APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDER

APPENDIX TABLE OF CONTENTS (Cont.)

OTHER DOCUMENTS

ORDER OF THE COURT OF CRIMINAL APPEALS OF TEXAS REFUSED APPELLANT'S PETITION FOR DISCRETIONARY REVIEW (OCTOBER 21, 2020)

COURT OF CRIMINAL APPEALS OF TEXAS

JERRY WILTZ

v.

THE STATE OF TEXAS

Tr. Ct. No. 1514086

COA No. 14-18-00718-CR

PD-0252-20

On this day, the Appellant's petition for discretionary review has been refused.

JUDGE RICHARDSON AND JUDGE NEWELL WOULD GRANT

/s/ Deana Williamson
Clerk

Alexander Houthuijzen
Attorney-at-Law, PLLC
917 Franklin St Ste 230
Houston, TX 77002-1741
Delivered via e-mail

14th Court of Appeals Clerk
Christopher A. Prine
301 Fannin, Suite 245
Houston, TX 77002-7006
Delivered via e-mail

State Prosecuting Attorney
Stacey Soule
P.O. Box 13046
Austin, TX 78711
Delivered via e-mail

District Attorney Harris County
Appellate Section
1201 Franklin St. Ste. 600
Houston, TX 77002-1901
Delivered via e-mail

**DISSENTING OPINION
FILED BY JUSTICE WALKER IN
COURT OF CRIMINAL APPEALS OF TEXAS
(OCTOBER 21, 2020)**

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

JERRY WILTZ,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

Nos. PD-0252-20 & PD-0253-20

On Appellant's Petition for Discretionary Review
from the Fourteenth Court of Appeals Harris County

WALKER, J., filed a dissenting opinion.

Dissenting Opinion

In his petition for discretionary review, Appellant argues that the court of appeals erred in holding that he abandoned his cell phone by fleeing the scene of a traffic stop and thus lacked standing to challenge the warrantless search of his cell phone and its contents. This Court has yet to determine the parameters in which a person's actions constitute intentional abandon-

ment of his cell phone for purposes of the Fourth Amendment. Given the importance of this rapidly evolving issue to Fourth Amendment jurisprudence, I believe this Court should grant review to decide whether the evidence in this case establishes that Appellant intentionally abandoned his cell phone and the contents within it. In the absence of full review, I cannot agree with the court of appeals that Appellant evinced an intent to abandon his cell phone and its contents merely by fleeing the scene. Therefore, I respectfully dissent from the Court's denial of Appellant's petition for discretionary review.

I. Background

While on beat patrol at about 4 a.m. June 15, 2016, Harris County Sheriff's Deputy Jose Castellanos initiated a traffic stop of a Chevy Tahoe for failure to stop at a designated point. Appellant, the driver, pulled into a public parking lot and stopped without parking in a parking space. Castellanos approached the vehicle and detected the smell of marijuana, at which point he asked Appellant to exit the vehicle so he could handcuff and detain him. Castellanos then attempted to detain the passenger in Appellant's vehicle but was instead led on a foot chase when the passenger fled. As Castellanos took off after the passenger, Appellant—hands cuffed—ran from the parking lot.

After a short pursuit, Castellanos apprehended the passenger, who had a gun. Castellanos returned to the vehicle to discover Appellant was gone. After putting the passenger in his patrol car, Castellanos began to inventory Appellant's vehicle.

Castellanos recovered a gun, marijuana, and a cell phone located next to the driver's seat. Castellanos also recovered drug paraphernalia and sex toys, all of which were new and in the original packaging. Castellanos proceeded to look through the contents of the cell phone. As he did so, Castellanos opened text messages, emails, and the settings application. Searching the phone, Castellanos found Appellant's name along with the address of a sex shop that had recently been robbed. Castellanos entered Appellant's name into a reporting system, which led him to positively identify Appellant.

Ultimately, police determined the unused, packaged items in Appellant's vehicle were stolen from one of two sex shops where employees had been robbed at gunpoint. Appellant—a former employee of the adult store chain—was indicted for aggravated robbery of two retail stores.

Appellant filed a pre-trial motion to suppress all evidence from the cell phone. The trial court agreed that the warrantless search of the cell phone could not be justified as a search incident to arrest or an inventory search. However, the trial court determined that Appellant had abandoned his cell phone and thus lacked standing to challenge the search. As trial neared, Appellant asked the trial court to reconsider its suppression ruling and argued that the abandonment doctrine did not apply because Appellant did not intentionally abandon his cell phone.[1] Following a

---

[1] At the time Appellant filed his motion to suppress in November 2017, the State had not yet obtained a search warrant for the cell phone. In April 2018, about a month before the motion to suppress hearing, the State obtained a search warrant to forensically examine the cell phone. Subsequently, in July 2018,

hearing on Appellant's motion to reconsider, the trial court once again ruled that the abandonment doctrine applied to the warrantless search of the cell phone and denied his motion. A jury found Appellant guilty of aggravated robbery of both of the sex shops, and a judge sentenced him to ten years on each count to be served concurrently.

On appeal, Appellant challenged the trial court's denial of his motion to suppress. In addition to arguing that he did not intentionally abandon his cell phone, Appellant contended that the abandonment doctrine could not apply as an exception to a warrantless search of a cell phone based on the United States Supreme Court decision in *Riley v. California*, 573 U.S. 373 (2014). The court of appeals rejected Appellant's arguments, determined that the abandonment doctrine did apply to the cell phone, and affirmed Appellant's convictions. *Wiltz v. State*, 595 S.W.3d 930, 936 (Tex. App.—Houston [14th Dist.] 2020).

II. Abandonment Doctrine

A person has no reasonable expectation of privacy in property he abandons. *Matthews v. State*, 431 S.W.3d 596, 608 (Tex. Crim. App. 2014). Once a defendant voluntarily and intentionally abandons property, he no longer has standing to challenge the reasonableness of the search of the abandoned property. *Id.* at 608-09. Rather than being determined in the strict property-right sense, the issue centers on whether the person relinquished his or her interest in the property so that he or she could no longer retain a reasonable expectation of privacy with regard to the

---

Appellant filed a motion to reconsider the motion to suppress.

property at the time of the search. *State v. Martinez*, 570 S.W.3d 278, 286 (Tex. Crim. App. 2019) (citing *McDuff v. State*, 939 S.W.2d 607, 616 (Tex. Crim. App. 1997)).

Abandonment is primarily a question of intent to be inferred from words spoken, acts done, and other objective facts and relevant circumstances. *Id.* "[A]bandonment consists of two components: 1) a defendant must intend to abandon property, and 2) a defendant must freely decide to abandon the property."[2] *Comer v. State*, 754 S.W.2d 656, 659 (Tex. Crim. App. 1986) (op. on reh'g). The abandonment "test does not begin with a presumption of abandonment which must be rebutted by proof of an intent not to abandon." *Martinez*, 570 S.W.3d at 286. Instead, affirmative proof of abandonment is required. *Id.*

III. The Evidence Fails to Show That Appellant Intentionally Abandoned His Cell Phone.

While this Court has recognized that the abandonment doctrine may apply as an exception to the warrantless search of a cell phone, *State v. Granville*, 423 S.W.3d 399, 409 (Tex. Crim. App. 2014), we have not specified the parameters in which a person's actions equate to intentional abandonment of a cell phone for purposes of the Fourth Amendment.

In concluding that Appellant intentionally abandoned his vehicle and cell phone, the court of appeals noted that "[t]he video shows appellant fleeing from

---

[2] A person does not voluntarily abandon his cell phone if his relinquishment is the result of police misconduct. *Comer*, 754 S.W.2d at 658-59. Because there is no evidence of police misconduct in this case, the abandonment inquiry is one of intent.

the vehicle on foot after having been handcuffed, passing by the wide-open door, leaving behind his vehicle and everything in it, including the cell phone." *Wiltz*, 595 S.W.3d at 935. While I agree that Appellant abandoned his vehicle when he fled,[3] the same evidence, without more, does not demonstrate that Appellant intended to abandon his cell phone and the information within it.

It is apparent that when Appellant fled, he knew his vehicle would be left behind and chose to run anyway. Appellant did not return to his vehicle. By intentionally leaving his unparked vehicle in a public parking lot, Appellant abandoned the vehicle "in such a way 'that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.'" *Matthews*, 431 S.W.3d at 609 (quoting *McDuff*, 939 S.W.2d at 616). If the question was whether Appellant had standing to challenge the search of his vehicle, I would hold that he did not.

But what is not apparent from the record is whether Appellant knew the cell phone was in his vehicle when he ran or whether he made a conscious decision to leave it behind. Based on the facts before us, it would be speculative to conclude that Appellant knew his phone was in his vehicle and intentionally left it behind when he fled just as it would be speculative to conclude that he believed it was in his pocket when he ran. The record also is silent as to whether Appellant was in possession or control of his cell phone at the time of the stop. As the Appellant

---

[3] *See Matthews*, 431 S.W.3d at 610 (concluding that the defendant intentionally abandoned a borrowed vehicle when he fled from the police).

suggested to the trial court, it is possible that the passenger was using the phone and had control over it when the traffic stop occurred. Again, reaching that conclusion would be speculative just as concluding that Appellant was in control of his phone at the time of the stop would be speculative. There is no evidence that would lead to an inference that Appellant intentionally abandoned the phone.

Both the trial court and the court of appeals found *Edwards v. State*, 497 S.W.3d 147 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd) instructive on the issue of whether Appellant abandoned his cell phone for purposes of the Fourth Amendment. Although the court of appeals in *Edwards* did hold that the defendant in that case abandoned his cell phone, the case is distinguishable in several respects.

In *Edwards*, the defendant left his phone out in the open on top of a stolen vehicle he and his co-defendants used as transportation to a game room where they attempted an armed robbery. *Id.* at 154. Based on the facts available, it appears that Edwards left his cell phone on top of the stolen vehicle *before* he approached the game room and got into a confrontation with the security guard, which led to a shootout between the defendants and the security guard. *Id.* at 151–54. Eventually, Edwards took off running without going back for his cell phone. *Id.* at 152.

There was an abundance of evidence that Edwards intentionally abandoned his cell phone when he left it on top of the stolen vehicle out in the open before he attempted an armed robbery and fled from the scene without going back for his cell phone. Based on these facts, it is clear that Edwards relinquished any

reasonable expectation of privacy with regard to his cell phone.

The facts of Appellant's case differ substantially. The one similarity is that both Edwards and Appellant fled from the scene. But while in *Edwards* there is affirmative evidence[4] to infer that he knew he would be leaving his cell phone behind when he fled, the same cannot be said in Appellant's case.

In *Edwards*, the appellant placed his cell phone on top of a stolen car and then walked away to commit a crime. Edwards's act of getting out of a stolen vehicle and proceeding to the game room lobby without his cell phone provided some affirmative evidence that Edwards intended to leave his cell phone behind. In Appellant's case, there is no evidence that Appellant had the intent to leave the cell phone behind. There is no evidence to even infer that Appellant thought about whether he had the time or ability to retrieve the phone while having his hands cuffed behind his back. Immediately after Castellanos took off after Appellant's passenger, Appellant—who was handcuffed and could not have accessed his cell phone even if he knew it was there—ran. Not only is there no affirmative evidence that Appellant formed the intent to abandon his cell phone, the record facts would lead to a logical conclusion that it was extremely unlikely that he did so.

Further, in *Edwards* police found a handprint located on the vehicle near the cell phone that matched Edwards's handprint. *Edwards*, 497 S.W.3d at 158,

---

[4] *See Martinez*, 570 S.W.3d at 286 (explaining that "the test for abandonment in the Fourth Amendment context requires affirmative proof of abandonment").

n. 14. Unlike in Appellant's case, this provided some evidence to infer that Edwards placed his phone on top of the car and therefore knew he was leaving his cell phone behind. The fact that Edwards left his cell phone out in the open and on top of a vehicle that did not belong to him or his co-defendants can also lead to an inference that Edwards intended to abandon the cell phone at the time he placed it on top of the car. *See Martinez*, 570 S.W.3d at 287 (explaining that "[n]ot only will privacy expectations vary with the type of property involved . . . but they will vary with the location of the property") (quoting *United States v. Oswald*, 783 F.2d 663, 666–67 (6th Cir. 1986)). Conversely, in Appellant's case, the cell phone was recovered from the *inside* of *Appellant's* vehicle. For purposes of privacy expectations, a person leaving his cell phone inside of his own vehicle is much different than a person leaving his cell phone out in the open and on top of a stolen vehicle to go commit a robbery. Unlike the present case, consideration of where Edwards left his cell phone is additional affirmative evidence of his intent to abandon his cell phone.

Absent a showing of any affirmative evidence of Appellant's intent to abandon his cell phone, I cannot agree that Appellant did not have any reasonable expectation of privacy regarding his cell phone and would hold that he did have standing to challenge the warrantless search of his cell phone.

IV. The Evidence Fails to Show that Appellant Intentionally Abandoned the Contents of His Cell Phone.

Even if evidence existed that could lead to an inference that Appellant had intentionally abandoned

his cell phone by fleeing, there is no evidence that he intentionally abandoned the information contained in his cell phone. There is a distinction between the privacy interests of a cell phone as a physical object and the digital contents stored on a cell phone. This Court recognized as much in *Granville* when we concluded police were permitted to inspect the physical aspects of appellant's cell phone in police custody but were required to obtain a warrant to search the contents of the phone. *Granville*, 423 S.W.3d at 416; *Id.* at 426 (Keller, P.J., concurring).

In *Granville*, the defendant challenged the search of his cell phone seized while being booked in jail. Shortly after Granville, a high school student, was booked, a school resource officer was told that Granville had taken an inappropriate picture of another student in the boys' bathroom. The officer went to the jail, retrieved Granville's cell phone from the property room, and looked through it until he found the photograph. *Id.* at 402. In rejecting the State's argument that Granville did not have a reasonable expectation of privacy in any property in the custody of jail officials, this Court distinguished the expectation of privacy in physical objects such as clothing from the expectation of privacy in cell phones:

> [C]lothing does not contain private banking or medical information and records; it does not contain highly personal emails, texts, photographs, videos, or access to a wide variety of other data about the individual citizen, his friends and family. Searching a person's cell phone is like searching his home desk, computer, bank vault, and medicine cabinet all at once.

Id. at 415. *See also Riley*, 573 U.S. at 396 ("Indeed, a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house[.]").

In *Riley*, the Supreme Court held a warrant was required to search a cell phone seized incident to an arrest given the "quantitative and qualitative" differences between a cell phone and other objects. *Id.* at 393, 403. In so holding, the Court rejected the Government's argument that information stored by cell phones is "materially indistinguishable" from searches of other physical items that police are authorized to search incident to an arrest such as wallets, purses, and other containers. *Id.* at 393. In the Court's view, the Government's argument was "like saying a ride on horseback is materially indistinguishable from a flight to the moon." *Id.*

Nor was the Supreme Court persuaded by the Government's proposed rule that police be permitted to conduct a limited search of a cell phone seized incident to an arrest "where an officer reasonably believes that information relevant to the crime, the arrestee's identity, or officer safety will be discovered." *Id.* at 399. The Supreme Court declined to hold as much based on the plethora of information that would be swept up by such a rule and the inability for police to "discern in advance what information would be found where." *Id.*

The Court also was unpersuaded by the Government's suggestion that a search of a cell phone call log always be authorized. *Id.* at 400. In refusing to adopt such a rule, the Supreme Court explained that "call logs typically contain more than just phone numbers; they include any identifying information

that an individual might add, such as the label 'my house' in [this] case." *Id.*

Although *Riley* involved the search incident to arrest doctrine rather than the abandonment doctrine, the same privacy interests and governmental intrusion concerns expressed by the Supreme Court apply to the contents of the cell phone in this case. While Castellanos may not have done an extensive search of Appellant's cell phone, the *Riley* Court made clear that any warrantless search of a defendant's cell phone, however minimal, is unreasonable absent express exigent circumstances such as a concern for the safety of officers or others. *Id.* at 388, 399-400.

Given the heightened privacy interests associated with the information within a cell phone as distinct from the privacy interests associated with a cell phone as a physical object and the lack of any evidence that Appellant intentionally abandoned the contents of his cell phone, I would hold that Appellant maintained a reasonable expectation of privacy in the contents of the cell phone and thus had standing to challenge Castellanos's warrantless search of the cell phone.

V. Conclusion

Application of Fourth Amendment principles to cell phones is an evolving area of constitutional law that warrants further development. Both this Court and the Supreme Court have recognized a person's distinct privacy interests in his cell phone. Granting review in this case would give the Court an opportunity to address the abandonment doctrine's application to cell phones and the vast amount of information stored on them. Without review, I cannot conclude that the evidence in this case establishes that Appellant

abandoned either his cell phone or the contents within it, thereby losing any reasonable expectation of privacy regarding his cell phone and its contents. Therefore, I respectfully dissent from the Court's refusal to grant review.

FILED: October 21, 2020
PUBLISH

**JUDGMENT OF THE STATE OF TEXAS,
FOURTEENTH COURT OF APPEALS
(FEBRUARY 27, 2020)**

THE STATE OF TEXAS

THE FOURTEENTH COURT OF APPEALS

JERRY WILTZ,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

No. 14-18-00718-CR

No. 14-18-00719-CR

Cause No. 14-18-00718-CR was heard on the appellate record. Having considered the record, this Court holds that there was no error in the judgment. The Court orders the judgment AFFIRMED. We further order this decision certified below for observance.

Cause No. 14-18-00719-CR was heard on the appellate record. Having considered the record, this Court holds that there was no error in the judgment. The Court orders the judgment AFFIRMED. We further order this decision certified below for observance.

Judgment Rendered February 27, 2020.

Panel Consists of Justices Chief Justice Frost and Justices Wise and Hassan.

Opinion delivered by Chief Justice Frost.

OPINION OF THE STATE OF TEXAS, FOURTEENTH COURT OF APPEALS (FEBRUARY 27, 2020)

THE STATE OF TEXAS

THE FOURTEENTH COURT OF APPEALS

JERRY WILTZ,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

No. 14-18-00718-CR

No. 14-18-00719-CR

On Appeal from the 230th District Court
Harris County, Texas Trial Court Cause
Nos. 1514086 & 1570825

Before: Kem THOMPSON FROST, Chief Justice.

Appellant Jerry Wiltz appeals his convictions for the aggravated robbery of two retail stores. He seeks appellate relief based on a single complaint: the trial court erred in denying his motion to suppress data found on his cell phone. Because appellant abandoned the cell phone in his open car when he fled from the

police, we conclude he lacked standing to challenge the constitutionality of the cell-phone search. We affirm.

I. Procedural and Factual Background

On June 13, 2016, two armed, masked men entered a Zone D'Erotica store, held its clerk at gun point, and stole money and other things from the store. Later that night, the same thing happened at another Houston-area Zone D'Erotica store. Two nights later, Harris County Sherriffs Office Jose Castellanos stopped appellant's vehicle around 4:00 am for a traffic violation. Officer Castellanos testified that when he walked up to the door of the vehicle, he smelled marijuana. Appellant was in the driver's seat and Peter Vanderveen was sitting next to him. Castellanos asked appellant to get out of the car and he did so. Castellanos then handcuffed appellant. During this time, Vanderveen casually stepped out of the passenger side of the vehicle, paused for a moment, and then took off running. Officer Castellanos ultimately caught Venderveen, but during their foot race, appellant fled. Appellant did not return to the scene.

After securing Venderveen in the patrol car, Officer Castlellanos began to inventory the contents of the vehicle. Castellanos found, among other items, a gun, two bags of marijuana, still-packaged drug paraphernalia, and sex toys. He also found a cell phone by the driver's seat. At the suppression hearing, Officer Castellanos testified that he looked through the phone to identify its owner. In viewing text messages he found an address and appellant's name "on the owner detail portion of the message."

Appellant was charged by two indictments with the aggravated robbery of each of the stores. Appellant filed a pre-trial motion to suppress, asking the trial court to exclude all evidence seized from appellant's cell phone on the grounds that the police officer obtained the cell phone through an unreasonable, warrantless search to which no exceptions to the warrant-requirement applied.

The State argued that appellant had abandoned the cell phone when he left the property in the vehicle and fled the scene. The suppression hearing took place over several days. At the conclusion of the hearing, the trial court agreed with appellant that many of the warrantless-search exceptions did not apply to the facts as presented, but the trial court denied appellant's motion to suppress on the ground that appellant had abandoned the cell phone.

At trial, the State presented Todd Messina, who had been a manager at the Willow Chase Zone D'Erotica in 2016. Messina testified that he had hired appellant to work at the Willow Chase store and that appellant had worked there for a while before being fired. Messina testified that after another employee was promoted, appellant threatened Messina. Messina identified appellant as one of the men appearing on the surveillance videos taken of the robbery at the Willow Chase store. The State also offered the following evidence from the cell phone Officer Castellanos discovered:

- Photographs of appellant, including one showing him holding a firearm;
- Text messages that characterized appellant as a marijuana dealer; and

- Text messages suggesting that appellant committed the robberies as a sort of revenge against Messina.

In closing argument, the State focused on the text messages and dubbed them "the best evidence that [appellant] committed the[] robberies[.]"

The jury returned a "guilty" verdict in both cases. The trial court accepted the jury's assessment of punishment, and then sentenced appellant to ten years' confinement for each aggravated-robbery conviction. The trial court specified that the sentences were to run concurrently.

II. Issues and Analysis

In his sole issue appellant asserts that the trial court erred by denying his motion to suppress evidence Officer Castellanos retrieved from appellant's cell phone on the grounds the officer conducted the search without a warrant or under a valid exception and because, contrary to the trial court's finding, appellant did not abandon the cell phone. Under this issue, appellant also challenges the legality of a warrant subsequently issued to search the cell phone. Appellant argues he suffered harm by the admission of the cell-phone evidence.

We review a trial court's ruling on a motion to suppress under a bifurcated standard. *Ramirez-Tamayo v. State*, 537 S.W.3d 29, 35 (Tex. Crim. App. 2017). As long as the record supports the trial court's determination of historical facts, and mixed questions of law and fact that rely on credibility, courts give almost total deference to those decisions. *State v. Kerwick*, 393 S.W.3d 270, 273 (Tex. Crim. App. 2013). We review

de novo the trial court's application of the law to the facts. *Ramirez-Tamayo*, 537 S.W.3d at 35. When, as in this case, the trial court does not make formal findings of fact, we will uphold the trial court's ruling on any theory of law applicable to the case and we will presume the trial court made implicit findings in support of its ruling if the record supports those findings. *Cheek v. State*, 543 S.W.3d 883, 888 (Tex. App.—Houston [14th Dist.] 2018, no pet.).

"Under the Fourth Amendment, '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]'" *State v. Huse*, 491 S.W.3d 833, 839 (Tex. Crim. App. 2016) (quoting U.S. Const. amend. IV). What constitutes a "search" for Fourth Amendment purposes—and therefore, what may serve to confer Fourth Amendment "standing"—may be predicated, as the Supreme Court of the United States has emphasized, on either an intrusion-upon-property theory of search or a reasonable-expectation-of-privacy theory of search. *See Florida v. Jardines,* 569 U.S. 1, 11, 133 S. Ct. 1409, 1414, 185 L.Ed.2d 495 (2013); *United States v. Jones,* 565 U.S. 400, 406, 132 S. Ct. 945, 949–51, 181 L.Ed.2d 911 (2012); *Williams v. State*, 502 S.W.3d 254, 258 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd). Appellant asserts he had a reasonable expectation of privacy in the contents of his cell phone.

To assert a challenge to a search and seizure, a defendant first must establish standing. *See Kothe*, 152 S.W.3d at 59; *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996). So, as a threshold issue, we consider appellant's standing to challenge the search and seizure. A person has standing to

challenge the reasonableness of a search or seizure under a reasonable-expectation-of-privacy theory if (1) the person has a subjective expectation of privacy in the place or object searched, and (2) society is prepared to recognize that expectation as "reasonable" or "legitimate." *State v. Granville,* 423 S.W.3d 399, 405 (Tex. Crim. App. 2014); *Williams*, 502 S.W.3d at 258. A defendant normally has standing to challenge the search of places and objects the person owns. *State v. Granville*, 423 S.W.3d 399, 406 (Tex. Crim. App. 2014). Courts have held that (1) one has a subjective expectation of privacy in the contents of one's cell phone, and (2) society recognizes this expectation of privacy as reasonable and legitimate. *Id.* at 405–06. Yet, one may lose a reasonable and legitimate expectation of privacy in the contents of one's cell phone if one abandons the phone. *Id.* at 409; *Edwards v. State*, 497 S.W.3d 147, 160 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd).

Abandonment of property occurs when one intends to abandon the property and that decision does not flow from police misconduct. *McDuff v. State*, 939 S.W.2d 607, 616 (Tex. Crim. App. 1997); *Edwards v. State*, 497 S.W.3d 147, 160 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd). "When police take possession of property abandoned independent of police misconduct[,] there is no seizure under the Fourth Amendment." *McDuff,* 939 S.W.2d at 616. Abandonment is primarily a question of intent that can be inferred from the party's words and actions and other circumstances surrounding the alleged abandonment. *Id.*; *Edwards*, 497 S.W.3d at 160. We must determine whether appellant voluntarily discarded, left behind, or otherwise relinquished his interest in the cell phone

so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search. *See McDuff,* 939 S.W.2d at 616; *Edwards*, 497 S.W.3d at 160–61; *see also Straight v. State*, 515 S.W.3d 553, 567 n. 16 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd) (discussing the appropriate standard in the context of an ineffective-assistance analysis).

Although the trial court did not make formal findings, the trial judge noted that there appeared to be no dispute as to the propriety of the traffic stop. The dashcam video from Officer Castellanos's patrol car confirms this assessment, showing that appellant stopped on (and blocked) the pedestrian crossing. After Officer Castellanos activated his patrol car's lights, signaling appellant to stop, appellant pulled into a parking lot and parked in the lot, but not in a designated parking space. The trial court noted Officer Castellanos's testimony that he had smelled marijuana in approaching appellant's vehicle, prompting the officer to ask appellant step out of the vehicle. The officer then handcuffed appellant. Appellant does not argue, nor does the record contain evidence, that Officer Castellanos's conduct in handcuffing appellant at that time amounted to police misconduct. Appellant does not point to any other potential law-enforcement misconduct that might have led to his alleged abandonment of the car and cell phone.

We now consider whether appellant intended to abandon the cell phone. The record contains no evidence that the cell phone was password-protected or that appellant otherwise had attempted to limit another person's ability to access the phone and search through it to ascertain ownership. *See Lown v. State*, 172 S.W.3d 753, 761 (Tex. App.—Houston [14th Dist.]

2005, pet. ref'd) (concluding that appellant failed to show that his expectation of privacy was objectively reasonable because, among other reasons, "there is no evidence demonstrating that appellant took any precautions (such as encryption) to protect his privacy in the information contained on the computer system"). The facts do not present a scenario in which the cell-phone owner lost his phone and failed to keep it secured. *See id.* Flight does not particularly relate to the "reasonableness" of the expectation of privacy; instead, it signals the abandonment of that expectation of privacy. *Matthews v. State*, 431 S.W.3d 596, 610 (Tex. Crim. App. 2014). Here, the evidence supports a finding that appellant intentionally left the cell phone behind; no evidence suggests that he intended to keep it. *See id.* When Vanderveen exited the car and took off running, he left the vehicle door open. The video shows appellant fleeing from the vehicle on foot after having been handcuffed, passing by the wide-open door, leaving behind his vehicle and everything in it, including the cell phone.

Like the trial court, we find this scenario analogous to the facts in *Edwards v. State*, 497 S.W.3d 147 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd), a case in which the First Court of Appeals found abandonment of a cell phone recovered from the top of the defendants' vehicle when officers arrived at the scene. *Id.* at 160. In *Edwards,* the defendants "took off running" when they "felt that the police were close by," whereas in this case appellant took off running after having been placed in handcuffs. Appellant contends that the handcuffs removed his ability to intentionally abandon the cell phone in the vehicle at the time he fled. Appellant argues that with the restraint of his

hands, his ability to formulate an intent also became restrained.

No one compelled appellant to abandon property or any privacy right associated in that property. While the circumstances may have been part of appellant's calculus in making the decision, the decision was his. As appellant stood handcuffed, before he fled, he retained the privacy protections to his cell phone the law affords. But appellant opted to flee the scene and leave his cell phone behind. In making that decision to abandon the cell phone, appellant intentionally gave up any privacy rights to information on the cell phone. *See Edwards*, 497 S.W.3d at 161.

In 2014, the Court of Criminal Appeals noted that "when a person abandons their phone" that person may lose their reasonable and legitimate expectation of privacy in that property. *Granville*, 423 S.W.3d at 409. But appellant relies on the Supreme Court of the United States' opinion in *Riley v. California,* issued shortly thereafter. In *Riley,* the Supreme Court did not address the abandonment doctrine or any standing issue and explicitly left the door open for other case-specific exceptions. 573 U.S. 373, 401–02, 134 S. Ct. 2473, 2494, 189 L. Ed. 2d 430 (2014) (finding that search-incident-to-arrest exception to the warrant requirement did not apply to the cell phone, but noting the continuing applicability of other case-specific exceptions); *see also Carpenter v. United States*, 138 S. Ct. 2206, 2222, 201 L. Ed. 2d 507 (2018) (recognizing "case-specific exceptions may support a warrantless search of an individual's cell-site records under certain circumstances"). Appellant asserts that after *Riley* the abandonment doctrine does not apply to cell phones, and appellant cites a Florida state court decision

involving a password-protected cell phone. *See State v. K.C.*, 207 So.3d 951, 958 (Fla. Ct. App. 2016) (concluding that under *Riley* the abandonment exception does not apply to cell phones whose contents are protected by a password). As noted, no evidence shows that appellant's cell phone was protected by a password. Like the First Court of Appeals, and a majority of other courts that have considered the abandonment doctrine as applied to cell phones post-*Riley*, we conclude that the abandonment doctrine applies to cell phones and implicates the defendant's standing to challenge the reasonableness of the search of the phone's contents. *See United States v. Crumble*, 878 F.3d 656, 660 (8th Cir. 2018); *United States v. Quashie*, 162 F.Supp.3d 135, 141-42 (E.D.N.Y. 2016) (finding *Riley* does not eliminate abandonment exception for cell phones); *Kelso v. State*, 562 S.W.3d 120, 135 (Tex. App.—Texarkana 2018, pet. ref'd); *Edwards*, 497 S.W.3d at 160; *Lopez v. State*, 512 S.W.3d 416 (Tex. App.—Corpus Christi 2016, no pet.) (holding that appellant abandoned phone and had no standing to object to evidence retrieved from it when he left the device at his workplace and never requested that it be returned to him).

Appellant has not shown that he had a reasonable expectation of privacy in the cell phone that he abandoned inside the vehicle. Appellant therefore lacks standing to complain of the reasonableness of the search of the contents of the cell phone. *See Swearingen v. State*, 101 S.W.3d 89, 101 (Tex. Crim. App. 2003); *Edwards*, 497 S.W.3d at 160. We overrule appellant's sole issue challenging the denial of his motion to suppress.

III. Conclusion

Because the record shows that appellant abandoned his cell phone, we conclude the trial court did not err in impliedly finding that appellant lacked standing to challenge the search of the cell phone. We affirm the trial court's judgment.

/s/ Kem Thompson Frost
Chief Justice

Panel consists of Chief Justice Frost and Justices Wise and Hassan.

Publish—Tex. R. App. P. 47.2(b).

ORDER ON DEFENDANTS MOTION TO SUPPRESS CELLULAR SEARCH (MAY 30, 2018)

IN THE DISTRICT COURT HARRIS COUNTY, TEXAS 230TH JUDICIAL DISTRICT

STATE OF TEXAS

v.

JERRY WILTZ

Cause No. 1514086

Before: Brad HART, Judge Presiding.

Upon due consideration, Defendant's Motion to Suppress Cellular Search is DENIED.

AND IT IS SO ORDERED ON THIS THE ___ DAY OF _____, 2017.

/s/ Brad Hart
Judge Presiding

Signed May 30, 2018

BENCH RULING IN SUPPRESSION HEARING (OCTOBER 8, 2018)

IN THE DISTRICT COURT HARRIS COUNTY, TEXAS 230TH JUDICIAL DISTRICT

THE STATE OF TEXAS

v.

JERRY WILTZ

Trial Court Cause No. 1514086 & 1570825

Court of Appeals Nos. 14-18-00718-CR & 14-18-00719-CR

Volume 7 of 15 Volumes

Before: Hon. Brad HART, Judge Presiding.

[October 8, 2018, Transcript p.3]

THE COURT: What do you want to do first? MR. HOUTHUIJZEN: We would like to address the motion to suppress first, Judge.

THE COURT: All right. Then I will address that one first.

MR. HOUTHUIJZEN: Find out what your ruling is. But before you do so, I would like to bring to the Court's attention that last week I received an e-mail from the State. In that e-mail—it was at 5:20 p.m. last week, May 23rd, same day we had the motion to suppress hearing. I got an e-mail from the State with a search warrant that had

been executed April 8th or 9th of this same year, of 2018, for the cell phone that was in question during that motion to suppress hearing.

And I just would like to bring that to the Court's attention, that the State has filed a search warrant now that we have addressed the illegality of the original search. That search warrant, if the Court would like to see it—we will be filing another motion to suppress that search warrant. And the search warrant's probable cause is the same issues that we went over in the original motion to suppress concerning the illegality of the search. So, for what it's worth, we just wanted to bring that to the Court's attention.

THE COURT: Well, all of you people are the gift that keeps on giving, aren't you? Well, no, we're not addressing that right now.

MR. HOUTHUIJZEN: I understand.

THE COURT: We'll address this—

MR. HOUTHUIJZEN: I understand.

THE COURT:—right now.

All right. Regarding the motion to suppress hearing that we had last week, first off, I will make—as I think the evidence is clear—that the defendant was stopped on a traffic stop for failing to stop at a designated point. Which I don't believe that there was any controverted evidence regarding that as the video seemed to clearly establish that the vehicle was not stopped at the designated point. That the defendant was the driver of that vehicle. The defendant pulled into a parking lot and ordered to stop. Did not

pull into a parking space, but pulled into a parking lot and stopped the vehicle.

The deputy testified that he approached the vehicle and smelled an odor of marijuana. At which point he detained the defendant, placing him in handcuffs. Officer—Deputy testified that the passenger was moving around. I don't recall if he said he ordered the passenger out or if the passenger just got out. I don't recall, but I don't think it makes a difference.

In any event, the passenger got out of the vehicle and took off running. The deputy gave chase. Passenger door was left open. Deputy gave chase of that person. At which point you can see on the video clearly the defendant fleeing the scene too while in handcuffs. I believe the testimony was that the defendant was not caught there at the scene, but the passenger was caught and brought back to the scene.

Specifically regarding the cell phone-what the officer testified to was that he was conducting an inventory search of the vehicle. Located a gun, various other items that he believed to be stolen. Didn't really say how or why he believed those items to be stolen, but said that he had found several items that he believed may have been stolen. Additionally, found the cell phone in the front of the vehicle.

The officer testified that since he thought—I believe what he said was that since he thought the items were stolen, he thought maybe the cell phone was stolen also. So, he was looking to see who the owner of the phone was.

Couple of issues here as I see it. There was no real testimony about this being a search incident to arrest. I think if it were, then Riley would certainly apply and that would have been an illegal search.

Regarding the inventory of the vehicle, I don't believe searching a cell phone during an inventory of the vehicle would have been appropriate either. There was—I believe in the Riley case, maybe it was another case, that talked about searching a cell phone in order to help catch a fleeing suspect, how that might be okay. But I don't really find that that's—would have been necessary here in this case because the officers could have gotten a search warrant since the defendant was not caught there at the scene. Gotten a search warrant to search the cell phone to figure out was it stolen, did it belong to the defendant, who it belonged to, anything of that nature.

However, under Texas law, specifically Edwards versus State, 497 Southwest 3rd, 147 as it relates to abandoned property, this case that we face ourselves with and Mr. Wiltz is not completely similar, but similar enough that it appears that the defendant relinquished any privacy interest he had in that cell phone when he fled the scene and left it there. There was no real testimony about the cell phone being locked where he needed a code to get into it. It does not appear to be that way since the officer was able to look in it and see who the phone belonged to.

In any event, because of that case and the testimony and evidence presented, the Court will find that the defendant abandoned the cell phone. Therefore, no longer had standing to contest the search of the cell phone. So, your motion to suppress on that will be denied. All right.

MR. ROGERS: Thank you, Judge.

MR. HOUTHUIJZEN: Thank you, Judge.

THE COURT: I don't know—I don't know anything about the search warrant. I don't know. So, I don't know.

MS. COOPER: And just you're aware, the initial abandoned phone, they just looked in it to get some information on who it belonged to. They didn't do a full download of it at that time. We did the search warrant to do the full download later on. So, that was the distinction of that.

THE COURT: Okay. Well, like I said, I haven't seen the search warrant. So, I don't know what else, if anything, can be complained about in there. I've made my ruling.

If the probable cause at least partially for the search warrant is based upon the evidence we just heard on this motion to suppress, then I'm assuming—even though I probably shouldn't because I don't know what other information is in there. But at least that portion of the probable cause I will find or—information contained in the affidavit, I would find probable cause for that or find that there would be no standing for that part of it. But I don't know what else is in there. I don't know if there might be something

else beyond that. But I would think that it would be okay, but I'm not—especially with y'all, I'm not assuming that. Okay.

(Proceedings adjourned).

JUDGMENT OF CONVICTION BY JURY (AUGUST 2, 2018)

IN THE 230TH DISTRICT COURT
HARRIS COUNTY, TEXAS

STATE OF TEXAS

v.

WILTZ, JERRY

Case No. 151408601010

State ID No.: TX50524692

Incident NO/TRN: 9171982787A00I

Judge Presiding:
Hon. Brad Hart

Date Judgment Entered:
08/02/2018

Attorney for State:
Jerell Rogers/Micala Clark

Attorney for Defendant:
Houthuijzen, Alexander

Offense for which Defendant Convicted:
Aggravated Robbery-Deadly Weapon

Charging Instrument:
Indictment

Statute for Offense:

N/A

Date of Offense:
06/13/2016

Degree of Offense:
1st Degree Felony

Plea to Offense:
Not Guilty

Verdict of Jury:
Guilty

Findings on Deadly Weapon:
Yes, a Firearm

Punished Assessed by:
Jury

Date Sentence Imposed:
08/06/2018

Date Sentence to Commence:
08/06/2018

Punishment and Place of Confinement:

10 Years Institutional Division, TDCJ

This Sentence Shall run Concurrently.

Sentence of confinement suspended, defendant placed on community supervision for N/A.

Fine: N/A

Court Cost: As Assessed

Restitution: N/A

Time Credited

From: 06/28/2016 to 06/28/2016

From: 07/24/2017 to 11/14/2017

From: 08/02/2018 to 08/06/2018

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

This cause was called for trial in Harris County, Texas. The State appeared by her District Attorney.

Counsel/Waiver of Counsel

Defendant appeared in person with Counsel.

Punishment Assessed by Jury/Court/No election

Jury. Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

Punishment Options

Confinement in State Jail or Institutional Division. The Court ORDERS the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional

Division, TDCJ. The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the Harris County District Clerk's office. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

Execution/Suspension of Sentence

The Court ORDERS Defendant's sentence EXECUTED.

Furthermore, the following special findings or orders apply:

DEADLY WEAPON.

THE COURT FINDS DEFENDANT USED OR EXHIBITED A DEADLY WEAPON, NAMELY, A FIREARM, DURING THE COMMISSION OF A FELONY OFFENSE OR DURING IMMEDIATE FLIGHT THEREFROM OR WAS A PARTY TO THE OFFENSE AND KNEW THAT A DEADLY WEAPON WOULD BE USED OR EXHIBITED. TEX. CODE CRIM. PROC. ART. 42A.054; TEX. PENAL CODE SEC. 1.07(17)(A)(B).

Signed and entered on 08/07/2018

/s/ Brad Hart
Presiding Judge

Notice of Appeal Filed: Aug 06, 2018
Clerk: A Sanchez
Case Number: 151408601010
Defendant: Wiltz, Jerry

Right Thumbprint

ORDER OF THE COURT OF CRIMINAL APPEALS OF TEXAS DENYING APPELLANT'S MOTION FOR REHEARING (NOVEMBER 25, 2020)

COURT OF CRIMINAL APPEALS OF TEXAS

JERRY WILTZ

v.

THE STATE OF TEXAS

Tr. Ct. No. 1514086

PD-0252-20

On this day, the Appellant's motion for rehearing has been denied.

JUDGE RICHARDSON AND JUDGE WALKER WOULD GRANT

/s/ Deana Williamson
Clerk

Alexander Houthuijzen
Attorney-at-Law, PLLC
917 Franklin St Ste 230
Houston, TX 77002-1741
Delivered via e-mail

14th Court of Appeals Clerk
Christopher A. Prine
301 Fannin, Suite 245
Houston, TX 77002-7006
Delivered via e-mail

State Prosecuting Attorney
Stacey Soule
P.O. Box 13046
Austin, TX 78711
Delivered via e-mail

District Attorney Harris County
Appellate Section
1201 Franklin St. Ste. 600
Houston, TX 77002-1901
Delivered via e-mail

CELL PHONE SEARCH WARRANT (APRIL 9, 2018)

IN THE DISTRICT COURT HARRIS COUNTY, TEXAS 230TH JUDICIAL DISTRICT

Nos. 151408601010

Court: 230

THE STATE OF TEXAS
COUNTY OF HARRIS

To the Sheriff or Any Peace Officer of Harris County Texas

Greetings:

WHEREAS, Complaint in writing, under oath, has been made before me by Joe Freeman, a peace officer employed by Harris County Sheriff's Office, and who is currently assigned to the Robbery division/ department, with an address of Harris County Sheriffs Office, which complaint is attached hereto and expressly made a part hereof for all purposes and said complaint having stated facts and information in my opinion sufficient to establish probable cause for the issuance of this warrant;

YOU ARE THEREFORE COMMANDED to forthwith search the place therein named, to wit: One (1) "Alcatel" brand cell phone with Serial Number B2000013C2Y23RLV tagged in HC16-96075 under Tag No. 160014885. One (1) "Samsung" brand phone

with Serial Number SMS9061 tagged in HC16-96075 under Tag No. 160014885. and One (1) "LG" brand cell phone with Serial Number 604CYDG011746 tagged in HC16-96075 under Tag No. 160014885 which is currently located at 2223 West Loop South, Houston, Harris County, Texas and is owned by or was found in the possession of Jerry Wiltz with the authority to search for and to seize any and all evidence that may be found therein including, but not limited to: photographs/videos; text or multimedia messages (SMS and MMS); any call history or call logs; any e-mails, instant messaging, or other forms of communication of which said phone is capable; Internet browsing history; any stored Global Positioning System (GPS) data; contact information including e-mail addresses, physical addresses, mailing addresses, and phone numbers; any voicemail messages contained on said phone; any recordings contained on said phone; any social media posts or messaging, and any images associated thereto, including but not limited to that on Facebook, Twitter, and Instagram; any documents and/or evidence showing the identity of ownership and identity of the users of said described item(s); computer files or fragments of files; all tracking data and way points; CD-ROM's, CD's, DVD's, thumb drives, SD Cards, flash drives or any other equipment attached or embedded in the above described device that can be used to store electronic data, metadata, and temporary files.

YOU ARE FURTHER ORDERED to have a forensic examination conducted of any devices seized pursuant to this warrant to search for the items previously listed.

HEREIN FAIL NOT and due return make hereof.

WITNESS MY SIGNATURE on this the 9th day of April A.D., 2018 at 11:30 O'clock.

/s/ S. Brown
Magistrate
185th district court
Harris County, Texas

AFFIDAVIT OF JOE FREEMAN

THE STATE OF TEXAS
COUNTY OF HARRIS

I, Joe Freeman, a peace officer employed by Harris County Sheriffs Office, and who is currently assigned to the Robbery division/department, with an address of Harris County Sheriffs Office, do solemnly swear that I have reason to believe and do believe that within One (1) "Alcatel" brand cell phone with Serial Number B2000013C2Y23RLV tagged in HC16-96075 under Tag No. 160014885. One (1) "Samsung" brand phone with Serial Number SKS9061 tagged in HC16-96075 under Tag No. 160014885. and One (1) "LG" brand cell phone with Serial Number 604CYDG011746 tagged in HC16-96075 under Tag No. 160014885 which is currently located in 2223 West LOOP South. Houston, Harris County, Texas and is owned by or was found in the possession of Jerry Wiltz, is evidence including, but not limited to: photographs/videos; text or multimedia messages (SMS and MMS); any call history or call logs; any e-mails, instant messaging, or other forms of communication of which said phone is capable; Internet browsing history; any stored Global Positioning System (GPS) data; contact information including e-mail addresses, physical addresses, mailing addresses, and phone numbers; any voicemail messages contained on said phone; any recordings contained on said phone; any social media posts or messaging, and any images associated thereto, including but not limited to that on Facebook, Twitter, and Instagram; any documents and/or evidence showing the identity of ownership and identity of the users of said described item(s); computer files or fragments of

files; all tracking data and way points; CD-ROM's, CD's, DVD's, thumb drives, SD Cards, flash drives or any other equipment attached or embedded in the above described device that can be used to store electronic data, metadata, and temporary files.

Your Affiant Has Probable Cause for Said Belief by Reason of the Following Facts:

On June 13, 2016 at approximately 12:50am, Houston Police Department officers were dispatched to "Zone D'Erotica" adult store located at 13137 Willow Chase Drive in Houston, Harris County Texas, in reference to a robbery. Affiant reviewed Houston Police Department OR#757068-16 learned that George Granato was the complainant in the aforementioned case. Complainant Granato advised that while working at the above location, two suspects (one black male and one white male) entered the location. Complainant Granato advised that one of the males was black and pointed a black gun at the complainant while demanding money from him. The black suspect reached under the counter and took the reserve cash box hidden under the counter, leading the complainant to believe that the black male suspect must have worked at the store before. The complainant advised that the suspects wore bandanas. In addition to the money, the suspects also took other merchandise before leaving together in possibly tan suburban.

Shortly after this and on the same previously mentioned date, Harris County deputies responded to an Aggravated Robbery call at a different "Zone D'Erotica" adult store located at 19211 North Freeway, Spring, Harris County, Texas. Deputies were dispatched at approximately 1:14am, less than 30 minutes after the call at the 13137 Willow Chase location.

While on the scene, Harris County Deputies met with complainant James Wright who advised that he was working at the location when two suspects (one black male and one white male) entered the store. Complainant Wright advised that the black male suspect, wearing a black bandanna over his face, brandished a firearm and demanded the money that was stored in the register and the backup bank, leaving complainant Wright to believe that the black male suspect must have worked at the store before. The white male was wearing a red bandana and brandished a black in color handgun with a red slide. The black male unlocked the door to go behind the counter, and opened the register as if he had done it before and took from it approximately $138.00. Shortly after this and after taking additional store merchandise, Complainant Wright advised that the suspects then fled from the store in what seemed to be a late model Gray or Blue Chevy Tahoe or Suburban with unknown plates.

On Wednesday, January 15, 2016, Deputy Jose Castellanos of the Harris County Sheriffs Office was on patrol in the 1300 block of W. FM 1960 Road, Harris County, Texas when he observed a gray 2007 Chevrolet Tahoe bearing Texas tag BG2Y695 fail to stop at the designated point when stopping at the red light, which intersected with Ella Boulevard. Deputy Castellanos conducted a traffic stop on the vehicle which then drove into a nearby parking lot. Deputy Castellanos approached the vehicle and smelled an odor of marijuana emitting from inside and made contact with the driver, later identified as defendant Jerry Wiltz, and noted that he appeared to be nervous. Deputy Castellanos detained defendant Wiltz. Deputy

Castellanos then began to approach the white male passenger, later identified as defendant Peter Vander-Veen. After ordering defendant Vander-Veen to step out of the vehicle, defendant Vander-Veen opened the door and fled north through the parking lot. Deputy Castellanos was eventually able to detain defendant Vander-Veen and while doing so, recovered a black KelTec P-11 9mm pistol with a red slide that fell from defendant Vander-Veen's waist line.

While Deputy Castellanos was dealing with Defendant Vander-Veen, it was found that defendant Wiltz had fled the scene. Deputy Castellanos reviewed his dash cam footage and observed defendant Wiltz fleeing westbound through the parking lot with the handcuffs behind his back. Upon the arrival of additional units, Deputy Castellanos then began to check the Tahoe.

Inside the vehicle, Deputy Castellanos observed a black Sig Saur P226 9mm pistol within the center armrest. Deputy Castellanos also observed several newly packed items through the vehicle, which included sex toys, "Bongs", car audio supplies and radio, electronic cigarettes, back packs, and other miscellaneous items which appeared to have been stolen. Deputy Castellanos also found two black bandanas and two clear plastic bags containing a green leafy substance which Deputy Castellanos knew from his professional experience to be marijuana. Within the vehicle, Deputy Castellanos also observed several cell phones, including a cell phone located by the driver seat, where defendant Wiltz had been sitting. Deputy Castellanos began to check text message that may have had the owners' name or an address where the owner could be located and he observed a text having the address of 13137 Willow chase Drive, which was the location of one of

the Zone D'Erotica adult stores that had been robbed. Deputy Castellanos also observed the name "Jerry Wiltz" in the text message section of the owner's message details. In the driver side door panel, Deputy Castellanos located a check with the name "James Wright" on it, the same name as the complainant from the Zone D'Erotica robbery at 19211 North Freeway. Deputy Castellanos entered the name "Jerry Wiltz" into the HCSO reporting system at which time a hit for "Jerry Wiltz", with a date of birth of 6/2/94 was found in the system. When checking the driver's license information and photo, Deputy was able to positively identify Jerry Wiltz as the suspect who had escaped from his scene. Your affiant was briefed on all of the above on the morning of June 15, 2016 and reviewed the original report documenting the above, HC16-94813.

The items which appeared to have been stolen were transported to the Cypresswood Station where they were itemized and documented. The manager of the Zone D'Erotica adult store was contacted and was asked to arrive at the Cypresswood Station to verify items which may have been stolen from the store. Manager Todd Messsina was able to positively identify items from the vehicle as belonging to the Zone D'Erotica located at 13137 Willow Chase Drive. Manager Todd Messina further identified defendant Jerry Wiltz as a former employee of Zone D'Erotica.

WHEREFORE, PREMISE CONSIDERED, Affiant respectfully requests that a warrant issue authorizing your Affiant and any other peace officer in Harris County, Texas to search the contents of <u>One (1) "Alcatel" brand cell phone with Serial Number B2000013C2Y23RLV tagged in HC16-96075 under</u>

Tag No. 160014885. One (1) "Samsung" brand phone with Serial Number SMS9061 tagged in HC16-96075 under Tag No. 160014885, and One (1) "LG" brand cell phone with Serial Number 604CYDG011746 tanned in HC16-96075 under Tag No. 160014885 with the authority to search for and to seize and to analyze the property and items set out earlier in this affidavit.

Sworn to and Subscribed before me on this the 9 day of April, A.D., 2018.

/s/ S. Brown
Magistrate
185th district court
Harris County, Texas

RETURN AND INVENTORY

THE STATE OF TEXAS
COUNTY OF HARRIS

The undersigned, being a peace officer under the laws of the State of Texas, certifies that the foregoing warrant came to hand on the day it was issued executed on the 10th day of April A.D., 2018, by making the search directed therein and seizing during the search the following described property:

Providing DA Investigator D. Brown with a copy of the signed search warrant for the listed phones in the possession of the District Attorney's office.

/s/ Signature not legible
Officer Executing Process