Q. The side by side ---

A. --- exactly ---

Q. --- with the individual in the background picture. Let's go through that search warrant. Do you still have it up there?

A. Yes, ma'am.

Q. So all this information that you listed in the warrant -- not the -- the serial number of the phone, the phone number, the model number you got those from the phone itself when you went into it, correct?

A. Yes, ma'am. They are located on the phone.

Q. You said that the subscriber that was being looked at as a suspect in this case and you said you knew the subscriber was Lamar Brown, correct?

A. Yes, ma'am.

Q. And you knew it was Lamar Brown because you had already gone into the phone back in December of 2011?

A. And him admitting that that's his phone.

**[p.104]**

Q. But you got to go talk to him because of the information that you got from the search on ---

A. --- that's how we were able to put it all...

Q. But you were never would have been able to talk to him or have anybody to talk to if you hadn't gone into that phone in the first place.

A. At that time.

Q. And that's the information that you used in this warrant here?

A. Yes, ma'am.

Q. And again you said Mr. Brown was qualified as a suspect but he had already been arrested at that time and charged.

A. Yes, ma'am.

Q. So you weren't looking for anybody else at that time?

A. Not at that time.

Q. And he -- it says he admitted the phone located at the scene was his phone and that he lost it after the burglary occurred. And you never spoke to him; this comes from other officers correct?

A. Yes.

Q. And they didn't write any reports? They just told you about it?

A. Yes. They took the statement.

**[p.105]**

Q. But they were only able to get there and take the statement because of what the information that you got back in 2011?

A. Yes.

Q. And they went that same day that you got the information?

A. Yes.

Q. The next page, page 2 of your search warrant affidavit you're listing your reasons of why you wanted to get it. You stated, through experience and training you know that cellular service providers maintain records and they include subscriber information, account registration, billing and air time records, outbound and inbound call detail, connection time and dates, Internet routing information, message content.

You know there is a lot of stuff you can get off of a cell phone, correct?

A. Yes, ma'am.

Q. And you know that through your training and experience correct?

A. Yes, ma'am.

Q. You know that a lot of that information on cell phones is personal?

A. Yes, ma'am.

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**[p.110]**

therefore it's expectation of privacy is therefore ---

MS. ANDERSON: --- well, abandonment implies ---

THE COURT: --- gone. I'm sorry, what?

MS. ANDERSON: I'm sorry, abandonment implies a voluntary relinquishment of the property. And the detective called to the scene said he didn't think somebody had just thrown it away. He thought that it had been left behind. He thought that it still belonged to somebody else and he knew that. And that was the reason he wanted to get into it because that somebody else it belonged to he believed was the person involved in ---

THE COURT: --- so you think the cases that refer to lost property, and abandonment is they did it intentionally-- abandoned the property? I'm sure it probably fell out of his pocket or wherever he had it when he was in the house. But your theory is he has to willfully, intentionally abandon the property? So if he had put it on the table and said I don't want that phone anymore that would be the abandonment?

MS. ANDERSON: Well, the classic example of that is when a defendant is walking -- or an individual is walking down and throws some drugs away on the street and the officers see that and the guy is like well, that's mine; you can't get into that. But they threw it down on the ground; they showed that they didn't want it anymore.

**[p.111]**

Or perhaps putting something in a garbage can and putting it out on the street corner. That's different than losing something. That person who has lost something doesn't automatically give up their ownership right to it and the right to privacy of it ---

THE COURT: --- do you have any cases that address that issue?

MS. ANDERSON: The one case that I gave you from I believe Indiana address that --

THE COURT: --- that 4th Circuit. -- I mean the 7th Circuit?

MS. ANDERSON: Yes, the 7th circuit case. And it is east of the Mississippi.

THE COURT: Pardon?

MS. ANDERSON: It is east of the Mississippi.

THE COURT: All right. I'm just curious if he had anything east of the Mississippi.

MS. ANDERSON: Well, Indiana.

THE COURT: Pardon? Indiana.

MS. ANDERSON: The 7th circuit; that's a little bit closer. Or am I wrong ---

THE COURT: --- Okay. Thank you so very much.

MS. ANDERSON: Thank you.

MR. SIMPSON: Your Honor, this isn't the case that I was referring to earlier but its U.S. v Tolbert 692 F2d

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**[p.135]**

not voluntarily given?

MS. ANDERSON: Just the fact that there is nothing on here to indicate that he knew and understood each and every single one of these statements and that he went through it with him.

THE COURT: Just because he didn't initial the Miranda?

MS. ANDERSON: And that he had him in a small police vehicle with one policeman on one side and one policeman on the other side--

THE COURT: Do you want to offer any testimony from the defendant? I didn't give you -- afford you that opportunity on this issue alone?

MS. ANDERSON: No, Your Honor.

THE COURT: Okay. Any other arguments?

MS. ANDERSON: No, Your Honor.

THE COURT: On the voluntariness, truthfulness, and knowingly I believe you said you added to it?

MS. ANDERSON: No, Your Honor. I don't have anything more.

THE COURT: Okay. Thank you so very much. All right. The motion to suppress is denied. I find he was fully advised of his rights in Miranda and the statement was freely and voluntarily given without duress. There was no -- he said it was approximately 30 minutes. He

**[p.136]**

testified he understood the -- appeared to understand. I heard nothing that would affect the voluntariness of the giving of the Miranda rights as well as giving the statement there was no undue influence, no reward without promise, or hope of reward, no promise of leniency, and no threat of injury without compulsion of inducement.

I find it was a voluntary product of free and unconstrained will of the defendant in writing out the statement and signing it. Any other motions that need to be heard?

MS. ANDERSON: Not at this time, Your Honor.

THE COURT: Pardon?

MS. ANDERSON: No, Your Honor.

THE COURT: Okay. Then I guess we will adjourn until what? -- we said 2:15, is that correct? And I will give you my ruling on the cell phone at that time. I just want to read that case that you -- I want an opportunity to look at the facts of the particular case you were reading. I know you probably -- y'all got to eat lunch but do you have anything that would define what is lost and what is abandoned?

MS. ANDERSON: Not in the courtroom but I will certainly look and get your something --

THE COURT: Let me say this; and I will put this on the record, okay. In this court's opinion when you have

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**[p.139]**

2:23 p.m.]

THE COURT: Does anybody want to address the issue on the lost or abandoned issue? I believe we covered it briefly before lunch.

MS. PROCTOR: Your Honor, just going over the two cases that the Solicitor had given the case of People v Daggs what distinguishes our case from that this was a case where somebody committed a robbery at a convenience store.

THE COURT: A robbery and what?

MS. PROCTOR: I think a convenience-store. And they -- I think this is the one -- he robbed something and dropped his phone.

THE COURT: Right.

MS. PROCTOR: Whether it is abandonment or not he knew he dropped it there.

THE COURT: Right.

MS. PROCTOR: He did not relinquish it. So he said I know it's there. And he told the police I know

you have it, but I did not want to go back and get it because I knew I would be arrested. He knew where the phone was.

The second case that we had, the burning car case the defendant said well, I knew the suitcase was in the car but I didn't want to go back and get it because I would be arrested for drugs. In this case Mr. Brown did

**[p.140]**

not know where the phone was. It was lost; he didn't know where it was. And I think if you look -- I just was handed this as I was coming over; the case I think Mr. Butler gave you. In this case he did not know where it was.

And if you look at the cases -- and I think even the case that Mr. Simpson gave us they said it was sort of a novel argument; these cases are just now happening. That he never made an attempt to reclaim it, and I think that's important ---

THE COURT: --- he never what?

MS. PROCTOR: He -- I think the cases where they are abandoned the people say we never made an attempt to go back and get it because we knew we would be in trouble. He never knew where it was. I think that's different:

Also, the cases that I was looking at the one case of State v Smith, which is an Ohio case but it says you can get a lot of information off a phone. Without a warrant officers may take steps to reserve data in cell

phone. They may not search it absent an officer safety concern or extrinsic circumstances ---

THE COURT: --- how -- where did they get that phone from?

MS. PROCTOR: Well, here's the thing. No, they got

**[p.141]**

it at the scene and if they would have looked at it that night -- here's the difference I think, if they would have looked at it that night that is lost or abandoned. But once it was in evidence for a week, Judge it's not lost or abandoned at that point. At that point it's evidence. It is evidence; it is not lost or abandoned. It had been there for one week. The thing on the cell phone ---

THE COURT: --- you think that would make a difference on a 4th Amendment search and seizure ---

MS. PROCTOR: --- no ---

THE COURT: --- because it was actually logged in the evidence room?

MS. PROCTOR: No ---

THE COURT: --- by the police ---

MS. PROCTOR: --- but it's not been lost or abandoned; it's seized. It is seized at that point.

THE COURT: But the lost or abandonment runs to the owner of the phone in this situation.

MS. PROCTOR: But at that point it's a -- this night if they would have done it that night because they had to run out and find who did it. They put it in evidence. It sat there for one week. The phone is now seized. It is a seized piece of evidence. The phone calls were not going away. And I think the other cases

**[p.142]**

that they do have, and there are not a lot on this, but in all the other cases they say you can get a warrant. Nothing is going to be destroyed in that phone. It's still going to be there. There is no reason that a warrant can't -- you can't get one. You don't need it that night, it's not officer safety, it's not that the phone calls were going to be destroyed, they would still be there.

It is now seized property. Seized property they needed a warrant. They had a week to do it. They could have gotten a warrant; there is no reason they didn't. He had said he even told the police in the statement, I lost my phone. I don't know where it is. I don't know where it is. He didn't go back to reclaim it and then if I do I will get arrested; he did not know he lost the phone.

And I think that distinguishes it from the other cases that the State has given. And as I said I just -- I didn't realize Mr. Butler could get me this and so I just got it so I just had been going over it like five minutes. But the State -- I looked at United States v Wall holding that cell phones many not be searched infinite to arrest if the contents of a cell phone present no risk of danger to the arresting officers. And

because searching through information stored on a cell

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**[p.151]**

think what happened here, and there will be evidence presented in this trial when we talk about what is going on with this phone leading right up to pretty much the moment of the burglary that there is a good chance that he was inside the house as the victim came home and in a moment of panic bolted from the house. Whether he had a thought oh, let me leave my phone here, you're right Your Honor, that's probably not a decision he made.

But nevertheless the objective facts of the case are that he abandoned this phone. And I don't think that the defense gets to come in when he is fleeing a crime scene to avoid apprehension and say well it wasn't -- I didn't mean to abandon it. You don't get the credit for getting caught in the act of doing something. And I think those line of cases are really the determinate issue on the cell phone.

THE COURT: All right. Thank you very much. I'm going to find as I said before, lunch this court is of the opinion, since he had a privacy code installed on the phone that there was an expectation of privacy as to the phone.

However, leaving the phone or dropping the phone or whatever happened to the phone at the scene of the crime I think at that point in time it was either lost or abandoned; factually I don't know which. But looking at

**[p.152]**

the totality of the circumstances I think at that time whether you want to say it's lost or abandoned that the 4th Amendment right of expectation of privacy as to that phone was also abandoned and your motion is denied -- your suppression motion denied. Are y'all ready for opening statements?

MS. ANDERSON: Yes, Your Honor.

MS. FLYNN: Yes, Your Honor.

THE COURT: Is there anything else that we need to take up before we bring the jury out?

MS. FLYNN: No, Your Honor.

THE COURT: Okay. Bring us the jury, please?

[Whereupon, the jury enters the courtroom at 2:38 p.m.]

THE BAILIFF: The jury is present, Your Honor.

THE COURT: Thank you very much. Mr. Buyck, would you swap with the gentleman on the end here. I am going to appoint you as Foreman of the jury, please sir if you will swap with this gentleman.

[Whereupon, the jurors comply]

THE COURT: And if you will sit in that chair. The rest of you can sit as you please except for the two alternates if you will it in those two chairs. The rest of you it depends on how you file into the courtroom. Madame Clerk, if you will swear the jury.

....

**[p.163]**

BY MS. FLYNN:

Q. Good afternoon. You go by Justin, right?

A. Correct.

Q. Where do you currently work, Justin?

A. I work for a company called Blue Acorn.

Q. And how long have you worked there?

A: I've been there about a year and a half.

Q. Do you live in Charleston County?

A. I do.

Q. How long have you lived here?

A. I've lived in Charleston 12 years now; one year in Raleigh but 12 in Charleston County.

Q. Okay. Where do you live now?

A. I live on James Island.

Q. Okay. Did you live at that same address back in December of 2011?

A. No, I've moved since then.

Q. Where did you live back in December of 2011?

A. I lived in a condo community on James Island Riverland Woods Place. It's called the Retreat.

Q. And was there an apartment or a condo number?

A. It was a condo. It was number.

Q. And did you live there alone?

A. I had two roommates. One was really never there, but the other was a good friend of mine for a longtime.

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Q. And can you kind of explain to the jury the layout of your apartment?

A. Okay. So it is on the bottom floor of the building, an end unit. It has two sides and a lot of windows on it.

When you walk in the front door there is a hallway, to the left there is a kitchen, there is a dining area, and then to the far end to the left is a living room. The couch overlooks the fireplace and separates the dining area and the living area.

And to the right is the hallway that goes down to the bedrooms. Go down that hallway and the first door on your left is a guest bedroom that was our roommate who mainly used it for additional closet space.

Second left was my bedroom and that's the one in the corner that has windows on two of the four walls.

And then to the right was the master bedroom and bathroom and that was Amber Winkler's room.

Q. So could you kind of see through the windows in the condo since it was on the first floor if you were walking by?

A. Yes. That was something I learned very quickly when getting out of the shower not to have the windows open.

Q. Okay. Let's turn your attention to Thursday, December 22nd, 2011. Do you remember that day?

**[p.165]**

A. Yes.

Q. Do you remember -- what did you do that day?

A. Just really a nice day winding down from the work week and moving into the holidays. I ran some errands with my girlfriend for most of the day. That night we went over to my parents to have kind of a holiday dinner.

Q. What time did you leave the condo to go over to your parents?

A. I would say about 7 o'clock.

Q. And was your roommate, Amber home at that time?

A. She was but she was just about to leave with her boyfriend to go downtown to a holiday party.

Q. So after having dinner with your parents did you and your girlfriend come back to the condo at some point?

A. Correct. We came back around 10:30ish.

Q. Okay. And what happened once you got home?

A. Came in and like I said when you first come in you see the kitchen to the left and kind of the hallway leading into the living room.

I had arranged all of her Christmas presents in the living room on the center coffee table. And so we just kind of went straight to the living room and sat down and began opening presents.

Q. What happened next?

A. I kept hearing a phone ring. And I didn't recognize

**[p.166]**

the ring but thought maybe it was my roommate's boyfriend because he generally changes his ringtones pretty often; kind of annoying. But it just rang out I didn't think anything of it.

I just thought they were doing something that would preclude them wanting to answer a phone. So we just sort of stayed in the living room opening presents. The ringing started to pick up in terms of how many times it was being called. It was being called over and over and over.

And finally I was looking over when I heard it ring and I saw kind of a flash of light but I couldn't tell if it was a flashlight or if it was a phone light or whatever it was. I got a little nervous so I got up and told my girlfriend to stay in the living room and I walked down the hall and. learned that the ringing phone was sitting on my bedroom floor near the door.

I immediately knew that it was none of ours and I turned on the light in my bedroom and noticed that one of my windows had been broken out and glass everywhere. My T.V. was gone; all the drawers had been pulled out and riffled through. I quickly put two and two together because this had never happened to me before. But it didn't take very long to realize that we had been robbed. My immediate reaction was to call the police and then to

**[p.167]**

call my roommate. I knew that she kept a gun nearby. At that point I still didn't know if there was someone still further in her room or in the bathroom or --- if they didn't have that gun yet I wanted to be the first one to have it.

And then within I would say 15 or 20 minutes the police started to arrive. Amber came back, cancelled her holiday party and came back from downtown.

Q. What did you do with the phone when you got in the room? Did you pick the phone up?

A. No, I believe my girlfriend picked the phone up.

Q. Do you recall what the phone looked like?

A. It was an older phone. It's a red Samsung or Nokia; one of the two.

Q. And you said at some point the police arrived shortly thereafter.

A. Uh huh.

Q. What did you do with the phone when they arrived?

A. I handed it to them.

Q. Okay. And then did you at some point explain to the officers what had happened?

A. Correct.

Q. And then did you go over what items were taken from the house?

A. Correct.

....

**[p.177]**

call ---

MS. ANDERSON: --- objection. He can't say what the responding officers.

THE COURT: Pardon?

MS. ANDERSON: He can't say what the responding officers would ---

THE COURT: --- I haven't heard the question yet. Ask the question and I'll rule on the objection.

MS. FLYNN: Thank you, Your Honor.

Q. [Ms. Flynn] If I would to tell you the responding officer's report indicates that they arrived around --received the call around 11:08 p.m. would you say -- how long would you say you were home before you called the cops?

THE COURT: All right. Do you have an objection?

MS. ANDERSON: She can't say what is in an officer's report because he wouldn't know what was in the officer's report ---

THE COURT: --- I'll sustain the objection. Disregard the statement. Please proceed.

MS. FLYNN: Thank you, Your Honor.

Q. [Ms. Flynn] What time did you get home on December 22nd, 2011?

A. Like I said probably around 10 to 10:30.

Q. Okay. And how long after you discovered the phone

**[p.178]**

and that a burglary had occurred would you say give or take that you called the officers?

A. After I found the phone it was pretty immediate. I would say within two or three minutes.

Q. Okay.

A. A minute maybe.

Q. Okay. No further questions.

THE COURT: Recross?

MS. ANDERSON: Yes. Thank you, Your Honor. May I approach?

THE COURT: Yes ma'am.

[Whereupon, defendant's Exhibit number 1 is marked by the court reporter]

Recross Examination

BY MS. ANDERSON:

Q. I have here what has been marked as Defendant's exhibit 1.

[Whereupon, the witness is shown exhibit]

Q. Do you recognize this; can you tell the court?

A. Yes, it's an aerial view.

Q. Of what?

A. Of the condo community and the apartment community.

Q. How do you know what it is?

A. I've looked at it from Google before.

Q. You have?

....

**[p.184]**

Q. When you arrived on the scene what did you eventually learn from your investigation what occurred?

A. That while they were out that evening someone had come into their home and removed several items from their house.

Q. And did you learn through your investigation what time they alleged to have returned that evening?

A. They had -- the victim stated to me that they had left around 7 p.m. that night and returned home approximately 10:30.

Q. When a burglary occurs is it standard procedure to catalog the items that were taken from the home?

A. Yes, it is.

Q. And did you do that in this case?

A. I did.

Q. Okay. What sort of items were taken from the home?

A. The victim stated there was a 42 inch T.V. missing, three laptop computers and some jewelry.

Q. Did crime scene arrive at some point to process the scene?

A. Yes.

Q. Okay. Did an investigator or the detective come out that night?

A. No detective came that night.

Q. Is it standard procedure for them to come out for

**[p.185]**

every burglary?

A. Just it there is a witness to the burglary then we will have a detective come out or if an arrest was made that night and neither happened so...

Q. So there were no detectives there that evening?

A. Right.

Q. So after speaking with the victim did you locate the phone that the victim found?

A. Yes. He had it out in then I believe it was the dining room area.

Q. Arid what did the phone look like?

A. It was a smaller red Samsung telephone.

Q. And then would you have been the officer that collected the phone that evening?

A. Yes, I did.

MS. FLYNN: May I approach, Your Honor?

THE COURT: Yes, ma'am.

Q. [Ms. Flynn] I'm showing you has been previously marked as State's exhibit 15 for identification only.

[Whereupon, the witness is shown exhibit]

Q. Do you recognize this?

A. Yes, I do.

Q. What do you recognize it to be?

A. The cell phone I admitted as evidence from the burglary that night.

**[p.186]**

Q. That's the phone you collected that night?

A. Yes, ma'am.

Q. Does it appear to be in the same condition as it was?

A. Yes, ma'am.

MS. FLYNN: At this time, Your Honor, I would ask that State's exhibit 15 be admitted into evidence.

THE COURT: Any objection?

MS. ANDERSON: Just note our previous objection:

THE COURT: Pardon?

MS. ANDERSON: Just noting our previous objection.

THE COURT: Okay. Admitted with objection the pretrial objection is that correct?

MS. ANDERSON: Yes, Your Honor.

THE COURT: Okay. You renew that objection?

MS. ANDERSON: I do.

THE COURT: All right. That motion is denied.

MS. ANDERSON: Thank you.

THE COURT: You're welcome.

[Whereupon, State's exhibit number 15 is entered into evidence by the court]

Q. [Ms. Flynn] Now after you collected that phone you secured it into evidence---

A. Yes, ma'am.

Q. What does it mean to secure something into evidence?

**[p.187]**

A. I take it from the scene down to the police station, at 180 Lockwood, up into our evidence room. I then fill out it's called a voucher, which is basic general information about what I'm placing into evidence.

I seal it; its heat sealed in plastic -- and initial it with my initials. And then place it in a secure box we log by the evidence desk.

Q. After this did you later convey what you learned about the phone and the incident to the lead detective, Detective Lester in this case?

A. Yes, I did.

Q. And then at that point was that the end of your involvement in this case?

A. Yes, it was.

Q. Thank you. Please answer any questions the defense attorney may have.

THE COURT: Cross-examination?

MS. ANDERSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ANDERSON:

Q. So you were dispatched out there just after 11 o'clock?

A. Yes, ma'am.

Q. 11:08?

A. Yes.

....

**[p.191]**

effect.

Q. So you called in crime scene and the tech showed up you handed him the phone and asked him to process the phone?

A. The crime tech stated that since the phone had already been handled by Mr. Poole that it wouldn't be able to have fingerprints lifted from it and so he did not take it into evidence himself.

Q. But you didn't ask him to try anyway?

A. I mean it's not really my call.

Q. That's fair.

A. I'm not sure how they do their job so I just leave it up to them.

Q. Did you -- you didn't go out -- the residents of the apartment weren't home at the time somebody broke in, correct?

A. Correct.

Q. But it's possible that there may have been other witnesses maybe in the area?

A. Possibly.

Q. You didn't ever go and check with the neighbors to see if anyone had seen or heard anything?

A. No.

Q. You didn't go check with them. You didn't go walk around the complex at all? You stayed in the apartment?

....

**[p.208]**

front door.

Q. And are you familiar with the concept of touch D-N-A?

A. Yes. I'm not an expert at it but I have some experience, yes.

Q. So again, it is possible to obtain D-N-A from an, area that a person has touched?

A. That is true, yes sir.

Q. But also an area a person has touched, at least presuming no gloves --

A. --- no gloves

Q. --- would reveal a fingerprint as well, is that correct?

A. Yes, if the person wore gloves it's going to be difficult for D-N-A or latent fingerprints.

Q. And again you searched the suspected areas where a person might have touched and found no latent prints?

A. No latent prints.

MR. SIMPSON: Court's indulgence.

Q. [Mr. Simpson] Crime scene tech Charles; why did you not print the cell phone?

A. I was advised by Officer Randall that the cell phone has been contaminated by the victims and also the other people inside the residence. So the fact that-the phone has been contaminated there is no reason for crime scene

**[p.209]**

to dust the cell phone.

Q. And contaminated is kind of a scary word. As a crime scene tech what do you mean?

A. Contaminated means the phone has been handled, touched, went through, manipulated; the handle touched by the victims and most likely the victim's fingerprints would-be on the cell phone.

Q. Thank you, Mr. Charles. Please answer any questions that defense may have.

MS. PROCTOR: Court's indulgence one moment.

THE COURT: Yes, ma'am.

MS. ANDERSON: Thank you.

CROSS-EXAMINATION

BY MS. ANDERSON:

Q. Good afternoon Mr. Charles. You talked a little bit about how you documented the scene when you arrived.

A. Yes, ma'am.

Q. And you document it as you find it.

A. Yes, ma'am.

Q. You document it the way it is when you get there; not when everybody else got there but when you got there?

A. Yes, ma'am.

MS. ANDERSON: May I approach, Your Honor?

THE COURT: Yes, ma'am.

[Whereupon; defendant's exhibit numbers 6, 7, 8, and

....

**[p.228]**

found?

A. No, ma'am. The victim had found the cell phone in the bedroom and removed the cell phone from the location where it was. It wasn't there when I first came.

Q. I'm just trying to be clear.

A. Yes. They had already handled the cell phone prior to my arrival.

Q. And so you didn't process that either?

A. No, I did not process it. I was advised that the cell phone was already handled by several individuals in the house and the victim's admitted that they touched the cell phone so I did not.

Q. You didn't open up the cell phone to see if there were any...

A. All I did was take photographs.

Q. You didn't open it to see if any prints were inside?

A. I did not.

Q. There was no indication of any blood or tissue or...

A. No.

Q. Any bodily fluid?

A. No body fluid. No fibers, no hair, nothing.

Q. So you didn't pull anything from the scene other than taking the photographs and doing the process you mentioned it. And just briefly some of the -- you talked about some of the surfaces that are good to pull prints

....

**[p.236]**

THE COURT: Yes, ma'am. Overruled.

Q. [Mr. Simpson] Could you explain to the jury how you became involved and what you were asked to do on this case.

A. The lead detective asked me to respond to this location while he was handling another part of this particular investigation to attempt to locate him, and if I did locate him to take a statement from him.

Q. Okay. When you say locate him you mean locate a specific person?

A. Yes.

Q. Was this a person of interest in this investigation?

A. Yes.

Q. And how that person became a person of interest you don't know.

A. That's correct...

Q. You didn't respond to the scene.

A. No, I did not.

Q. Okay. Did you have any background regarding a telephone in this case?

A. Did I?

Q. Were you given before you went to the location to take a statement from this person given any background whatsoever on this telephone?

A. I was given the telephone.

**[p.237]**

Q. Okay. And what was part of your role in going to take this statement from this person?

A. To find out if this was his phone.

MR. SIMPSON: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

Q. [Mr. Simpson] Do you recall the -- while I'm getting this together, who was the lead detective on this case?

A. Detective Jordan Lester.

Q. And so for the broad big picture if you will he would probably be a better guy.

A. That's correct.

Q. But as to the statement this was your role?

A. Yes.

Q. Officer, I'm handing you what has been marked as State's exhibit 2 for I.D. only. Do you recognize that?

[Whereupon, the witness is shown exhibit]

A. I do.

Q. And what is that?

A. It's a Charleston Police Department advisement of constitutional rights and the defendant's statement afterwards.

Q. Okay. So what -- where did you go to speak with him --

A. We went over to _____ Riverland Drive on James

**[p.238]**

Island.

Q. Again, was that an address given to you by Detective Lester?

A. Yes.

Q. And when you -- was it provided to you as a place where you might locate the defendant?

A. Yes.

Q. And when we are referring to the defendant is the defendant in the court room right now?

A. He is.

Q. And where is the defendant?

A. Right here [indicates].

Q. And was this individual present at that address when you arrived?

A. He was.

Q. And how did you proceed?

A. When we pulled into the driveway of the yard there we got out of the vehicle and asked for Mr. Lamar Brown and he identified himself as Quan.

Q. And was Quan present?

A. Yes.

Q. What did you do then?

A. Asked him if he wished to speak to us about an incident that occurred on James Island and he agreed to speak to us.

**[p.239]**

Q. Okay. And did you inform him it was a burglary?

A. Yes.

Q. What did you do next?

A. We asked him if he wanted to -- there was a lot of family members out in the yard and we asked him if we could speak to him in private. And the vehicle is what we had there that would be private and he agreed to sit in the vehicle and speak to us.

Q. Okay. Was he cuffed?

A. No.

Q. Was he arrested?

A. No.

Q. Did he walk freely to the vehicle?

A. He did.

Q. Okay. What did you do once you got in the vehicle?

A. Once we got in the car I got the written statement out and I asked him his name, wrote down the date and time that it was occurring, asked him where he was living, gave him his Miranda warning then I --

Q. Let me stop you for a second. We've all watched T.V. but what do you mean by Miranda warnings?

A. I advised him that he had the right to remain silent and that he didn't have to speak with me and he could have an attorney present if he wished one.

Q. Okay. And in fact on this form that you have in

**[p.240]**

front of you that leads with some standard language correct?

A. Yes.

Q. And is the purpose of -- I'm sure you could go by memory but is the purpose of writing that right on the form to -- so you have those rights right in front of you when you're talking to somebody?

A. That's correct.

Q. And did you review those with the defendant?

A. I did.

Q. And if you could go through each right if you would as you would recount it to the defendant.

A. The top part is just his name, address, my name, how old he is. And at the bottom there is he has advised me that he is a member of the Charleston Police Department and also advised me that I had the right to absolutely remain silent and do not have to answer any questions or give a statement and this fact cannot be used against me, that if I do answer any questions or give a statement anything I say can and will be used against me in a court of law.

I have the right to consult with a lawyer of my choice before I answer questions or give a statement and also to have him present while I am being questioned. And if I wish to talk with a lawyer or have him present

**[p.241]**

but am unable to afford to hire a lawyer one will be appointed to represent me free of charge.

That if I decide to answer questions or give a statement without having a lawyer present representing me I have the absolute right during this interview to stop answering questions and to remain silent.

Q. In the introductory part of this document in front of you did you inquire as to the defendant's age?

A. I did.

Q. And what did he tell you?

A. Twenty-two.

Q. And did you inquire into his education?

A. Yes.

Q. And what did he tell you?

A. Completed the 9th grade in school.

Q. In these interactions with the defendant did he appear to understand what you were saying?

A. He did.

Q. Were there any apparent mental difficulties that he presented to you at that time?

A. Not to my knowledge.

Q. Any sign whatsoever that he would have been intoxicated or under the influence of any drugs?

A. Not to my knowledge.

Q. And again in responses to you talking to you were

**[p.242]**

they cogent?

A. Yes.

Q. You could understand them?

A. Yes.

Q. And did he later demonstrate that he understood what was going on?

A. He did.

Q. Now after reviewing those rights with him did you -- did he express to you his desire to waive those rights and speak to you?

A. He did.

Q. And how did he -- the way that was documented on the paper?

A. He signed it.

Q. And again I think you testified earlier your purpose there had to do something with a phone. Could you again explain that?

A. There was a phone found at the incident location and through Detective Lester's investigation it was determined that it could possibly be his -- Mr. Lamar Brown's phone. And Detective Lester gave me the phone if I was going over there to inquire about was it or was it not his cell phone.

Q. Okay. Sometimes when you are taking a statement the officer will write everything down as told to them

**[p.243]**

correct?

A. Yes.

Q. Was that the case in this particular case?

A. I wrote the questions and he wrote the answers.

Q. And did you give him an opportunity when addressing the phone to write out at first his kind of explanation?

A. Yes.

Q. And at this time he knew you were investigating a burglary, correct?

A. He did.

Q. Did you convey to him the time of this burglary; when it occurred?

A. Not at this point.

Q. Okay. So he wrote in his own handwriting initially. If you could what did he convey to you in writing was the situation with this phone?

A. He stated when I was going to the store in a car I had my phone in my lap and when I got out it fell somewhere because when I got back in the car I couldn't find it.

So a friend called me and said someone has your phone so I turned the phone off. I did not have it all I promise.

Q. So he conveyed to you essentially that he lost the phone?

**[p.244]**

A. Yes.

Q. Okay. And he also said that he knows he lost it because a friend called him.

A. Correct.

Q. And told him you lost his phone.

A. Yes.

Q. Any interest in how that might have occurred? Did that interest you at all?

A. It was just kind of vague the answers he was giving as to how he lost it and where he lost it.

Q. I lost the phone but somebody called me on the phone and told me I lost it. Now he also says to you when I realized I lost it I turned the phone off.

A. Yes.

Q. Did you interpret that to mean that he discontinued service on the phone once he realized it was gone?

A. That was my interpretation.

Q. Okay. Did you then inquire when -- ask him when he lost his phone?

A. I did.

Q. And what was his response?

A. He said he lost the phone on Friday December 23, 2011.

Q. And when was the -- when did this burglary occur?

A: It occurred on Thursday evening December 22, 2011.

**[p.245]**

Q. Now you weren't just going to leave that out there.

A. No.

Q. You asked him follow up questions.

A. That's correct.

Q. What was your first follow up question?

A. Do you know where you lost your phone?

Q. And his response?

A. Not exactly.

Q. Now did you then ask him where he was between 6 and midnight on the incident night?

A. My specific question was where were you on the evening of Thursday, December 22nd.

Q. And how did he respond to that in yes or no?

A. He just said in the house eating or something.

Q. Did you follow up and ask him if anyone else could have had his cell phone on that Thursday night later that evening?

A. I did.

Q. And how did he respond to that?

A. No.

Q. Did you ask him if he had ever been to the apartments in question?

A. I did.

Q. And how did he respond to that?

A. No.

**[p.246]**

Q. Now that's interesting. Where is this location that you're talking to him?

A. _____ Riverland Drive.

Q. And is the apartment complex where this occurred far away from that location?

A. No, it's not.

Q. Is it very close to this location?

A. I would say its close.

Q. So the defendant conveyed to you that he had -- no one else could have had this phone on the night in question, is that correct?

A. That's correct.

Q. Then at some point he lost his phone, but he's not sure when.

A. That's correct.

Q. That once he lost his phone he discontinued service?

A. That's correct.

Q. And he knows he lost his phone because someone called him on his phone to tell him that.

A. That's what he said.

Q. Please answer any questions that the defense has.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. PROCTOR:

....

**APPENDIX D**

**COURT OF GENERAL SESSIONS**
**NINTH JUDICIAL CIRCUIT**

| | |
|---|---|
| STATE OF SOUTH CAROLINA, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| LAMAR SEQUAN BROWN | ) |
| | ) |
| Defendant. | ) |

INDICTMENT #: 2012-GS-10-7545

JURY TRIAL
State v Lamar S. Brown

(2012-GS-104545)
March 7, 2013

VOLUME 2 OF 3

Held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit in the Charleston County Courthouse
Charleston, South Carolina on March 7, 2013,
Commencing at 9:38 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM

Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417
1-706-231-6028

....

**[p.276]**

phones it just might be your call logs or something like that. So there are some restrictions.

Q. Have you previously been qualified as an expert in digital evidence?

A. I have.

MS. FLYNN: Your Honor, at this point the State would ask that Rodney Van Horn be offered as an expert in the area of digital evidence.

THE COURT: Any objection or you want to ask questions on his qualifications?

MS. ANDERSON: No objection, Your Honor.

THE COURT: All right. The court so finds.

MS. FLYNN: May I approach, Your Honor?

THE COURT: Yes, ma'am.

Q. [Ms. Flynn] I'm showing you what has previously been marked and admitted as State's exhibit 15, if you will take a look at that?

[Whereupon, the witness is shown exhibit]

Q. Do you recognize that?

A. I do.

Q. What do you recognize it as?

A. This is a Samsung S-G-H T-239 that was submitted to our office verified through the serial number and through my initials that were on this bag after I sealed it.

Q. So is that the phone that you analyzed for this

**[p.277]**

case?

A. Yes.

Q. Can you kind of explain, the exercises you went through for this phone as far as what you were able to extract and what you weren't able to extract?

A. It's very simple with our UFED the external extraction devise is basically a standalone piece of hardware.

Many of the cell phone companies you can take your phone in and say I want to transfer my contacts to the new phone that you buy they use the same thing; they take it in the back.

Ours is just a forensic model which prevents any change to the data that is on the phone. It prohibits any manipulation of the data. On one side of the box you put the phone; you connect it through a cable to the box.

On the other side you have your output and you can put it into your computer, connect it to a phone drive or an SD card or whatever you want your output to go to.

In our case and in my case with this one here I used a phone drive and then you go through the screen; it's all digital readout and you pick the make and model of the phone and then it finds that make and model and then comes back and tells you what you can get off the phone. In this case it was the phone book and images book were

**[p.278]**

checked and then the extraction was completed. Then you take the phone drive out and put it in the machine and just produced the reports.

Q. Okay. So you extracted the phone contacts from that phone?

A. Yes.

Q. So they would have come directly off of that red cell phone that you analyzed?

A. Yes, without manipulation.

Q. And then print them out in a version that we could look out?

A. Yes. You would print them out as a hard copy. Generally what we do is we take our report and put it on a disk, a D-V-D so that it can't be changed. It's a onetime writeable D-V-D and then you give it to the investigator for follow-up.

Q. So you can't take ---

MS. ANDERSON: Objection, leading.

THE COURT: I'm sorry?

MS. ANDERSON: Leading.

THE COURT: Leading the witness. Don't lead your witness please, ma'am.

MS. FLYNN: Yes, Your Honor.

Q. [Ms. Flynn] So you did testify that you put it on a disk so that it can't be manipulated?

....

**[p.283]**

words what number is associated with that red cell phone?

A. The red cell phone's own number would be 843-345-

Q. And is that listed right here indicates under M-M-I-S-D-N?

A. M-M-I-S-D-N; yes it is.

Q. Okay. And so you went over those 292 contacts?

A. Correct.

Q. And again you would have extracted that data which means just pull the data from the phone?

A. Right.

Q. Okay.

A. In our lab we can do extractions and examinations. In this case we just did an extraction. There was no examination.

MS. FLYNN: Thank you, Your Honor. No further questions.

THE COURT: Cross-examination?

MS. ANDERSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ANDERSON:

Q. Good morning.

A. Good morning.

Q. So when were you actually asked to look at this phone?

**[p.284]**

A: The phone was submitted to us on November 6th, 2012 was the first submission.

Q. So November 6th, 2012 was the very first time you ever saw this phone?

A. The first time we saw the phone is our lab.

Q. And you never examined it before then either?

A. No, ma'am.

Q. Were you aware that this investigation began back in December of 2011?

A. We don't ---

Q. --- you didn't know that when you looked at it ---

A. --- we are kind of what would be considered an independent entity of the police department so we don't know the background.

Q. You mentioned before that there are a lot of things that you can get from a cell phone, correct, depending on the make and model and depending on the limitations of the device that you use correct?

A. Correct.

Q. Some of what you can get are if the model is enabled with G-P-S you would be able to pull that from the phone?

A. Correct.

Q. If you can do that would be able to ping from this phone?

A. From this particular phone?

....

**[p.290]**

responded.

Q. When you say witness, a witness to the actual crime?

A. Yes, somebody actually seeing the suspect.

Q. Okay. What does it, mean to be the lead detective of the case?

A. Basically I am the point man. I have other officers, other detectives that will go out and they will gather intelligence and then they will bring it back to me.

And my job is to gather it all together and essentially make the final decision as far as the arrest and things like that.

Q. So throughout the case you would have received information from other officers?

A. Yes.

Q. You had to manage the big picture?

A. Yes.

Q. And at the beginning of this investigation did you learn that there was a cell phone left at the scene on December 22, 2011?

A. I did.

Q. At some point did you look at the cell phone left on the night of the burglary?

A. Yes, I did.

Q. When did you first look at the cell phone?

**[p.291]**

A. On the 28th of December.

Q. Okay. So the burglary happened on the 22nd and you looked on the 28th?

A. Yes.

Q. Can you kind of explain that gap in time?

A. It was the Christmas holidays so I wasn't working.

Q. Okay. So when you got back to work that's when you looked at the phone?

A. Yes, ma'am.

Q. So kind of talk us through your investigation of how you eventually developed Lamar Brown as a suspect.

A. I pulled his cell phone out of evidence; it's a T-Mobile red in color cell phone. I opened it up and I had a background picture of a black male with dreadlocks on the phone. I was able to go into the phone and look at the contacts. Going through the phone ---

MS. ANDERSON: --- objection. At this point we're renewing our previous objection.

THE COURT: Let me see y'all up here just a second.

[Whereupon, an off the record bench conference is held]

THE COURT: Ms. Anderson, your objection is based upon the pretrial motion to suppress, is that correct?

MS. ANDERSON: Yes, Your Honor.

THE COURT: And you are renewing that objection?

**[p.292]**

MS. ANDERSON: I am.

THE COURT: All right. That motion is denied. Please proceed.

MS. ANDERSON: Thank you, Your Honor.

Q. [Ms. Flynn] So let's start from the beginning. You looked at the phone on December 28, 2011. Talk us through what you do next.

A. I opened the phone up. I have a saved background. As soon as you open the Phone up I see a black male with dreadlocks holding a child. And then I go into the contact list and I'm looking for a relative, something that possibly says Grandma, Grandpa, Mom, Dad.

I look at I believeit was a Grandma. I took that phone number and we have a data base called Accurant [ph] and I plugged that phone number into our database into Accurant. And I know I'm looking for a black male roughly in his 30's or early 20's.

So when I put that number into Accurant I get a woman who lives at _____ Riverland. I can --

through Accurant I can also click a button and it lists relatives, associates, and neighbors.

That gives me a list of individuals in the relative section in the phone saved as Grandma and it gives me a name and it also gives me a date of birth. I take that name and then I put it into a South Carolina D-M-V which is

**[p.293]**

where you have your license -- has your picture for your South Carolina driver's license. Basically you can look at your license on line. Then I start comparing the pictures that I located in Accurant to the pictures on the cell phone as the background.

In comparing them I -- it was pretty easy to see that the person on the background of this cell phone is the D-M-V says in Lamar S. Brown who also lives at _____ Riverland Drive.

So I know that this person is the same driver's license so I am able to positively identify him. Next I have to go talk to him to talk about the phone and why his picture of the background of this phone was located at the scene of a crime.

Q. So let's stop there. So through his D-M-V you located the address you said as _____ Riverland Drive?

A. Yes.

Q. And at some point would you have sent other officers or did you go out there and speak with the defendant?

A. I sent other officers out there.

Q. Okay. And that was to _____ Riverland Drive?

A. Yes.

Q. And where did -- where was the victim's home that was burglarized? What was the address?

A. _____ Riverland Woods Place, Apartment _____

....

**[p.295]**

of the defendant's residence, which is _____ Riverland Drive?

[Whereupon, the witness complies]

Q. Okay. Can you make that mark a little bit bigger?

[Whereupon, the witness complies]

Q. Okay, great. Thank you. And through the course of your investigation how far did you learn that was from the victim's residence?

A. If you're in vehicles I believe less than half a mile and there are trails throughout these woods here [indicates]. If you're taking the trails it would be less than a quarter of a mile.

Q. So less than a quarter mile through the trails in the residence area?

A. Yes.

Q. And then about a half mile driving?

A. Yes.

Q. During the course of your investigation you said that officers spoke with the defendant. What did you learn as a result of the interview?

A. He stated he had the phone on the date of the burglary. He advised us the phone was his.

Q. I want to turn your attention now to the information that was retrieved from the defendant's cell phone. So as lead investigator in this case you eventually executed

**[p.296]**

a search warrant for the phone records from T-Mobile right?

A. Yes.

Q. And then did you also have digital evidence from the Charleston Police Department extract some data from the phone?

A. Yes.

Q. So after receiving that information did you have an opportunity to review the phone Contacts taken from the digital evidence unit with the T-Mobile phone logs?

A. Yes.

MS. FLYNN: May I approach, Your Honor?

THE COURT: Yes, ma'am.

Q. [Ms. Flynn] I'm showing you what has already been admitted as State's exhibit 12 and State's exhibit 13.

[Whereupon, the witness is shown exhibits]

Q. State's exhibit 12 do you recognize that?

A. Yes, ma'am.

Q. And what is that?

A. It's basically the incoming and outgoing -- all the phone calls and the numbers that made during the 9th and 22nd of December; the date of the burglary.

Q. And that's what was received from T-Mobile?

A. Yes, ma'am.

Q. And then now State's 13?

….

**[p.344]**

Q. On the phone background?

A. Yes, ma'am.

Q. And then you went through the contacts and, you identified a relative; in this case a grandmother.

A. Yes ma'am.

Q. And you put her through the database and that brought up a list of relatives ---

A. --- relatives.

Q. And all of that and you looked closely at all the black males in their 20's and 30's.

A. Yes' ma'am, because it was the background on the phone?

Q. Because you were trying to match the background on the phone right?

A. Yes, ma'am.

Q. And doing that you came up with the name of Lamar Brown. You pulled up his picture from the D-M-V database.

A. Yes, ma'am.

Q. Now there are two ways to have an I.D. in a database. You can have a driver's license and a South Carolina I.D.?

A. Yes, ma'am.

Q. This one wasn't a driver's license it was an I.D. right or you don't remember.

....

**[p.351]**

items that were stolen?

Q. I'm sure we do.

THE COURT: Solicitor, you got a full copy of the search warrant?

MS. FLYNN: I've got his search warrant.

THE COURT: Y'all got a copy of it, Solicitor?

MS. FLYNN: I do.

THE COURT: If you'll give it to the witness so they will both have copies please?

MS. FLYNN: Yes, Your Honor.

THE COURT: Ms. Anderson do you have a copy?

MS.., ANDERSON: Yes, Your Honor.

THE COURT: Okay.

[Whereupon, the witness reviews documents]

Q. [Ms. Anderson] I believe the question was were you looking for any car stereos in this case?

A. In this case no stereos were taken so that is a typo.

Q. All right. Let's move on to the next page of the warrant where we get to the reason the affiant believe that the property sought is on the premises. Just to start, this search warrant is for _____ Riverland Drive correct?

A. Yes, ma'am.

Q. And this is the search warrant that you put together

**[p.352]**

after going through the phone and after hearing-from the officers on the scene at _____ Riverland, correct?

A. Yes, ma'am.

Q. All right. So you stated on December 22, 2011 Mr. Marquis Terrell Brown was identified as a suspect breaking into the residence at _____ Riverland Woods Place, apartment.

A. Yes, ma'am.

Q. Marquis Terrell Brown. That's not Lamar Brown is it?

A. No it's not. It's his brother.

Q. That's his brother. But you put this in here in your warrant that you put in front of the Judge to sign.

A. Yes, ma'am.

Q. You stated that the apartment belonged to victim's Amber Winkler, J. Poston, and Richard Poole; who is Justin Poole correct? So J. Poston is the third roommate correct?

A. Yes, ma'am.

Q. So you knew at least at this time that there was .a third roommate?

A. Yes, ma'am.

Q. And this warrant was sworn out on the 28th of December 2011.

A. Yes, it was.

....

**[p.357]**

Q. So you just believed that he was being untruthful. Did you actually go over to _____ Woodlawn?

A. I didn't go physically.

Q. Did you try and call over there and see if anybody knew him?

A. No, ma'am.

Q. Did you ask him who he was with that day to see if maybe somebody else could -- you could ask somebody else?

A. He said he was with his child.

Q. But you didn't go check anything?

A. No, ma'am. Given the facts I did not.

Q. Because you just believed that he was not telling the truth.

A. I did.

Q. And so you didn't go anywhere over there at all?

A. I didn't go to Woodlawn, no.

Q. And then after you did all this you issued his arrest warrant on the 29th of December, 2011 correct?

A. Yes, ma'am.

Q. You mentioned -- you testified that you had executed a search warrant on the phone and that's how we were able to talk about these records ---

A. --- yes, ma'am ---

Q. --- that you were discussing. You didn't do that search warrant until November of 2012.

**[p.358]**

A. Yes, ma'am.

Q. And that's the first time that you ever did anything like that to get through the contacts of the phone other than contacts --

A. Yes, ma'am.

Q. You know that's almost a year later?

A. Yes, ma'am.

Q. It took you almost a whole year to get a search warrant and go through that phone.

A. Yes, ma'am.

Q. But you had arrested -- Mr. Brown had been arrested in January of 2012.

A. Yes, ma'am.

Q. January 18th I believe is that right?

A. I'm sure ---

Q. I have the return on the search warrant if you want to have a look at that?

A. Okay.

MS. ANDERSON: May I approach?

THE COURT: Yes, ma'am.

A. The arrest warrant?

Q. [Ms. Anderson] Yes?

[Whereupon, the witness views documents]

A. Okay. Yes, it was served on the 18th.

Q. It was served on the 18th so that would have been

....

---

**APPENDIX E**

---

**COURT OF GENERAL SESSIONS**
**NINTH JUDICIAL CIRCUIT**

| | |
|---|---|
| STATE OF SOUTH CAROLINA, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| LAMAR SEQUAN BROWN | ) |
| | ) |
| Defendant. | ) |

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INDICTMENT #: 2012-GS-10-7545

JURY TRIAL
State v Lamar S. Brown

(2012-GS-104545)
March 8, 2013

VOLUME 3 OF 3

Held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit in the Charleston County Courthouse
Charleston, South Carolina on March 8, 2013,
Commencing at 9:36 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM

Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417
1-706-231-6028

....

**[p.426]**

VERDICT

THE COURT: Mr. Foreman, I have filled out the -- your verdict on the Indictment. I'm going to ask you -- I have -- wrote down the verdict and I have dated it 3/8/13. Whitney, will you come get the Foreman to sign it please ma'am and then you can publish the Verdict.

[Whereupon, the Clerk complies]

THE COURT: Mr. Foreman, if you will just sign right above where it says Foreperson.

[Whereupon, the Foreman signs document]

CLERK OF COURT: Permission to publish?

THE COURT: Yes, ma'am. Go ahead and publish the verdict if you would please.

CLERK OF COURT: Case number 2012-GS-10-7545 the State of South Carolina versus Lamar Sequan Brown as to the charge of Burglary in the First Degree we, the jury, by unanimous consent find the defendant guilty of Burglary in the First Degree, signed Hugh Buyck, Foreman.

Mr. Foreman and ladies and gentlemen of the jury, if this is your verdict please raise your right hand.

[Whereupon, the jury complies]

THE COURT: Thank you, ma'am. Does the State have a sentencing sheet?

MS. FLYNN: No, Your Honor, if you could give me just one minute.

....

**[p.441]**

to church and everything, and do everything my Momma asked me, and my Grandmother and everything. I was respectful, obedient. I just think I don't deserve this, sir. I didn't do this. I didn't. I didn't sir. I did not do this.

MS. PROCTOR: Your Honor, when he was arrested I would add he did spend 298 days ---

THE COURT: --- 298 days?

MS. PROCTOR:Yes, sir.

THE COURT: Okay. Anything else from the defense?

MS. PROCTOR: No, sir.

THE COURT: Anything else from the Solicitor in rebuttal you would like to offer?

MS. FLYNN: No, Your Honor.

THE COURT: Okay. Thank you very much.

[Whereupon, the court reviews documents]

THE COURT: All right. Mr. Brown, on Indictment number 7545 you are sentenced to the State Department of Corrections for a period of 18 years. I'll give you credit for 298 days.

Ms. Anderson, can I get you to sign the sentencing sheet please, ma'am?

[Whereupon, Ms. Anderson complies]

THE COURT: Jury, y'all may go to the jury room. Thank you so much for your service this week.

....

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**APPENDIX F**

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**COURT OF GENERAL SESSIONS**
**November Term 2012**

| | |
|---|---|
| STATE OF SOUTH CAROLINA, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| LAMAR SEQUAN BROWN | ) |
| | ) |
| Defendant. | ) |

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INDICTMENT #: 2012-GS-10-7545

INDICTMENT FOR BURGLARY 1ST DEGREE

State v Lamar Sequan Brown

(2012-GS-104545)

VERDICT GUILTY

At a Court of General Sessions, convened on November 13, 2012 the Grand Jurors of Charleston County present upon their oath:

**Burglary 1st Degree**

That in Charleston County, South Carolina, on or about December 22, 2011, the Defendant LAMAR SEQUAN BROWN, did enter the dwelling of Richard

Poole and Amber Winkler, located at _____ Riverland Woods Place, Apartment _____ without consent and with the intent to commit a crime therein. That, in addition, it was committed by a person with a prior record of 2 or more convictions for burglary or housebreaking or a combination of both; or entry occurred at night; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

/s/ Kelly Flynn
Assistant Solicitor