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CRIMINAL PROCEDURE — FOURTH AMENDMENT — FLORIDA  
SUPREME COURT HOLDS THAT CELL PHONE DATA IS NOT SUB-  
JECT TO THE SEARCH-INCIDENT-TO-ARREST EXCEPTION. —  
*Smallwood v. State*, 113 So. 3d 724 (Fla. 2013).

Warrants are central to the legitimacy of the American legal system, and the Supreme Court has found that warrantless searches, as a rule, are prohibited under the Fourth Amendment unless they fall into one of several “specifically established and well-delineated exceptions.”<sup>1</sup> The search-incident-to-arrest exception allows police to search arrestees and their immediate surroundings, typically for weapons or evidence that could be destroyed.<sup>2</sup> The Court has spent the last fifty years determining, fact pattern by fact pattern, whether particular searches are permissible under the search-incident-to-arrest exception.<sup>3</sup> Whether cell phones on an arrestee’s person can be searched without a warrant has been one area of particularly drastic lower court divergence<sup>4</sup> and Supreme Court silence.<sup>5</sup> Recently, the Supreme Court of Florida joined this debate. In *Smallwood v. State*,<sup>6</sup> the court held that the Fourth Amendment prohibits police from warrantlessly searching the contents of a person’s cell phone incident to a lawful arrest.<sup>7</sup> The court correctly adduced that cell phones represent a different kind of object from a simple container, but its ultimate holding relied on overly broad doctrinal analysis rather than any feature specific to cell phones. The court unnecessarily reinterpreted Fourth Amendment doctrine when it should have created a narrow, bright-line exception for cell phones within existing precedent.

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<sup>1</sup> *Arizona v. Gant*, 129 S. Ct. 1710, 1716 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)) (internal quotation mark omitted).

<sup>2</sup> See *Chimel v. California*, 395 U.S. 752, 763 (1969) (identifying two justifications for the search-incident-to-arrest exception: officer safety and preservation of evidence). *Chimel v. California*, 395 U.S. 752, limited the reasonable subjects of such searches to “the arrestee’s person and . . . the area from within which he might gain possession of a weapon or destructible evidence.” *Id.*

<sup>3</sup> See, e.g., *Gant*, 129 S. Ct. 1710; *Thornton v. United States*, 541 U.S. 615 (2004); *New York v. Belton*, 453 U.S. 454 (1981); *United States v. Robinson*, 414 U.S. 218 (1973).

<sup>4</sup> Compare, e.g., *United States v. Pineda-Areola*, 372 F. App’x 661, 663 (7th Cir. 2010) (holding that cell phones can be searched incident to arrest), *Silvan W. v. Briggs*, 309 F. App’x 216, 225 (10th Cir. 2009) (same), *United States v. Murphy*, 552 F.3d 405, 411 (4th Cir. 2009) (same), and *United States v. Finley*, 477 F.3d 250, 260 (5th Cir. 2007) (same), with *United States v. Wurie*, 728 F.3d 1, 13 (1st Cir. 2013) (holding that cell phones cannot be searched incident to arrest), *United States v. Park*, No. CR 05-375 SI, 2007 WL 1521573, at \*8 (N.D. Cal. May 23, 2007) (same), and *State v. Smith*, 920 N.E.2d 949, 955 (Ohio 2009) (same), *cert. denied*, 131 S. Ct. 102 (2010).

<sup>5</sup> The Supreme Court has denied certiorari review of lower court cases addressing this question. See *Ohio v. Smith*, 131 S. Ct. 102 (2010) (mem.), *denying cert. to* 920 N.E.2d 949; *Finley v. United States*, 549 U.S. 1353 (2007) (mem.), *denying cert. to* 477 F.3d 250.

<sup>6</sup> 113 So. 3d 724 (Fla. 2013).

<sup>7</sup> *Id.* at 740.

On February 4, 2008, Cedric Smallwood was arrested as a suspect in an armed robbery.<sup>8</sup> While Smallwood was locked in a police vehicle, an officer opened and searched Smallwood's cell phone, finding five images of Smallwood displaying jewelry, large amounts of money, and a handgun matching a description of the one used by the robber.<sup>9</sup> Smallwood filed a motion to suppress the photographs as fruits of an unconstitutional search.<sup>10</sup> The trial court denied the motion, and a jury found Smallwood guilty of armed robbery and possession of a firearm by a convicted felon. The court sentenced him to sixty-five years in prison with a thirteen-year mandatory minimum.<sup>11</sup>

Florida's First District Court of Appeal affirmed the conviction.<sup>12</sup> Writing for the court, Judge Wolf<sup>13</sup> held that *United States v. Robinson*<sup>14</sup> was controlling precedent and that searching cell phones incident to arrest does not violate the Fourth Amendment.<sup>15</sup> The court found that the United States Supreme Court viewed *Robinson* as establishing a "bright-line rule" allowing officers "to conduct a full field search as incident to an arrest," which would include cell phones.<sup>16</sup> The court reached this holding reluctantly, however, opining that the *Robinson* Court could not have intended to allow warrantless searches of "the nearly infinite wealth of personal information" on cell phones.<sup>17</sup>

The Supreme Court of Florida quashed the First District Court of Appeal's decision and remanded.<sup>18</sup> The court's holding had two components, first rejecting *Robinson*'s application and only then determining which precedent applied.<sup>19</sup> Writing for the majority, Justice Lewis<sup>20</sup> determined that "*Robinson*, which governed the search of a static, non-interactive container, cannot be deemed analogous to the search of a modern electronic device cell phone."<sup>21</sup> The court began by noting the

<sup>8</sup> *Id.* at 726.

<sup>9</sup> *Id.* at 726–27.

<sup>10</sup> *Id.* at 727.

<sup>11</sup> *Id.* at 728.

<sup>12</sup> *Smallwood v. State*, 61 So. 3d 448, 462 (Fla. Dist. Ct. App. 2011).

<sup>13</sup> Judges Webster and Roberts concurred in the opinion. *Id.*

<sup>14</sup> 414 U.S. 218 (1973). In *Robinson*, the defendant was arrested for a traffic violation and the officer found a cigarette package on his person that, upon inspection, contained heroin. *Id.* at 220–23. The *Robinson* Court announced a blanket rule that searches of objects on the arrestee's person were per se reasonable under the Fourth Amendment. *Id.* at 234–35.

<sup>15</sup> *Smallwood*, 61 So. 3d at 459.

<sup>16</sup> *Id.* at 460 (quoting *Knowles v. Iowa*, 525 U.S. 113, 118 (1998)) (internal quotation marks omitted).

<sup>17</sup> *Id.* at 461.

<sup>18</sup> *Smallwood*, 113 So. 3d at 741.

<sup>19</sup> The Florida Constitution mandates that its search and seizure provision be construed according to the United States Supreme Court's interpretation of the Fourth Amendment to the U.S. Constitution. FLA. CONST. art. I, § 12.

<sup>20</sup> Justices Labarga, Pariente, Perry, and Quince concurred. *Smallwood*, 113 So. 3d at 741.

<sup>21</sup> *Id.* at 732.

technological progress made since 1973, when *Robinson* was decided: cell phones did not exist then, much less today's "interactive, computer-like devices"<sup>22</sup> that can access "[v]ast amounts of private, personal information."<sup>23</sup> Noting that a sizeable percentage of the population uses cell phones for all remote communication, scheduling, and banking, the court found that "[t]he cell phones of today have a greater capacity not just in the *quantity* of information stored, but also in the *quality* of information stored."<sup>24</sup> The court compared allowing warrantless searches of cell phones to "providing law enforcement with a key to access the home of the arrestee," opining that searches of one are no less invasive than searches of the other.<sup>25</sup> Cell phone searches and searches of an arrestee's home are essentially fungible in this networked age and warrantless cell phone searches cannot be allowed "simply because the cellular phone device which stores that information is small enough to be carried on one's person."<sup>26</sup>

After distinguishing *Robinson* on its facts, the court considered other U.S. Supreme Court precedents concerning the search-incident-to-arrest exception to determine which case should govern. *Chimel v. California*<sup>27</sup> had established the dual rationales for the warrant exception: officer safety and preservation of destructible evidence.<sup>28</sup> In *Arizona v. Gant*,<sup>29</sup> the Court applied these rationales to prohibit searches of automobiles incident to arrest when the arrestee has been secured and cannot access the vehicle.<sup>30</sup> From these cases, the *Smallwood* court extrapolated a principle that "once an arrestee is physically separated from an item or thing . . . the dual rationales for this search exception no longer apply."<sup>31</sup> Applying this principle, the majority held that although the officer was justified in seizing *Smallwood*'s cell phone, his subsequent search of the cell phone without a warrant was unconstitutional.<sup>32</sup> The court dismissed contrary state and federal precedents as unpersuasive<sup>33</sup> and asserted that its decision upheld

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<sup>22</sup> *Id.* at 731.

<sup>23</sup> *Id.* at 731–32.

<sup>24</sup> *Id.* at 733.

<sup>25</sup> *Id.* at 738.

<sup>26</sup> *Id.*

<sup>27</sup> 395 U.S. 752 (1969).

<sup>28</sup> *See id.* at 763.

<sup>29</sup> 129 S. Ct. 1710 (2009).

<sup>30</sup> *See id.* at 1719.

<sup>31</sup> *Smallwood*, 113 So. 3d at 735.

<sup>32</sup> *Id.* at 735–36; *see also* *State v. Smith*, 920 N.E.2d 949, 955 (Ohio 2009) ("Once the cell phone is in police custody, the state has satisfied its immediate interest in collecting and preserving evidence . . . [P]olice must then obtain a warrant before intruding into the phone's contents."), *cert. denied*, 131 S. Ct. 102 (2010).

<sup>33</sup> *Smallwood*, 113 So. 3d at 738.

“fundamental” Fourth Amendment principles while remaining cabined to the facts of the case.<sup>34</sup>

Justice Canady dissented.<sup>35</sup> The dissent first noted that all four federal circuits that had ruled on the issue had found that *Robinson* permitted cell phone searches incident to arrest.<sup>36</sup> Justice Canady agreed, reasoning that cell phones are not meaningfully distinct from other objects carried on the person.<sup>37</sup> Finally, the dissent questioned the purported narrowness of the majority’s holding, warning that its rationale “sweeps much more broadly” than just cell phone searches.<sup>38</sup>

Although *Smallwood* reached the right outcome, its bifurcated reasoning resulted in a needless reinterpretation of Fourth Amendment doctrine. Rather than expand *Gant* to swallow *Robinson*, the court should have applied *Gant*’s reasoning to derive a cell phone exemption from the search-incident-to-arrest rule based on the especially invasive nature of cell phone searches and the absence of *Chimel*’s dual justifications. Such a narrow, bright-line proscription of warrantless cell phone searches would have protected arrestees’ private information effectively while remaining squarely within Supreme Court precedent.

*Smallwood*’s interpretation of *Gant* was not a mere “refinement” of Fourth Amendment doctrine;<sup>39</sup> it was a substantial reconception. This reading of *Gant* would permit police to search the area around the arrestee, but would not allow police to search any items thus discovered and seized. Consider the facts of *Robinson* under the *Smallwood* court’s holding: once the officer had physically separated Robinson from the cigarette pack by legitimately seizing it, the *Chimel* rationales of evidence preservation and officer safety would no longer apply. *Robinson*’s rule would thus no longer govern *Robinson*’s facts. The *Smallwood* court rightly recognized that there is a tension between *Robinson*’s permissive and *Gant*’s restrictive treatment of searches incident to arrest, and some have argued that *Gant* should be the general rule.<sup>40</sup> Nevertheless, by the U.S. Supreme Court precedent that Flori-

<sup>34</sup> *Id.* at 740–41. The majority further held that the good faith exception to the exclusionary rule did not apply, as the officer was not following any established bright-line rule. *Id.* at 738–39. Finally, the majority found that the introduction of *Smallwood*’s photos was not harmless error, noting that the photos provided “powerful evidence” of guilt and that the trial judge himself commented on the photos’ convincing nature. *Id.* at 740.

<sup>35</sup> Chief Justice Polston joined the dissent.

<sup>36</sup> *Smallwood*, 113 So. 3d at 741 (Canady, J., dissenting). The First Circuit had not yet held to the contrary in *United States v. Wurie*, 728 F.3d 1 (1st Cir. 2013), when the decision in *Smallwood* was released.

<sup>37</sup> *Smallwood*, 113 So. 3d at 742 (Canady, J., dissenting).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 735 (majority opinion).

<sup>40</sup> See, e.g., Sean Foley, Comment, *The Newly Murky World of Searches Incident to Lawful Arrest: Why the Gant Restrictions Should Apply to All Searches Incident to Arrest*, 61 U. KAN. L. REV. 753, 775 (2013) (arguing that *Gant* should apply to all searches incident to arrest because it

da courts are bound to follow,<sup>41</sup> this interpretation is not yet the law. Although the *Smallwood* court elided this doctrinal tension by treating each case in isolation, the resulting rule contradicts *Robinson* and effectuates what remains only an inchoate revision of Fourth Amendment doctrine.

By applying *Gant*'s reasoning to cell phones specifically, the *Smallwood* court could have followed Fourth Amendment precedent while protecting arrestees from warrantless cell phone searches. *Gant* began its discussion of the merits by addressing the relevant privacy interests, noting that while there is a "less substantial" privacy interest in one's vehicle than in one's home, "the former interest is nevertheless important and deserving of constitutional protection."<sup>42</sup> The Court found that allowing authorities "unbridled discretion to rummage at will among a person's private effects" was especially threatening to Fourth Amendment rights when such discretion could be triggered by even minor arrests, such as traffic offenses.<sup>43</sup> Having established that the privacy interest was significant, the Court next considered whether a search-incident-to-arrest exception was necessary to protect officers and preserve evidence; it determined that the *Chimel* factors were not relevant when the arrestee could not access the vehicle.<sup>44</sup> The Court concluded that allowing "a substantial intrusion on individuals' privacy" by authorizing searches of vehicles incident to arrest would be "anathema to the Fourth Amendment" in the absence of *Chimel*'s justifications.<sup>45</sup>

When applied to the facts of *Smallwood*, *Gant*'s reasoning supports recognizing an exemption from the search-incident-to-arrest exception for cell phones. As with the vehicles at issue in *Gant*, individuals have a substantial privacy interest in their cell phones. As the *Smallwood* court noted, cell phone searches incident to arrest would give authorities an open door into the most private details of an arrestee's life, far beyond any result envisioned by the *Robinson* Court.<sup>46</sup> *Smallwood*'s

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effectuates the *Chimel* factors); Chelsea Oxtan, Note, *The Search Incident to Arrest Exception Plays Catch Up: Why Police May No Longer Search Cell Phones Incident to Arrest Without a Warrant*, 43 CREIGHTON L. REV. 1157, 1206–08 (2010) (identifying *Gant* as an appropriate retreat from overly invasive searches).

<sup>41</sup> See FLA. CONST. art. I, § 12; *supra* note 19.

<sup>42</sup> *Arizona v. Gant*, 129 S. Ct. 1710, 1720 (2009).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 1721. More specifically, the Court found that there were enough existing exceptions to the warrant rule (such as when there is probable cause that a vehicle contains evidence of a crime, as in *United States v. Ross*, 456 U.S. 798 (1982), or when there is a reasonable suspicion that an individual may access the vehicle to gain control of a weapon, as in *Michigan v. Long*, 463 U.S. 1032 (1983)) that allowing vehicular searches incident to arrest was not required to serve the ends of officer safety and evidence preservation. *Gant*, 129 S. Ct. at 1721.

<sup>45</sup> *Gant*, 129 S. Ct. at 1721.

<sup>46</sup> *Smallwood*, 113 So. 3d at 731–32 ("When *Robinson* was decided, hand-held portable electronic devices . . . containing information and data were not in common and broad use." *Id.* at 731.).

rejection of *Robinson* relies heavily on the differing privacy interests in cell phones and cigarette packs.<sup>47</sup> Even beyond the essentially subjective privacy interests discussed in *Gant* and *Smallwood*, the more restrictive “objective” prong of the Supreme Court’s reasonable expectation of privacy test<sup>48</sup> supports denying police the right to search cell phones incident to arrest. For instance, a majority of the Justices in *United States v. Jones*<sup>49</sup> suggested that watching an individual’s public movements is permissible but that aggregating comprehensive Global Positioning System (GPS) data tracking his movements over time violates his privacy under the Fourth Amendment.<sup>50</sup> Similarly, police can paint an uncomfortably detailed picture of a person’s activities from his collected phone contacts, emails, and text messages.<sup>51</sup> The possibility of such disclosure without procedural safeguards like warrants may “chill[] associational and expressive freedoms.”<sup>52</sup> In light of Supreme Court precedent, the *Smallwood* court reasonably found that individuals have “a high expectation of privacy in a cell phone’s contents.”<sup>53</sup>

The *Chimel* prong of *Gant*’s reasoning also supports a cell phone exception. As the *Smallwood* court noted, it is difficult to imagine a circumstance in which *Chimel* would support searching a cell phone’s data after the phone has been seized.<sup>54</sup> Several courts have suggested that evidence may be destroyed when incoming calls supplant previous calls in logs or when phones automatically delete old text messages to make room for new ones.<sup>55</sup> While these possibilities may once have been concerns, technological progress has largely obviated them; records of calls may easily be obtained from cell phone service carriers

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Notably, the court referenced an application that accesses a webcam in one’s home and thus allows a cell phone search incident to arrest to “evolve into a search of the interior of an arrestee’s home.” *Id.* at 732 (citing *United States v. Flores-Lopez*, 670 F.3d 803, 805–06 (7th Cir. 2012)).

<sup>47</sup> See, e.g., *id.* (observing that comparing “a static, inert package of cigarettes to an interactive, computer-like, handheld device . . . [with] vast quantities of highly personalized and private information” is like “comparing a one-cell organism to a human being”).

<sup>48</sup> See *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (clarifying that an expectation of privacy must “be one that society is prepared to recognize as ‘reasonable’”).

<sup>49</sup> 132 S. Ct. 945 (2012).

<sup>50</sup> See *id.* at 955–56 (Sotomayor, J., concurring); *id.* at 964 (Alito, J., concurring in the judgment).

<sup>51</sup> Cf. *id.* at 957 (Sotomayor, J., concurring) (“I for one doubt that people would accept without complaint the warrantless disclosure to the Government of a list of every Web site they had visited in the last week, or month, or year.”).

<sup>52</sup> *Id.* at 956.

<sup>53</sup> *Smallwood*, 113 So. 3d at 736 (quoting *State v. Smith*, 920 N.E.2d 949, 955 (Ohio 2009), *cert. denied*, 131 S. Ct. 102 (2010)).

<sup>54</sup> See *id.* at 735. Even under a *Gant*-inspired cell phone exception, *Chimel* would presumably justify searching a cell phone’s case for evidence or weapons which could be hidden inside.

<sup>55</sup> See, e.g., *United States v. Young*, 278 F. App’x 242, 245–46 (4th Cir. 2008); *United States v. Santillan*, 571 F. Supp. 2d 1093, 1102–03 (D. Ariz. 2008).

and phones today have enormous storage capacities, making it unlikely that evidence will be destroyed through a lack of memory.<sup>56</sup>

*Gant* would not determine the breadth of a cell phone exception, but a bright-line rule prohibiting any search of cell phone data would be most practicable.<sup>57</sup> When authorities can easily understand a rule, the Fourth Amendment properly prevents abuse rather than just remedying it.<sup>58</sup> Exempting cell phones from searches incident to arrest would provide a comprehensible rule that neither requires an on-the-spot balancing test by officers nor undermines either of the *Chimel* rationales.

Multi-tiered schemes allowing the search of some data<sup>59</sup> aim to ideally balance the needs of the criminal justice system against the privacy of arrestees, but they would raise significant difficulties in practice. For instance, distinguishing between locally stored data and remotely accessed data as suggested by the *Smallwood* dissent<sup>60</sup> overlooks that there is no obvious way to tell where data is stored, particularly before viewing it. Police are not technological experts, and officers in the field may not know where a photo application stores its photos.

Other proposals explicitly allow for the search of certain categories of data, such as call logs, but not others, such as the content of emails.<sup>61</sup> Unlike the low-tech precedents that underlie them, these proposals lack a reasonable basis for the distinction between searchable data and prohibited data. Professor Orin Kerr analogizes to a letter, whose destination and return addresses are plainly visible on the envelope while the letter itself is inside and hidden.<sup>62</sup> He translates the distinction into the technological context, suggesting that address-

<sup>56</sup> See Oxtan, *supra* note 40, at 1201–02 (describing the increasing storage capacities of cell phones and the capabilities to recover deleted data). But see Eunice Park, *Traffic Ticket Reasonable, Cell Phone Search Not: Applying the Search-Incident-to-Arrest Exception to the Cell Phone as “Hybrid,”* 60 DRAKE L. REV. 429, 469–70, 490–93 (2012) (describing remote memory deletion applications on modern cell phones). Although remote memory deletion is possible, there are several simple preventive options that do not involve accessing a cell phone’s contents without a warrant. See *United States v. Wurie*, 728 F.3d 1, 11 (1st Cir. 2013).

<sup>57</sup> Additionally, the Supreme Court favors bright-line rules in Fourth Amendment contexts because such rules allow for clear and consistent decisionmaking. See *Dunaway v. New York*, 442 U.S. 200, 213–14 (1979) (“A single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests . . .”).

<sup>58</sup> *Chimel v. California*, 395 U.S. 752, 766 n.12 (1969) (“The [Fourth] Amendment is designed to prevent, not simply to redress, unlawful police action.”).

<sup>59</sup> See, e.g., Orin S. Kerr, *Applying the Fourth Amendment to the Internet: A General Approach*, 62 STAN. L. REV. 1005, 1007–08 (2010) (proposing a content/noncontent distinction in applying the Fourth Amendment to Internet searches); Park, *supra* note 56, at 481–82 (proposing that only the most recent text messages, email addresses, and call logs be searchable incident to arrest).

<sup>60</sup> See *Smallwood*, 113 So. 3d at 742 (Canady, J., dissenting).

<sup>61</sup> See Kerr, *supra* note 59, at 1019–20.

<sup>62</sup> See *id.* at 1019.

ing information (such as email addresses and call logs) should be searchable while the content (such as the text of emails and phone conversations) should not.<sup>63</sup> In essence, this rule makes the same kind of information available to authorities in both technological and nontechnological contexts. However, when imported into the digital world, these boundaries no longer track the distinction that justifies them in the analog world. Information about “where people go . . . and to whom they are communicating”<sup>64</sup> is available to authorities not because of some special interest in surveilling citizens’ movements or because this information is uniquely valuable to authorities, but rather because this information is publicly manifested and individuals have no reasonable expectation of privacy in such actions.<sup>65</sup> In the physical world, the distinction between inside and outside is actually a distinction between hidden and visible. That addressing information would be visible if the communication had transpired in the physical world, however, misses the point; the individual bypassed the post office and communicated in a much less publicly visible way. Just as activities in one’s home are not surveillable simply because they would be visible if performed in a different place, cell phone data should not be searchable simply because it would be visible if transmitted in a different way.<sup>66</sup>

As society continues to adapt to rapid technological change, Fourth Amendment doctrine must take the realities of the modern age into account. Recent revelations of domestic surveillance have highlighted both the importance of privacy in technological life and the degree to which the status quo falls short of meaningful protection. Only by incorporating new technologies explicitly into existing legal frameworks can society establish a legal regime for today. While the Supreme Court of Florida admirably sought to balance law enforcement needs against privacy interests, the deepening court split on cell phone searches reflects the need for the U.S. Supreme Court to clarify Fourth Amendment doctrine concerning cell phones in particular and modern technology in general.

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<sup>63</sup> *Id.* at 1019–20.

<sup>64</sup> *Id.* at 1022.

<sup>65</sup> See *Katz v. United States*, 389 U.S. 347, 351 (1967) (“What a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection.”); cf. *United States v. Jones*, 132 S. Ct. 945, 955–56 (2012) (Sotomayor, J., concurring) (arguing that recording an individual’s movements by GPS tracking device may violate reasonable expectations of privacy by compiling large amounts of public information).

<sup>66</sup> Thus, the State’s contention in *Smallwood* that the photos should be admissible because the search would have been legal if Smallwood had been carrying printed copies is inapposite. *Smallwood*, 113 So. 3d at 727–28. A search of records stored at Smallwood’s home would have been legal if he had carried them in his pocket, but this does not justify a search of his home.