

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

**RECEIVED**

DEC 19 2017

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

ROBERT LEE MOORE,

PETITIONER

APPELLATE CASE NO. 2017-002479

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

ROBERT M. DUDEK  
Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

**INDEX**

INDEX ..... i

STATE V. ROBERT LEE MOORE, Op. No. 5512,  
(S.C. Ct. App. filed August 30, 2017) ..... 1

APPELLANT’S PETITION FOR REHEARING ..... 16

RESPONDENT’S PETITION FOR REHEARING ..... 21

ORDER DENYING PETITIONS FOR REHEARING..... 32

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Robert Lee Moore, Appellant.

Appellate Case No. 2014-001669

---

Appeal From Spartanburg County  
R. Keith Kelly, Circuit Court Judge

---

Opinion No. 5512

Heard January 18, 2017 – Filed August 30, 2017

---

**AFFIRMED**

---

Chief Appellate Defender Robert Michael Dudek, of  
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General William M. Blich, Jr., both of  
Columbia; and Solicitor Barry Joe Barnette, of  
Spartanburg, for Respondent.

---

**MCDONALD, J.:** Robert Lee Moore appeals his conviction for attempted murder, arguing the trial court erred when it (1) denied his motion to suppress evidence from a limited warrantless search identifying him as the owner of a cell phone found at the crime scene and (2) denied his motion to suppress evidence obtained pursuant to a subsequent search warrant Moore contends was based on a conclusory affidavit. Although the panel majority affirms the circuit court's denial of Moore's motion to suppress the identification information obtained from the

warrantless search of the cell phone, Chief Judge Lockemy, Judge Konduros, and I differ in our analyses of this Fourth Amendment challenge. The majority also affirms the circuit court's denial of Moore's motion to suppress the evidence obtained pursuant to the search warrant, as we find the supporting affidavit was sufficient to establish probable cause.

### **Facts and Procedural History**

On the afternoon of February 25, 2013, Travis Hall (Victim) was found shot in the head in a Taco Bell parking lot. When police arrived at the scene, Victim was draped out of the driver's side door of his vehicle, and three cell phones were found in the car. The phone at issue here was an AT&T ZTE331 model flip phone (the flip phone) discovered "almost up under" the driver's side seat. The other two phones were iPhones belonging to the Victim. In addition to the three phones, money and drugs were found inside the vehicle.

Police photographed and collected the phones, took them to the Sheriff's Office, and gave them to Detective Lindsay McGraw. Detective McGraw performed limited forensic examinations to determine who owned each of the phones. Specifically, he pulled the flip phone's subscriber identity module card (SIM card) from the phone and obtained the telephone number associated with the phone. Detective McGraw provided the phone number to Investigator Tom Clark, who ran it through a database and determined the flip phone belonged to Moore. Investigator Clark then applied for a search warrant to examine the stored data on the phone. After obtaining the search warrant, Detective McGraw performed a full forensic examination of the flip phone during which he recovered stored contacts, images, call logs, and text messages.

Before trial, Moore moved to suppress any and all information derived from the search of his phone, citing *Riley v. California*, 134 S. Ct. 2473 (2014). Moore further argued the search warrant affidavit submitted to support the flip phone warrant application was conclusory and did not support the finding of probable cause necessary for issuance of the search warrant. The trial court denied the motion to suppress the flip phone evidence, ruling the phone was abandoned property.

At trial, the State's evidence established Victim was at his mother's home prior to the shooting and received several phone calls from the same number. Records from the flip phone revealed five calls were made to Victim's phone between 1:03 p.m. and 2:06 p.m. on the day of the shooting.

After the shooting, witnesses observed a white Chrysler 300 rapidly fleeing the area. One witness who was on foot stated the car drove against the flow of traffic and had to slam on its brakes to avoid hitting her. Police later used surveillance footage to identify the vehicle at a gas station near the Taco Bell. The video showed that after the vehicle parked at the gas station, two men exited and threw a bag in the trash before entering the gas station. The two men were identified as Tevin Thomas and Moore. Inside, Moore bought potato chips and cigarettes, and was required to give his birthdate for the cigarette purchase. This footage showed Thomas wearing dark clothing and Moore wearing a red jacket. Other cameras at a Cracker Barrel and an automotive business recorded the vehicle after it left the gas station. The vehicle was eventually located in a neighborhood not far from the automotive business.

Thomas testified that he and Moore had planned to rob Victim during a drug deal. According to Thomas, Moore was given a revolver by a third man who did not go with them to the Taco Bell. Moore and Thomas rode to the Taco Bell in Moore's Chrysler. Once they arrived, Victim parked next to their car and Moore exited his car and got into Victim's car. Thomas stated he saw Moore pull the gun on Victim; a struggle then ensued and Thomas heard a gunshot. Thomas testified that he got out of Moore's car and tried to intervene when he saw the struggle, but the doors on Victim's car were locked. When Thomas later asked whether Moore shot Victim, Moore responded, "yeah, I seen blood coming out of his head."

A fingerprint expert testified Thomas left ten fingerprints on the exterior of the passenger side of Victim's car. None of Moore's fingerprints were found on Victim's car; however, both Thomas's and Moore's fingerprints were found on the white Chrysler 300.

Moore called eyewitness Chris Barnes, who testified he was at the Taco Bell, heard a shot, then saw a man emerge from the passenger side of Victim's car and jump into another car. He described the man as wearing a dark colored sweatshirt and a dark colored toboggan. Barnes was shown the gas station surveillance video with Moore wearing a red jacket, but Barnes insisted the man he "locked eyes with" at the Taco Bell was not wearing red.

The jury found Moore guilty of attempted murder, and the circuit court sentenced him to thirty years' imprisonment.

## Standard of Review

"On appeals from a motion to suppress based on Fourth Amendment grounds, the appellate court] . . . reviews questions of law de novo." *State v. Bash*, 419 S.C. 263, 268, 797 S.E.2d 721, 723–24 (2017). As to a circuit court's findings of fact, we must affirm "if there is any evidence to support" the factual findings and "may reverse only for clear error." *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012).

## Law and Analysis

### I. Warrantless Search of the Flip Phone

Moore argues the initial warrantless search of the flip phone violated the Fourth Amendment, and no exception to the warrant requirement applied to justify the search. Additionally, Moore disputes the circuit court's conclusion that he abandoned his phone. I disagree that the initial, limited search to determine ownership of the flip phone violated the Fourth Amendment.

The Fourth Amendment to the United States Constitution demands that "[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 . . . ." U.S. Const. amend. IV. South Carolina's constitution also recognizes the right of the people to be free from unreasonable searches and seizures. *See* S.C. Const. art. I, § 10 (containing language nearly identical to that of the Fourth Amendment). But not every search implicates the Fourth Amendment. "The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). "[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*, 533 U.S. 27, 33 (2001). However, "a Fourth Amendment search does *not* occur . . . unless 'the individual manifested a subjective expectation of privacy in the object of the challenged search,' and 'society [is] willing to recognize that expectation as reasonable.'" *Id.* (quoting *California v. Ciraolo*, 476 U.S. 207, 211 (1986)). In cases claiming an unreasonable search and seizure, the burden is on the defendant to prove not only that the search of an item was illegal, but also that he had a legitimate expectation of privacy in the item searched. *Rawlings v. Kentucky*, 448 U.S. 98, 104–05 (1980) (holding petitioner did not make a sufficient showing that his legitimate or reasonable expectations of privacy were violated by a search of his female companion's purse).

Particularly illustrative here is a recent case from the Georgia Court of Appeals, *State v. Hill*, 789 S.E.2d 317 (Ga. Ct. App. 2016). In *Hill*, a police officer discovered a cell phone in the back seat of a taxi. *Id.* at 318. The taxi's driver told police that a man had fled his taxi without paying the fare. *Id.* The police officer turned on the phone but could not access any information because the phone was protected by a passcode. *Id.* However, the officer was able to use an emergency call feature on the phone to get in touch with a 911 dispatcher, who then provided the officer with the phone's number as well as the owner's name and date of birth. *Id.*

The Georgia Court of Appeals found no Fourth Amendment violation because the defendant had no reasonable expectation of privacy in his name, date of birth, or phone number. *Id.* To support its determination, the Georgia court cited the litany of state and federal cases that have concluded "a person lacks a legitimate expectation of privacy in identifying information such as name, address, or telephone number that is used to facilitate the routing of communications by methods such as physical mail, e-mail, landline telephone, or cellular telephone." *Id.* at 319. The court explained there was a "core distinction" between the content of a communication and the information necessary to get the communication from one point to another. *Id.* at 319 (citing *United States v. Carpenter*, 819 F.3d 880, 886 (6th Cir. 2016)); see also *United States v. Graham*, 824 F.3d 421, 427 (4th Cir. 2016) (en banc) (addressing historical cell-site location information and holding an individual can claim "no legitimate expectation of privacy" in information he voluntarily provided to a third party). Although the content of the communication is private, the information related to its transmission is not. *Hill* at 319; *Graham* at 428.

The *Hill* court further recognized that "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." *Id.* (quoting *Smith v. Maryland*, 442 U.S. 735, 743–44 (1979)); see also *Graham* at 428 (recognizing "the vast majority of federal district court judges" who have reached the same result). Therefore, the defendant's cellular phone number did not fall within the category of private information protected by the Fourth Amendment.

*Hill* at 320. The police in *Hill* did not—and could not due to the presence of a passcode—access the files contained on the phone.<sup>1,2</sup> *Id.*

Likewise in *Graham*, the Fourth Circuit, sitting *en banc*, considered information voluntarily provided to cell phone providers, albeit in a different, and perhaps more intrusive, context. In discussing its reasoning for finding a defendant had no legitimate expectation of privacy in historical cell-site location information, the court noted:

Moreover, outside the context of phone records, we have held that third-party information relating to the sending and routing of electronic communications does not receive Fourth Amendment protection. *United States v. Bynum*, 604 F.3d 161, 164 (4th Cir. 2010). In *Bynum*, we explained that it "would not be objectively reasonable" for a defendant to expect privacy in his phone and Internet subscriber records, including "his name, email address, telephone number, and physical address." *Id.*

*Graham* at 432.

Like the *Hill* phone, Moore's flip phone was found at a crime scene and was examined by police before they obtained a warrant *solely* to obtain the telephone number and ownership identification. In the present case, police removed the phone's SIM card and processed it for the limited purpose of obtaining the telephone number. I recognize that even small manipulations of personal property have been held to be Fourth Amendment searches. *See Arizona v. Hicks*, 480 U.S. 321, 324–25 (1987) (holding a search occurred when a police officer briefly moved stereo equipment inside a defendant's apartment in order to record the equipment's serial numbers). However, under the facts of this case, law enforcement's limited search of the SIM card to obtain the phone number did not constitute an

---

<sup>1</sup> It is unclear whether Moore's phone was passcode-protected, although when an officer was asked to review Detective McGraw's report to see whether the report indicated the phone was passcode-protected, the officer stated, "I don't see that it was."

<sup>2</sup> Because the court found no Fourth Amendment violation, it did not reach the issue of abandonment. *Hill* at 321.

unreasonable search under the Fourth Amendment because Moore had no reasonable expectation of privacy in the number itself.

Of significance here is the fact that police obtained a warrant before performing further analysis to examine the phone's contents. In *Riley*, the United States Supreme Court explained that the immense amount of personal information stored in modern cell phones makes cell phone searches inherently different from other searches conducted incident to a lawful arrest. 134 S. Ct. at 2482. The Court wrote:

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 . . . .

*Id.* at 2489–90. The Supreme Court ultimately held "that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest." *Id.* at 2493. The Court explained:

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[.]" 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.

Unlike *Riley*, this case does not involve the warrantless search of a cell phone's stored contents. Accordingly, *Riley's* concerns about modern cell phones operating as personal "minicomputers" are not implicated when, as here, police obtained a warrant before examining the flip phone's stored contents. *Id.* at 2489; *see also Hill*, 789 S.E.2d at 320 ("Although a law enforcement officer cannot access data stored within a cellular phone without a warrant or an exception to the warrant requirement . . . courts have held that the officer can take other action with a cellular phone lawfully in his or her possession to determine the phone's owner." (internal citation omitted)).<sup>3</sup>

I recognize our learned dissenting colleague's admonition in *State v. Brown* that "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." 414 S.C. 14, 30, 776 S.E.2d 917, 926 (Ct. App. 2015) (Konduros, J., dissenting), *cert. granted* (S.C. Sup. Ct. Order dated August 8, 2017). I also acknowledge that the best policy in cases where Fourth Amendment concerns might be implicated is to obtain a warrant before conducting a search. *See Riley*, 134 S. Ct. at 2493 ("Recent technological advances . . . have . . . made the process of obtaining a warrant itself more efficient."); *State v. Cardwell*, 414 S.C. 416, 778 S.E.2d 483 (Ct. App. 2015), *cert. granted* (June 16, 2016) (stating a warrant is a necessary and "relatively simple step" when seeking to conduct a full search of files on a computer). Yet, I agree with the *Brown* majority that in *Riley*, "the Court did not require law enforcement officers to obtain a warrant to search every cell phone that falls into their possession[.]" in every situation. 414 S.C. 14, 23, 776 S.E.2d 917, 921–22. "[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).

As an additional sustaining ground, I find the inevitable discovery doctrine applies to the question of ownership of the flip phone. *See State v. Spears*, 393 S.C. 466,

---

<sup>3</sup> Because I would find no Fourth Amendment violation, I have not addressed the issue of abandonment.

482, 713 S.E.2d 324, 332 (Ct. App. 2011) ("The inevitable discovery doctrine, one exception to the exclusionary rule, states that if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, the information is admissible despite the fact it was illegally obtained." (citing *Nix v. Williams*, 467 U.S. 431, 444 (1984))). Detective McGraw testified he was asked to perform a forensic examination of all three phones found at the scene of the shooting. The undisputed evidence established five phone calls were made from the flip phone to one of Victim's phones shortly before the shooting occurred. Therefore, even without the use of the SIM card, Moore's telephone number would have been discovered through the examination of Victim's phones—in which Moore certainly had no reasonable expectation of privacy. *See Nix*, 467 U.S. at 449–50 (holding the inevitable discovery doctrine applied when searchers were approaching the location of a victim's body and would have discovered it without information obtained from the defendant's unlawful interrogation).

## II. Validity of Search Warrant

Next, Moore argues the warrant to search the contents of the flip phone was impermissibly issued as the conclusory affidavit submitted to obtain the warrant did not establish the necessary probable cause. The panel majority disagrees.

A search warrant may issue only upon a finding of probable cause. *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). The duty of the reviewing court is to ensure that the issuing magistrate had a substantial basis upon which to conclude that probable cause existed. *Id.* at 50, 625 S.E.2d at 221. "The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Spears*, 393 S.C. 466, 483, 713 S.E.2d 324, 333 (Ct. App. 2011) (quoting *State v. Dunbar*, 361 S.C. 240, 253, 603 S.E.2d 615, 622 (Ct. App. 2004)). "A reviewing court should give great deference to a magistrate's determination of probable cause." *State v. Weston*, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997). "Suppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" *Id.* at 293, 494 S.E.2d at 804 (quoting *United States v. Leon*, 468 U.S. 897, 923 (1984)).

Here, the affidavit submitted with the search warrant request stated:

On 2/25/2013 at approx. 14:13 Hrs. Deputies with the Spartanburg County Sheriff's Office responded to 760 Warren H. Abernathy Hwy. In reference to a shooting. Upon arrival they found the Victim, Travis Hall had been shot. Hall was transported to SRMC. Through further investigation and the processing of the Victim's vehicle an AT&T ZTE model Z331 cell phone serial number #22213371843 was found inside the victim's vehicle. Through further investigation it was found the phone number assigned to the phone is (864) 494-2573. Through further investigation it was found this phone did not belong to the Victim. Through further investigation it was found this phone belonged to Robert Lee Moore. This search warrant is needed for the furtherance of this investigation to obtain information from the phone that can either implicate, or clear Robert Lee Moore from any involvement in this incident.

This affidavit provided ample probable cause for the magistrate to issue the warrant. The affidavit explained *why* police believed the phone's contents would reveal evidence about the shooting and Moore's possible involvement; namely, because police discovered his phone in Victim's vehicle at the scene of the shooting. *Contra State v. Smith*, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990) (finding an affidavit defective on its face when it set forth no facts as to *why* police believed a defendant committed a robbery and omitted the fact that some of the information in the affidavit was provided by an informant). As the affidavit provided the magistrate with a substantial basis to find probable cause existed to support the search and, thus, issue the warrant, the circuit court properly denied Moore's motion to suppress.

**AFFIRMED.**

**LOCKEMY, C.J., concurring in part and dissenting in part in a separate opinion. KONDUROS, J., dissenting in a separate opinion.**

**LOCKEMY, C.J., concurring in part and dissenting in part:** I agree with the dissent's Fourth Amendment analysis and would find Moore's constitutional rights were violated when officers searched his cell phone without a warrant. However, I would find the information used during trial—the identity of the owner of the cell phone—would have been inevitably discovered because officers obtained a valid search warrant prior to performing a full forensic search. Therefore, I concur in part and dissent in part.

As each of my colleagues recognize, the Fourth Amendment ensures "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." U.S. Const. amend. IV. Furthermore, as the lead opinion notes, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). "In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement." *Riley v. California*, 134 S. Ct. 2473, 2482 (2014).

The lead opinion indicates the officer's actions in removing the SIM card and processing the information contained therein was not a search under the Fourth Amendment because Moore had no reasonable expectation of privacy in the information recovered. I disagree that the Fourth Amendment analysis should focus on the information searched, and instead should focus on what information could have been searched. The SIM card contained more than simply the cell phone's number, and police could have accessed that information during their search. As Chief Justice Roberts noted in *Riley*,

a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home, it also contains a broad array of private information never found in a home in any form—unless the phone is.

*Id.* at 2491.

I would find Moore had a reasonable expectation of privacy in the data contained on his cell phone, and any intrusion into that data constituted a search under the Fourth Amendment. Furthermore, I disagree with the State that Moore's reasonable expectation of privacy was abandoned as the facts do not support such a finding in this case. *See State v. Dupree*, 319 S.C. 454, 457, 462 S.E.2d 279, 281

(1995) ("In the law of search and seizure, . . . the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure is reasonable within the limits of the Fourth Amendment." (quoting *City of St. Paul v. Vaughn*, 237 N.W.2d 365, 370-71 (Minn. 1975))); *State v. Brown*, 414 S.C. 14, 23, 776 S.E.2d 917, 922 (Ct. App. 2015), *cert. granted*, (S.C. Sup. Ct. Order dated August 8, 2017) ("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." (quoting *United States v. Tugwell*, 125 F.3d 600, 602 (8th Cir. 1997))).

Because Moore had a reasonable expectation of privacy in the data contained on his cell phone and he did not abandon that expectation, I would find the State violated the Fourth Amendment by performing a warrantless search of that information. I concur in the result reached by the lead opinion because I believe the State would have inevitably discovered the same information using the valid warrant it later secured to continue its search of the phone. *See Nix v. Williams*, 467 U.S. 431, 447 (1984) ("If the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings.").

I recognize police included information gleaned from the warrantless search in their warrant affidavit. In *State v. Spears*, this court faced a similar issue regarding illegally obtained information used in a warrant. 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011). The court excised the offending information from the warrant affidavit, and analyzed the remaining portions of the affidavit to determine if probable cause still existed to support the magistrate's decision to issue the warrant. *Id.* at 483, 713 S.E.2d at 333.

Here, I would find any information about the owner of the phone should be removed from the warrant affidavit and the remaining language should be considered under our test for probable cause. The affidavit would thus read:

On 2/25/2013 at approx. 14:13 Hrs. Deputies with the Spartanburg County Sheriff's Office responded to 7680 Warren H. Abernathy Hwy. In reference to a shooting. Upon arrival they found the Victim, Travis Hall had been shot. Hall was transported to SRMC. Through further investigation and the processing of the Victim's vehicle an AT&T ZTE Model Z331 cell phone serial number

[Redacted] was found inside the Victim's vehicle. This search warrant is needed for the furtherance of this investigation to obtain information from the phone that can either implicate, or clear any individual from any involvement in this incident.

I agree with the lead opinion that this warrant affidavit would support a finding of probable cause. *See State v. Dunbar*, 361 S.C. 240, 253, 603 S.E.2d 615, 622 (Ct. App. 2004) ("The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place."). Accordingly, I would find the evidence would have been inevitably found pursuant to the valid search warrant, regardless of the initially unlawful search.

Finally, I wish to echo the sentiments expressed in the lead opinion and the dissent cautioning officers about the practice of searching cell phones without warrants. Chief Justice Roberts stated well the importance with which courts must protect individual's rights to the "privacies of life" that are contained on cell phones. *Riley*, 134 S. Ct. at 2495. "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." *Id.* There were no cell phones at Valley Forge. The principle of fighting and dying to make sure a soldier of the king is not allowed to kick in a citizen's door, however, is not very different than keeping a person's utmost personal information safe from unreasonable government intrusion. In the context of a search incident to an arrest, the Supreme Court created a bright line rule—"get a warrant." *Id.* While this case does not warrant the creation of such a rule in cases outside the search incident to an arrest exception, officers should tread lightly around digital information, and consider the implications of failing to obtain a warrant before searching an individual's cell phone.

**KONDUROS, J., dissenting:** I respectfully dissent and would reverse and remand Moore's case for a new trial. I conclude Officer McGraw's warrantless examination of the SIM card constituted a search that violated Moore's Fourth Amendment rights. As Officer McGraw explained in his testimony, the contents one can find on a SIM card include the stored phone number, call logs, a contact list, and "things of that nature." In this case, Officer McGraw testified he recovered the cell phone number, thirty-four contact entries, and three text messages. The minute Officer McGraw removed the SIM card, he had access to

digital information in which our courts have recognized an expectation of privacy. *See Riley v. California*, 134 S. Ct. 2473 (2014) (explaining society is willing to recognize an expectation of privacy in the digital contents of one's cell phone as reasonable). Therefore, I would conclude the warrantless search of Moore's cell phone violated his Fourth Amendment rights and no exception to the warrant requirement applies to the facts of this case.<sup>4</sup> *Katz v. United States*, 389 U.S. 347, 357 (1967) (indicating searches without a warrant are per se unreasonable under the Fourth Amendment unless some exception applies).

The lead opinion cites to two cases—one from the Georgia Court of Appeals and one from the Fourth Circuit Court of Appeals—both of which are distinguishable from the facts in this case. In *State v. Hill*, the police used a locked cell phone to call 911 and obtain the owner's phone number, name, and date of birth. 789 S.E.2d 317, 318 (Ga. Ct. App. 2016). Such limited identifying information is not all Officer McGraw had access to in Moore's SIM card. The 911 dispatcher in Georgia did not provide the police with the owner's contact list, text messages, or call logs. The Fourth Circuit's opinion in *United States v. Graham*, 824 F.3d 421, 427 (4th Cir. 2016) (en banc), addressed an individual's expectation of privacy in historical cell-site location information. Again, this is distinguishable from the information available on a SIM card.

Additionally, I respectfully disagree with both of my learned colleagues that this warrantless search of Moore's cell phone can be cured through inevitable discovery. The holding in *Riley* "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." 134 S. Ct. at 2493 (emphasis added). As I noted in my dissent in *State v. Brown*, 414 S.C. 14, 32, 776 S.E.2d 917, 927 (Ct. App. 2015) (Konduros, J., dissenting), *cert. granted* (S.C. Sup. Ct. Order dated August 8, 2017), I believe this language from *Riley* indicates an officer must obtain a warrant prior to searching a cell phone absent an applicable exception, even when one's expectation of privacy is diminished. Allowing officers to search the digital content of a cell phone prior to obtaining a warrant, yet cure such an invasion by arguing they could have inevitably obtained the information, circumvents the spirit of the warrant requirement. In keeping with my previous dissent and adhering to what I believe is the Court's holding in *Riley*, I

---

<sup>4</sup> I agree with Chief Judge Lockemy that the facts of this case do not support a finding Moore abandoned his expectation of privacy in the contents of the cell phone.

would find the search of the digital contents of Moore's cell phone violated his rights under the Fourth Amendment and the case should be reversed and remanded.<sup>5</sup>

---

<sup>5</sup> Because my resolution of Moore's issue regarding the warrantless search of the cell phone would be dispositive, I decline to address his second issue on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issue when disposition of prior issue is dispositive).

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ROBERT LEE MOORE,

APPELLANT

APPELLATE CASE NO. 2014-001669

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

Opinion No. 5512

PETITION FOR REHEARING

Appellant seeks rehearing pursuant to Rule 221 (a), SCACR, because the majority of this Court, for different reasons, overlooked the scope of Officer McCraw’s warrantless search of Appellant Moore’s cell phone as Judge Konduros explained in her dissent:

I conclude Officer McGraw's warrantless examination of the SIM card constituted a search that violated Moore's Fourth Amendment rights. As Officer McGraw explained in his testimony, the contents one can find on a SIM card *include the stored phone number, call logs, a contact list, and "things of that nature."* In this case, Officer McGraw testified he recovered the cell phone number, thirty-four contact entries, and three text messages. The minute Officer McGraw removed the SIM card, **he had access to digital information in which our courts have recognized an expectation of privacy.** See Riley v. California, — U.S. —, 134 S.Ct. 2473,

189 L.Ed.2d 430 (2014) (explaining society is willing to recognize an expectation of privacy in the digital contents of one's cell phone as reasonable). Therefore, I would conclude the warrantless search of Moore's cell phone violated his Fourth Amendment rights and no exception to the warrant requirement applies to the facts of this case. (Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (indicating searches without a warrant are per se unreasonable under the Fourth Amendment unless some exception applies).

State v. Moore, Op. No. 5512, Shearouse's Adv. Sh. #33 at 59.

The dissent also explained the distinction between the present case and a Georgia and Fourth Circuit case relied upon in the lead opinion:

The lead opinion cites to two cases—one from the Georgia Court of Appeals and one from the Fourth Circuit Court of Appeals—both of which are distinguishable from the facts in this case. In State v. Hill, the police used a locked cell phone to call 911 and obtain the owner's phone number, name, and date of birth. 338 Ga.App. 57, 789 S.E.2d 317, 318 (2016). **Such limited identifying information is not all Officer McGraw had access to in Moore's SIM card. The 911 dispatcher in Georgia did not provide the police with the owner's contact list, text messages, or call logs.** The Fourth Circuit's opinion in United States v. Graham, 824 F.3d 421, 427 (4th Cir. 2016) (en banc), addressed an individual's expectation of privacy in *historical cell-site location information. Again, this is distinguishable from the information available on a SIM card.*

State v. Moore, Op. No. 5512, Shearouse's Adv. Sh. #33 at 59.

As to inevitable discovery, Judge Konduros harkened back to her dissent in State v. Brown, 414 S.C. 14, 32, 776 S.E.2d 917, 927 (Ct. App. 2015) *cert. granted* (S.C. Sup. Ct. Order dated August 8, 2017):

The holding in Riley '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.' 134 S.Ct. at 2493 (emphasis added) . . . I believe this language from Riley indicates an officer must obtain a warrant prior to searching a cell phone absent an applicable exception, even when one's expectation of privacy is diminished. Allowing officers to

search the digital content of a cell phone prior to obtaining a warrant, yet cure such an invasion by **arguing they could have inevitably obtained the information, circumvents the spirit of the warrant requirement.**

State v. Moore, Op. No. 5512, Shearouse's Adv. Sh. #33 at 60.

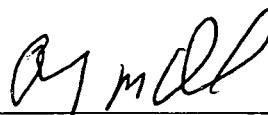
In concurring and dissenting, Chief Judge Lockemy agreed that appellant did not abandon his reasonable expectation of privacy in the data contained on his cell phone. State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995), involved discarding and abandoning illegal drugs, not the data and information on a citizen's cell phone. State v. Moore, Op. No. 5512, Shearouse's Adv. Sh. #33 at 56-57.

While finding the State violated the Fourth Amendment in this case by performing a search of appellant's cell phone information, the concurring and dissenting opinion nonetheless joined in the lead opinion because "[I] believe the State would have inevitably discovered the same information using the valid warrant it later secured to continue its search of the phone. See Nix v. Williams, 467 U.S. 431, 447, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984) ('If the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings.'). State v. Moore, Op. No. 5512, Shearouse's Adv. Sh. #33 at 57.

Respectfully, the State conducted an illegal warrantless search of appellant's cell phone as the concurring and dissenting opinion found. In doing so it obtained information and data that violated appellant's reasonable expectation of privacy. The State's belated covering of its tracks to obtain a mulligan for its constitutional violation of appellant's reasonable expectation of privacy from the majority of the Court does, most respectfully, circumvent the integrity of the warrant requirement. See Riley v. California, — U.S. —, 134 S.Ct. 2473 (2014).

Appellant respectfully urges the majority of the Court to reconsider, and grant rehearing in this significant constitutional case.

Respectfully Submitted,



---

ROBERT M. DUDEK  
Chief Appellate Defender

This 14th day of September, 2017

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

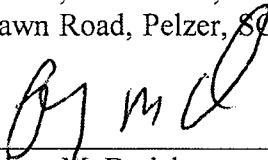
V.

ROBERT LEE MOORE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Robert Lee Moore, #320303, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 14th day of September, 2017.



Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE  
ME this 14th day of September, 2017.

Courtney Powers (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 2, 2027.

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

---

Appeal from Spartanburg County  
 Honorable R. Keith Kelly, Circuit Court Judge  
 Appellate Case Tracking No. 2014-001669

---

The State,

Respondent,

vs.

Robert Lee Moore,

Appellant.

---

 PETITION FOR REHEARING
 

---

On August 30, 2017, this Court affirmed the trial court's decision allowing into evidence the identity of the individual whose phone was found abandoned in the victim's vehicle. While a majority of the Court affirmed the decision of the trial court, the members of the panel arrived at the decision in different ways. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find in accordance with Judge McDonald's opinion that there was no violation of the Fourth Amendment, and affirm Appellant's conviction and sentence.<sup>1</sup> In the event, this Court denies the Petition for Rehearing, the State asks this Court to de-publish the opinions because the three vastly different opinions are likely to cause confusion and not clarity on the issues involved.

The majority of the Court found the officer obtained identification information from the phone in violation of the Fourth Amendment. However, as Judge McDonald

---

<sup>1</sup> While the State was the prevailing party, it believes out of an abundance of caution it needs to address the issues that follow in order to best raise them in the event a Petition for Writ of Certiorari is filed.

explained, the limited search to identify the owner of the phone was entirely reasonable, and so no violation of the Fourth Amendment occurred. Further, the majority of the panel overlooked or misapprehended the relevant law and facts demonstrating the phone was clearly abandoned and so an exception to the warrant requirement existed. Additionally, members of the panel either misapprehended or overlooked relevant law and facts indicating the identity would have inevitably been discovered and so suppression would not have been necessary.

First, the search to determine ownership of the phone was entirely reasonable and so it is not a violation of the Fourth Amendment. “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .” U.S. Const. amend. IV (emphasis added. This guarantee protects against unreasonable searches and seizures. “The touchstone of the Fourth Amendment is reasonableness.” *Florida v. Jimeno*, 500 U.S. 248, 250 (1991) (emphasis added).

Investigator McGraw did not initially examine the contents of the phone such as text messages and call logs. Instead, he examined the SIM card which provided him merely a phone number for the phone. (T.19-20; R. 11-12). The phone number was then run through the Sheriff’s Department’s database and was connected to Appellant. (T.20; 37; R. 12-19). This process would have been required in order to verify whether the phone belonged to the victim. A process which was entirely reasonable given the phone was found in the victim’s car. The mere obtaining of the cell phone number from the SIM card in order to verify whether the phone belonged to the owner of the vehicle in which it

was found did not implicate the Fourth Amendment because it was not an unreasonable search.

“When containers have been turned over to the police, an officer ‘may validly search lost property to the extent necessary for identification purposes.’” United States v. Wilson, 984 F. Supp. 2d 676, 683 (E.D. Ky. 2013) (quoting State v. Ching, 678 P.2d 1088, 1093 (Haw. 1984)). In Wilson, officers searched a suitcase containing the personal effects and electronics of the defendant in order to identify ownership. Id. at 681. The district court found officers acted reasonably in searching a suitcase for identification of the owner when the suitcase was found in the woods and turned over to them. Id. at 683.

Very recently, the Ohio Supreme Court considered the reasonableness of searching unattended book bags on a school bus. The Court found even if someone retained an expectation of privacy in a lost item, that expectation was “diminished to the extent that the finder may examine the contents of that item as necessary to determine the rightful owner.” State v. Polk, 78 N.E.3d 834, 843 (Ohio 2017) (citing State v. Hamilton, 2003 MT 71, 314 Mont. 507, 67 P.3d 871; accord Ching at 110, 678 P.2d 1088; State v. Kealey, 80 Wash. App. 162, 173, 907 P.2d 319 (1995)); see also, U.S. v. Sumlin, 909 F.2d 1218, 1220 (8th Cir.1990) (holding officer’s search of defendant’s stolen property for the purpose of identifying ownership was a “legitimate governmental interest” that outweighed defendant’s reasonable expectation of privacy in that property); Chrispen v. Sec’y, Florida Dep’t of Corr., 246 F. App’x 599, 602 (11th Cir. 2007) (finding either briefcase left on trunk of third-party’s automobile was abandoned or the search by officers of the briefcase “constituted a reasonable inventory-like administrative search conducted for the purpose of identifying the seemingly abandoned briefcase’s owner”);

Wayne R. LaFave, 3 Search & Seizure § 5.5(d) (5th ed.) (2016 Supp.) (“Similarly, there is authority that police may inventory effects which they find apparently abandoned or which are turned over to them by persons who found them or who by mistake took or received possession of them. Even if such full inventory authority is not granted, courts recognize a police obligation to undertake to find the owner of property they find or which a finder turns over to them, and on this basis an examination of contents is permissible but only to the extent needed to discover the owner's identification.”) (footnotes omitted).

Investigator McGraw solely obtained the SIM card from the phone for the purpose of identifying the phone's owner. The only information presented at trial was the phone number obtained from that SIM card. No contents or other information was presented to the jury. As a result, Judge McDonald correctly determined the actions of the officers in searching the phone solely for identification purposes was entirely reasonable and not in violation of the Fourth Amendment.

Additionally, the phone in the instant case was abandoned and so Appellant did not retain any expectation of privacy in the phone. As this Court very recently observed: “Our supreme court has recognized the doctrine of abandonment as one such exception to the Fourth Amendment warrant requirement.” State v. Brown, Op. No. 5355 (S.C. Ct. App. Filed September 23, 2015) (Shearouse Adv. Sh. No. 37 at 25) (citing State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995)). “Abandoned 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) (citing California v. Greenwood, 486 U.S. 35 (1988)). The South Carolina Supreme Court thoroughly

explained the determination of abandoned property, indicating a very clear distinction between abandoned property in a property-law sense and abandoned property in a Fourth Amendment sense:

The distinction between abandonment in the property-law sense and abandonment in the constitutional sense is critical to a proper analysis of the issue. In the law of property, the question . . . is whether owner has voluntarily, intentionally, and unconditionally relinquished his interest in the property so that another, having acquired possession, may successfully assert his superior interest.... In the law of search and seizure, however, 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.

Where the presence of the police is lawful and the discard occurs in a public place where the defendant cannot reasonably have any continued expectancy of privacy in the discarded property, the property will be deemed abandoned for the purpose of search and seizure.

Dupree, 319 S.C. at 457, 462 S.E.2d at 281 (quoting City of St. Paul v. Vaughn, 237 N.W.2d 365, 370–71 (1975)). This Court explained: “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.” Brown, Ad. Sh. No. 37 at 26.

This distinction is critical in this case where Appellant’s sole argument regarding whether he abandoned the cell phone is that he “forgot it” or “inadvertently” left it behind—as he fled a crime scene. His argument, if believed in full, could be fruitful in the “property-law sense” because he did not voluntarily abandon his interest in the property, such that the police who found it could claim a greater possessory interest.

However, similar to this Court's conclusion in Brown, Appellant did abandon his expectation of privacy interest in the cell phone by leaving it at a crime scene and not seeking to reclaim the phone. See Id. at 27-29. He did nothing to further protect his expectation of privacy by claiming the phone at the scene, or calling the phone to determine if it had been discovered.

During the suppression hearing and at trial, officers explained three cell phones were located in the victim's vehicle. No one came forward to claim any of the cell phones. (T.36; R. 28). The cell phone ultimately connected to Appellant was not password protected. (T.37-38; R. 29-30). Appellant presented no evidence he intended to come forward and claim the cell phone as his prior to the suppression hearing. As a result, the officers objectively believed the cell phone to be abandoned, and the Fourth Amendment did not require a warrant to conduct a search of the phone.

Finally, members of the panel overlooked the fact the identity of the person owning the phone would have inevitably been discovered. The only evidence admitted from the search of Appellant's phone was its connection to the victim through the phone calls made directly before the shooting occurred. The officers had the victim's phone in their possession. They had every right to search the victim's phone as part of the investigation, and even if they did not, Appellant could not assert any violation of the right because he did not have a possessory interest in the victim's phones. See State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987) (stating defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate his "own rights" have been violated by showing he has a legitimate expectation of privacy in connection with the searched premises in order to challenge the search). As a result of the search of the

victim's phone, the officers would have found the number that called five times immediately before the shooting. It would have taken nothing more than running the number through the same database that they ran the number from the SIM card through to determine it belonged to Appellant. A simple call to the number would have verified it was the phone in their possession and would have placed Appellant at the scene of the crime. As a result, any evidence obtained from the search of Appellant's phone would have inevitably been discovered through an independent source, the victim's phone. See Nix v. Williams, 467 U.S. 431, 443-444 (1984) (finding the inevitable discovery doctrine has been adopted as an exception to the exclusionary rule and "[t]he independent source doctrine teaches us that the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred.").

The dissent posits: "Allowing officers to search the digital content of a cell phone prior to obtaining a warrant, yet cure such an invasion by arguing they could have inevitably obtained the information, circumvents the spirit of the warrant requirement." This overlooks the exact rationale behind the inevitable discovery doctrine, as well as the cost to society for exclusion of evidence which otherwise should be admitted.

In Nix, officers violated the defendant's Sixth Amendment right to counsel by speaking with him after agreeing with his lawyer not to communicate with the defendant. As a result of the communications, the defendant led the officers to the location of a missing child's body. The United States Supreme Court acknowledged the violation of the Sixth Amendment, but found because individuals were already canvassing the area,

the body would have been inevitably discovered. The Court explained its reasons for not excluding the evidence based on the constitutional violation saying:

Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial. . . . Suppression, in these circumstances, would do nothing whatever to promote the integrity of the trial process, but would inflict a wholly unacceptable burden on the administration of criminal justice.

Nix, 467 U.S. at 446. The Court continued that exclusion was not necessary to cure an ill or to insure fairness, finding:

Fairness can be assured by placing the State and the accused in the same positions they would have been in had the impermissible conduct not taken place. However, if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings. In that situation, the State has gained no advantage at trial and the defendant has suffered no prejudice. Indeed, suppression of the evidence would operate to undermine the adversary system by putting the State in a worse position than it would have occupied without any police misconduct. Williams' argument that inevitable discovery constitutes impermissible balancing of values is without merit.

Id. at 447. The Fourth Circuit, in United States v. Seohnlein, 423 F.2d 1051, 1053 (4th Cir. 1970), recognized the inevitable discovery doctrine in a case similar to the one at hand. Officers stopped a vehicle driven by the defendant. After obtaining his wallet and realizing he presented an expired license, the officer continued to search through the wallet for further proof of identification. He found papers with the defendant's real name listed. The trial court suppressed the papers from the wallet, but allowed testimony and evidence that resulted after the individuals were detained. The Fourth Circuit found that

the defendant's identity would have been discovered from his co-defendant because they were both wanted as fugitives and the co-defendant had given his actual name. The

Fourth Circuit explained:

[T]he district judge found that the police would have learned of the Baltimore warrants through Rutkowski and that they would have arrested Seohnlein even if they had not discovered the papers in his wallet. Although the knowledge gained from examining the wallet may have accelerated a lawful arrest on the Baltimore warrant, it did not taint the evidence that was subsequently obtained.

Seohnlein, 423 F.2d at 1053.

Similar to Nix and Seohnlein, the information of Appellant's identity would have been discovered by the officers even if they had never pulled the SIM card from his phone. The officers would have matched his name to the phone number that called the victim using the same database they used once they had the phone number off the SIM card. There is no reason to suppress the evidence that otherwise would have been admissibly because it did not taint the investigation.

## CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the investigation into the identity of the owner of the cell phone was not an unreasonable search and seizure so the prohibitions of the Fourth Amendment do not apply, and affirm Appellant's conviction and sentence. If the Court finds the Fourth Amendment applies because the search would have been unreasonable, the State asks the panel to conclude the phone was abandoned, and therefore, Appellant no longer had an expectation of privacy in the phone. In the alternative, the panel should find the

information would have been inevitably discovered and affirm the refusal of the trial court to suppress the information. Finally, if this panel denies the Petition for Rehearing or does not alter its opinions, the State asks the panel to de-publish the opinions because they are more likely to cause confusion and not assist the trier of fact in reaching a conclusion on similar issues.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Assistant Attorney General

BY: 

William M. Blitch, Jr.  
S.C. Bar No. 15608  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 14, 2017

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Spartanburg County  
Honorable R. Keith Kelly, Circuit Court Judge  
Appellate Case Tracking No. 2014-001669

The State,

Respondent,

vs.

Robert Lee Moore,

Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.  
This 14<sup>th</sup> day of September, 2017.

*Anne Mueller*  
ANNE A. MUELLER  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

RECEIVED  
SEP 15 2017  
APPELLATE DEFENSE

12-6

# The South Carolina Court of Appeals

The State, Respondent,

v.

Robert Lee Moore, Appellant.

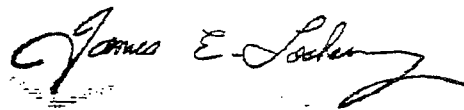
Appellate Case No. 2014-001669

---

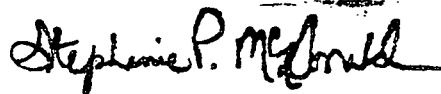
## ORDER

---

After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, both Appellant's petition for rehearing and Respondent's petition for rehearing are denied.

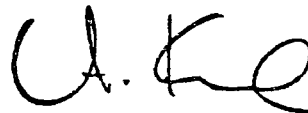


C.J.



J.

For the reasons set forth in my dissent, I would grant Appellant's petition for rehearing.



J.

Columbia, South Carolina

cc:

**FILED**

November 2, 2017

*hdb*

Alan McCrory Wilson, Esquire  
Robert Michael Dudek, Esquire  
William M. Blicht, Jr., Esquire  
Barry Joe Barnette, Esquire

RECEIVED  
NOV 02 2017  
APPELLATE DEFENSE