

RECEIVED

AUG 12 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

v.

LAMAR SEQUAN BROWN,

APPELLANT.

APPELLATE CASE NO. 2013-000725

MOTION TO STRIKE

Counsel for appellant, Lamar Brown, moves to strike footnote 5 from the State's Initial Brief of Respondent. This case involves the question of whether a warrantless search of a cell phone is allowed by the Fourth Amendment. A contested issue is whether there was an expectation of privacy in the cell phone. The phone had a password which was guessed by the police. The State argued that no expectation of privacy existed and now, on appeal, uses factual information outside of the record to support this argument.

Footnote 5 of the State's brief contains the following technical information that is outside of the record. Footnote 5 states:

All #SGH-T239 cell phones (Appellant's cell phone model) use the default factory password of "1234." T-Mobile Support, Pin & Password: Samsung T239, <http://support.t-mobile.com/docs/DOC-8979> (last modified Sep. 10, 2013).

Init. Br. Resp. n.5. A copy of this webpage is attached as Exhibit 1 to this motion.

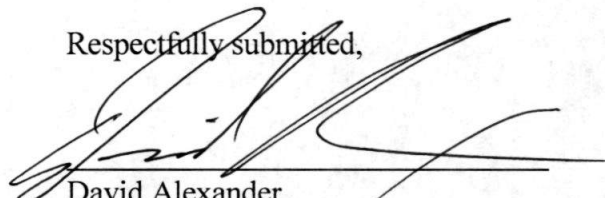
Information about how this cell phone works is factual. Allowing such information into a brief is tantamount to offering expert testimony on the working of this cell phone. None of this information was before the trial court, and therefore cannot be considered on appeal. SCACR, Rule 210(h) (stating that this Court's review is limited to the record; SCACR, Rule 208(b)(2) (stating that the respondent may ask the Court to affirm on any ground **appearing on the record**) (emphasis added).

Furthermore, appellant cannot respond to this footnote without using factual information outside of the record to engage in a factual dispute. The author of the information used by Respondent is someone named "tmo_erica." See http://support.t-mobile.com/people/tmo_erica. A copy of the profile of "tmo_erica" is attached as Exhibit 2. Even according to "tmo_erica," it appears that regardless of whether "1234" is the default lock code, it appears that a user of this phone must go through a series of steps to decide whether to use a lock code at all. <http://support.t-mobile.com/docs/DOC-8979>. It also appears that a user must actively decide to turn on the lock code instead of a lock code being a default setting. <http://support.t-mobile.com/docs/DOC-8979>. Of course, these arguments are subject to the reliability of "tmo_erica's" information and have not been subjected to adversarial testing or presented to a trial judge. Appellant will also need to discuss his review of the phone's 132-page owner's manual, which is available for download from the wireless carrier's website, and which does not decisively indicate whether a phone initially has the lock feature enabled, but certainly informs an owner of how to turn off the lock feature. See <http://support.t-mobile.com/docs/DOC-1206>. These types of factual inquiries are not legal research and should not be conducted during the course of an appeal, nor are

they facts generally known that are not subject to dispute and capable of being judicially noticed. Rule 201(b), SCRE.

For these reasons, appellant asks that the Court order footnote 5 of the Initial Brief of Respondent stricken because it contains factual information outside of the record. Appellant also asks that the Court hold the deadline for the initial reply brief in abeyance until it makes a decision on this Motion because appellant must first know if he will need to respond to footnote 5 before he can finalize his reply.

Respectfully submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

August 12th, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Nicholson, Jr., Circuit Court Judge

RECEIVED
AUG 12 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

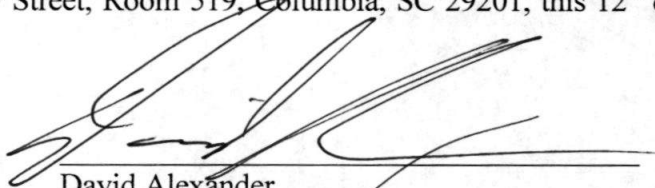
V.

LAMAR SEQUAN BROWN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the motion to strike in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of August, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 12th day of August, 2014.

Maura Muesel (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

EXHIBIT # 1

PIN & password: Samsung T239

Version 1

created by tmo_erica on Sep 10, 2013 8:36 AM, last modified by tmo_erica on Sep 10, 2013 8:36 AM

Learn how to lock, unlock, and PUK unlock the Samsung T239. Find out more on this page:

Device lock
PUK code unlock
SIM PIN

LIVE CHAT

Device lock

Change device lock password / PIN

To change device lock password or PIN, follow these steps:

1. From the Home screen, select **Menu**.
2. Scroll to and select **Settings**.
3. Scroll to and select **Personalize**.
4. Scroll to and select **Security**.
5. Scroll to and select **Lock phone**.
6. Scroll to and select the **Enable** checkbox.
7. Enter the password.
Note: The default password is 1234.
8. Press the **OK** key.

To unlock the device, follow these steps:

1. From the Home screen, select **Menu**.
2. Scroll to and select **Settings**.
3. Scroll to and select **Personalize**.
4. Scroll to and select **Security**.
5. Scroll to and select **Lock phone**.
6. Scroll to and select the **Disable** checkbox.
7. Enter the password.
Note: The default password is 1234.
8. Press the **OK** key.

Turn on / off device lock

To turn on or turn off the device lock password or PIN, follow these steps:

1. From the Home screen, select **Menu**.
2. Scroll to and select **Settings**.
3. Scroll to and select **Personalize**.
4. Scroll to and select **Security**.
5. Scroll to and select **Lock phone**.
6. Scroll to and select the **Enable** checkbox.

[Back to top](#)

PUK code unlock

PUK code unlock

Related errors:

- 'PIN code blocked. Enter PUK code.'
- 'Enter PUK code'
- 'SIM card locked. Emergency calls only. Please contact Customer Care'

If you enter a PIN code incorrectly several times in a row, the device blocks you from attempting again. To enter a PUK code and unblock the PIN, follow these steps:

Important: You must call Customer Care for the PUK code. Entering the wrong code can permanently damage your SIM card.

1. Contact Customer Care to request your PUK code.
2. Enter ****05***

3. Enter the **PUK code**
4. Press * (the star key) then enter the **new PIN**
5. Press * (the star key) then enter the **new PIN** to confirm followed by # (the pound key)

[Back to top](#)

SIM PIN

Change SIM PIN

To change the SIM PIN code, follow these steps:

1. From the Home screen, select **Menu**.
2. Scroll to and select **Settings**.
3. Scroll to and select **Personalize**.
4. Scroll to and select **Phone settings**.
5. Scroll to and select **Security**.
6. Scroll to and select **Change PIN**.
7. Enter the old PIN.
8. Enter the new PIN. **Note:** PIN must be at least four digits long.
9. Select **OK**.
10. Enter the new PIN again.
11. Select **OK**.

Turn on / off SIM PIN

The SIM PIN code can protect your SIM from being used in other devices. When you turn on the SIM PIN lock, the device prompts you to enter the code after turning it on.

To lock and unlock the SIM card, follow these steps:

1. From the Home screen, select **Menu**.
2. Scroll to and select **Settings**.
3. Scroll to and select **Personalize**.
4. Scroll to and select **Phone settings**.
5. Scroll to and select **Security**.
6. Scroll to and select **Check PIN code**.
7. Scroll to and select **Enable**.
8. Enter the password.
Note: The default password is **1234**.
9. Press the **OK** key.

To unlock the SIM card, follow these steps:

1. From the Home screen, select **Menu**.
2. Scroll to and select **Settings**.
3. Scroll to and select **Personalize**.
4. Scroll to and select **Phone settings**.
5. Scroll to and select **Security**.
6. Scroll to and select **Check PIN code**.
7. Scroll to and select **Disable**.
8. Enter the password. **Note:** The default password is **1234**.
9. Press the **OK** key.

[Back to top](#)

1302 Views

Categories: Settings

Tags: password , samsung , lock , pin , code , puk , t239

Average User Rating

(0 ratings)

0 Comments

There are no comments on this document.

CONTACT US

Contact information >

Track order status >

How return policy >

Get a rebate >

Find a store >

Get in program >

SUPPORT

Support home >

Get help >

Questions about your bill >

Plans & services >

Activate your Pay in Advance phone or device >

Fill your Pay in Advance account >

International rates >

MOBILE

BUSINESS (HTTP://BUSINESS.T-MOBILE.COM/)

Bring your business up to speed with 4G innovations, a powerful network, and flexible plans. >

OUT (<http://www.t-mobile.com/Company>) INVESTOR RELATIONS (<http://investor.t-mobile.com/corporateprofile.aspx?it=4091145>) PRESS (<http://news.com.t-mobile.com/>)
BS (<http://www.t-mobile.jobs/?=>) DEUTSCHE TELEKOM (<http://www.telekom.com/>) PUERTO RICO (<http://www.t-mobilepr.com/>)
<http://www.t-mobile.com/company/privacypolicy.aspx>)
VACY & SECURITY RESOURCES (http://www.t-mobile.com/Company/PrivacyResources.aspx?tp=Abt_Tab_IdentityTheft)
NSUMER INFORMATION (http://www.t-mobile.com/Company/CompanyInfo.aspx?tp=Abt_Tab_ConsumerInfo)
LIC SAFETY/911 (http://www.t-mobile.com/Company/CompanyInfo.aspx?Abt_Tab_CompanySafety&tsp=Abt_Sub_WirelessEmergencyAlerts)
MS & CONDITIONS (http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true)
MS OF USE (http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsOfUse&print=true)
CESSIBILITY (http://www.t-mobile.com/Company/CompanyInfo.aspx?tp=Abt_Tab_ConsumerInfo&tsp=Abt_Sub_AccessibilityPolicy)

EXHIBIT # 2



tmo_erica

Login to learn more about tmo_erica, share content, and exchange messages and invites. Not a member? Join Now!

Bio Activity Content Places Reputation

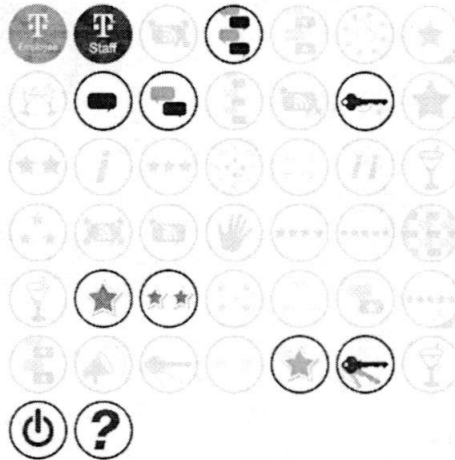
Work

Title: Content Writer / Editor
Location: PA
Biography: I have been with T-Mobile since 2003. I've worked in a Tech center since being hired and have experience with all services offered by T-Mobile. For device support, contact: TForce@T-Mobile.com
Expertise: I am an Editor for Android Platform devices. I support the Hauwei, LG, Motorola and Samsung devices. I additionally support downloadable Applications. For device support, contact: TForce@T-Mobile.com
Current Device(s): Galaxy S Blaze 4G, Galaxy S II, Galaxy S 4G, G2x, CLIQ2, etc
Current Points: 60 Points *(10 this year)*
Current Level: Newbie Gold

25 Points until Newbie Magenta

Other details

Member Since: Jun 1, 2011
Last Logged In: Aug 11, 2014 8:00 AM
Tags: android application
Badges:



CONTACT US

- contact information >
- track order status >
- return policy >
- request a rebate >
- find a store >
- enroll in program >

JPPORT

port home >

vice support >

estions about your bill >

ns & services >

ivate your Pay in Advance phone or device >

ill your Pay in Advance account >

ernational rates >

MOBILE

USINESS (HTTP://BUSINESS.T-MOBILE.COM/)

ing your business up to speed with 4G innovations, a powerful network, and flexible plans. >

OUT (<http://www.t-mobile.com/Company/>) INVESTOR RELATIONS (<http://investor.t-mobile.com/default.asp?id=4091145>) PRESS (<http://news.com.t-mobile.com/>)

ES (<http://www.t-mobile.jobs/?=>) DEUTSCHE TELEKOM (<http://www.telekom.com/>) BLIERTO, PICO (<http://www.t-mobilepr.com/>) ESI
<http://www.t-mobile.com/company/privacypolicy.aspx> (<https://www.youtube.com/tmobile>) (<https://plus.google.com/+T-Mobile/posts>)

WACY & SECURITY RESOURCES (http://www.t-mobile.com/Company/PrivacyResources.aspx?tp=Abt_Tab_IdentityTheft)

NSUMER INFORMATION (http://www.t-mobile.com/Company/CompanyInfo.aspx?tp=Abt_Tab_ConsumerInfo)

3LIC SAFETY/911 ([http://www.t-mobile.com/Company/CompanyInfo.aspx?](http://www.t-mobile.com/Company/CompanyInfo.aspx?Abt_Tab_CompanySafety&tsp=Abt_Sub_WirelessEmergencyAlerts)

Abt_Tab_CompanySafety&tsp=Abt_Sub_WirelessEmergencyAlerts)

MS & CONDITIONS (http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true)

MS OF USE (http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsOfUse&print=true)

CESSIBILITY (http://www.t-mobile.com/Company/CompanyInfo.aspx?tp=Abt_Tab_ConsumerInfo&tsp=Abt_Sub_AccessibilityPolicy)



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

RECEIVED

AUG 12 2014

SC Court of Appeals

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

August 12, 2014

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Lamar Sequan Brown – Appellate case No. 2013-000725

Dear Ms. Kitchings:

Enclosed for filing are an original and six copies of the Appellant's Motion to Strike.

If the Court requires any further information, please don't hesitate to contact me.

Sincerely,

David Alexander
Appellate Defender

DAA/mpm
cc: Salley W. Elliott, Esquire
Lamar S. Brown, #328957

Enclosures