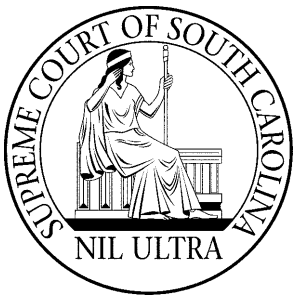

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 8
February 19, 2020
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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The Supreme Court of South Carolina

The State, Petitioner,

v.

Archie More Hardin, Respondent.

Appellate Case No. 2018-002035

ORDER

The petition for rehearing is granted, and we dispense with further briefing. The attached opinion is substituted for the previous opinion, which is withdrawn.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
February 19, 2020

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Petitioner,

v.

Archie More Hardin, Respondent.

Appellate Case No. 2018-002035

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Orangeburg County
Maité Murphy, Circuit Court Judge

Opinion No. 27938
Heard January 15, 2020 – Filed January 29, 2020
Withdrawn, Substituted, and Refiled February 19, 2020

CERTIORARI DISMISSED AS IMPROVIDENTLY GRANTED

Attorney General Alan McCrory Wilson and Assistant Attorney General Joshua Abraham Edwards, both of Columbia; and Solicitor David Michael Pascoe Jr., of Orangeburg, for Petitioner.

Chief Appellate Defender Robert Michael Dudek and Appellate Defender Lara Mary Caudy, both of Columbia;

and Daniel Carson Boles, of Boles Law Firm, LLC, of Charleston, for Respondent.

PER CURIAM: We issued a writ of certiorari to review the court of appeals' decision in *State v. Hardin*, 425 S.C. 1, 819 S.E.2d 177 (Ct. App. 2018). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Rent-A-Center East, Inc., and Rent Way, Inc.,
Petitioners,

v.

South Carolina Department of Revenue, Respondent.

Appellate Case No. 2019-000670

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from the Administrative Law Court
Harold W. Funderburk Jr., Administrative Law Judge

Opinion No. 27946
Heard February 12, 2020 – Filed February 19, 2020

DISMISSED AS IMPROVIDENTLY GRANTED

John C. von Lehe Jr. and Bryson M. Geer, both of Nelson Mullins Riley & Scarborough, LLP, of Charleston, for Petitioners.

Sean G. Ryan and Jason P. Luther, both of South Carolina Department of Revenue, for Respondent.

PER CURIAM: We issued a writ of certiorari to review the court of appeals' decision in *Rent-A-Center East, Inc. v. South Carolina Department of Revenue*, 425 S.C. 582, 824 S.E.2d 217 (Ct. App. 2019). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius and Karen Albenesius, Petitioners,

v.

Town of Sullivan's Island and Sullivan's Island Town Council, Respondents.

Appellate Case No. 2018-001888

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Opinion No. 27947
Heard November 21, 2019 – Filed February 19, 2020

REVERSED AND REMANDED

Robert H. Hood, James B. Hood, and Deborah H. Sheffield, all of Hood Law Firm, LLC, of Charleston, for Petitioners.

Derk Van Raalte and J. Brady Hair, both of the Law Offices of J. Brady Hair, of North Charleston, for Respondents.

ACTING CHIEF JUSTICE KITTREDGE: We granted a writ of certiorari to review the court of appeals' decision in *Bluestein v. Town of Sullivan's Island*, 424 S.C. 362, 818 S.E.2d 239 (Ct. App. 2018). The court of appeals affirmed the trial court's entry of summary judgment for the Town of Sullivan's Island and the Sullivan's Island Town Council (collectively, the Town). We reverse and remand to the trial court.

This case concerns accreting land along the South Carolina coast that is owned by the Town. Petitioners Nathan and Ettaleah Bluestein and Theodore and Karen Albenesius (collectively, Petitioners) bought property in the Town that abuts the accreting land. Petitioners' properties were once considered oceanfront lots only a short distance from the beach, but due to accretion, the properties are now a substantial distance (perhaps 500 feet or more) from the shoreline. The accreting land is subject to a 1991 deed, which sets forth certain rights and responsibilities respecting the condition of the property and the Town's duties concerning upkeep of the land. Petitioners are third party beneficiaries of the 1991 deed.

Petitioners argued the 1991 deed mandated the Town keep the vegetation on the land in the same condition as existed in 1991, particularly as to the height of shrubs and vegetation. Conversely, the Town contended the 1991 deed granted it unfettered discretion to allow unchecked growth of the vegetation on the accreting land. The parties have cherrypicked language from the 1991 deed which ostensibly supports their respective interpretations of the deed. Contrary to the holding of the court of appeals and the trial court's findings, the deed is far from unambiguous; because the 1991 deed is ambiguous in terms of the Town's maintenance responsibilities, the court of appeals erred in affirming the entry of summary judgment for the Town. As a result, we remand this case to the trial court for further proceedings.

I.

The Bluesteins and the Albenesiuses each separately bought front row property on Sullivan's Island, a barrier island off the coast of South Carolina.[1] The Town

[1] The Bluesteins purchased front row property located on Atlantic Avenue around

owned (and still owns) the land between Petitioners' properties and the Atlantic Ocean. That land continues to grow each year through sediment transport, a process known as accretion.[2]

Beginning in the mid-1980s, the Town expressed concern about the future of the accreting land. Other coastal towns in South Carolina had chosen to develop their own accreting land, and, according to the Town, that development had a negative impact on the communities involved. As a result, the Town explored options for protecting the accreting land from development.

In 1991, in the aftermath of the damage wrought by Hurricane Hugo, the Town worked with Lowcountry Open Land Trust (LOLT)—a non-profit organization whose purpose was to conserve and preserve natural areas—to protect the accreting land. Ultimately, the Town and LOLT entered into an agreement, in which the Town deeded the accreting land to LOLT, and LOLT then transferred the land back to the Town subject to a number of deed restrictions. At the time the 1991 deed was executed, the vegetation on the accreting land was no taller than three feet, consisting mostly of sea oats and wild flowers. In contrast, in certain areas along the coastline today, including in front of Petitioners' properties, the accreting land is now thickly wooded, creating a habitat for coyotes and other varmints.

The dispute in this case revolves around the language and intent of the 1991 deed restrictions, specifically the responsibility of the Town to maintain the accreting land. The parties construe the Town's rights and obligations under the 1991 deed differently. In granting summary judgment, the trial court effectively agreed with the Town's interpretation that the 1991 deed gives the Town complete discretion to allow the vegetation on the accreting land to grow unchecked. The court of appeals affirmed.

1980. The Albenesiuses purchased front row property located on Atlantic Avenue in 2009. It appears the Albenesiuses have sold their property since filing this lawsuit.

[2] According to the record, the land accretes at a rate of approximately seventeen feet per year.

II.

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id*. at 122, 708 S.E.2d at 769. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Id*. (citation omitted).

"It is a question of law for the court whether the language of a contract is ambiguous." *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001). "A [deed] is ambiguous when the terms of the [deed] are reasonably susceptible of more than one interpretation." *Id*. at 623, 550 S.E.2d at 302.

"In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." *K & A Acquis. Grp., L.L.C. v. Island Pointe, L.L.C.*, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009) (internal quotation marks and citations omitted). "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." *Id*. (citation omitted). "When the [deed] is ambiguous the court may take into consideration the circumstances surrounding its execution in determining the intent." *Williams v. Teran, Inc.*, 266 S.C. 55, 59, 221 S.E.2d 526, 528 (1976).

III.

Petitioners argue the 1991 deed requires the Town to keep the accreting land in the same condition as existed in 1991, in the aftermath of Hurricane Hugo. It appears Petitioners' main complaint is the unchecked growth of trees and vegetation that has fostered the influx of coyotes and has blocked the oceanfront views they once enjoyed. In support of their interpretation of the deed, Petitioners focus on the purpose of the agreement, which was to preserve the accreting land "in its present state [in 1991] as a natural area which has not been subject to development or exploitation." To establish the condition of the property at the time the deed was executed in 1991, the deed references an aerial photograph of the accreting land.

The deed further references photographs and other documentation, which the Town and LOLT deemed "sufficient to establish the condition of the [accreting land] as of the date" the deed was executed.

In contrast, the Town argues the 1991 deed grants it "unrestricted authority" to trim or not trim the vegetation on the accreting land. In essence, the Town posits that the 1991 deed grants it unfettered discretion to allow the vegetation on the accreting land to grow completely unchecked.

Both parties' interpretations are based on the premise that the 1991 deed is unambiguous. However, these two interpretations lead to very different results. While we acknowledge that both parties make compelling arguments when they are allowed to isolate deed provisions that support their respective positions, the 1991 deed, when read in its entirety, is not a model of clarity.

On one hand, the 1991 deed has no language limiting the height of trees and shrubs to a maximum of three feet, which is a central feature of Petitioners' case. Similarly, the deed language setting forth the purpose of retaining the land in its "natural" condition in no manner mandates that the types and amounts of vegetation and growth be frozen in time as existed in 1991.

On the other hand, the Town's "unrestricted authority" argument is far from dispositive, for that seemingly wide discretion is confined to "trim[ming] and control[ling] the growth of vegetation for the purposes of mosquito control, scenic enhancement, public and emergency access to the Atlantic Ocean and providing views of the ocean and beaches to its citizens."

In sum, the 1991 deed is ambiguous in terms of the Town's maintenance responsibilities towards the accreting land. Based on the current record and limiting our analysis to the four corners of the 1991 deed, this dispute may not be resolved as a matter of law. Genuine issues of material fact exist, precluding summary judgment. Accordingly, we reverse the grant of summary judgment to the Town and remand to the trial court for further proceedings.

REVERSED AND REMANDED.

HEARN, FEW, JAMES, JJ., and Acting Justice Stephanie Pendarvis McDonald, concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Robert Lee Moore, Petitioner.

Appellate Case No. 2017-002479

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

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

Opinion No. 27948
Heard June 11, 2019 – Filed February 19, 2020

AFFIRMED AS MODIFIED

Chief Appellate Defender Robert M. Dudek, of Columbia, for Petitioner.

Attorney General Alan Wilson and Assistant Attorney General William M. Blitch Jr., both of Columbia, and Seventh Judicial Circuit Solicitor Barry J. Barnette, of Spartanburg, all for Respondent.

JUSTICE KITTREDGE: Following a jury trial, Petitioner Robert Moore was sentenced to thirty years' imprisonment for the attempted murder of Travis Hall.

Hall was shot in the head and left for dead in a vehicle in a Taco Bell parking lot following a drug deal gone wrong. In the immediate aftermath of the shooting, law enforcement officers found three cell phones, including one later identified as Petitioner's "flip phone,"[1] in the area of the driver's floorboard after emergency medical personnel removed Hall from the vehicle.[2] Without obtaining a warrant, the officers removed the cell phones' subscriber identity module (SIM) cards to determine ownership. The officers then obtained a warrant to search the contents of Petitioner's flip phone. Petitioner's subsequent motion to suppress all evidence acquired from the flip phone was denied, as the trial court found Petitioner had abandoned his phone. A divided court of appeals' panel affirmed Petitioner's conviction on the basis of inevitable discovery. *State v. Moore*, 421 S.C. 167, 805 S.E.2d 585 (Ct. App. 2017). We granted a writ of certiorari to review the decision of the court of appeals and now affirm as modified.

I.

On February 25, 2013, Spartanburg County Sheriff's Office deputies were dispatched to a "shots fired" call at a Taco Bell. The first officer to arrive on the scene found Hall shot in the head, hanging out of his vehicle while partially restrained by the seatbelt. Despite the severity of his injuries, Hall survived. Witnesses told law enforcement that a white Chrysler 300 with "some rather large [and distinctive] rims" fled the scene immediately after the shooting.

Deputies at the crime scene recovered three cell phones from Hall's vehicle. The phones were immediately given to an investigator, who removed the SIM cards to obtain the phone number associated with each phone. A Spartanburg County Sheriff's Office database identified one phone number as belonging to Petitioner, who had given law enforcement that number three months prior in connection with obtaining a surety bond. An investigator with the Sheriff's Office then listed (1)

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[1] While a "smart phone" is "a cell phone with a broad range of other functions based on advanced computing capability, large storage capacity, and Internet connectivity," a flip phone is "a kind of phone that is flipped open for use and that generally has a smaller range of features than a smart phone." *Riley v. California*, 573 U.S. 373, 379, 380 (2014).

[2] The other two cell phones were later identified as Hall's.

the flip phone's phone number obtained from the SIM card; (2) Petitioner's name; and (3) the circumstances under which the phone was found, ultimately securing a search warrant to examine the contents of the flip phone. The search revealed that five calls were made from Petitioner's phone to the victim's phone in the hour prior to the shooting.

Meanwhile, in a separate portion of the investigation unrelated to the flip phone or search warrant, law enforcement officers identified the getaway vehicle and its two occupants—Petitioner and his co-defendant Tevin Thomas—via eyewitness testimony and video recording. Thomas was subsequently apprehended, initially denying he was present at the scene of the crime. However, after an officer confronted him with the video recording of Thomas and Petitioner at a nearby gas station—driving, within minutes of the shooting, the distinctive getaway car described by witnesses at the crime scene—Thomas made a second statement naming and implicating Petitioner in the shooting. Petitioner was arrested and charged with attempted murder.

Pursuant to the Fourth Amendment to the United States Constitution and *Riley v. California*,[3] Petitioner made a pre-trial motion to suppress any evidence seized from the warrantless examination of his phone's SIM card. Finding Petitioner had abandoned his cell phone, the trial court denied the motion. On appeal, a majority of the court of appeals' panel affirmed on the ground of inevitable discovery. A dissenting member of the panel voted to reverse the trial court, relying on *Riley* and contending that the warrantless examination of the SIM card constituted a Fourth Amendment violation. We granted a writ of certiorari to review the divided court of appeals' decision.

II.

On appeals involving a motion to suppress based on Fourth Amendment grounds, appellate courts apply a deferential standard of review and will reverse only in cases of clear error. *State v. Cardwell*, 425 S.C. 595, 599–600, 824 S.E.2d 451, 453 (2019). The "clear error" standard means appellate courts may not reverse the trial court's findings of fact merely because they would have decided the case differently. *State v. Moore*, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016)

[3] 573 U.S. 373 (2014).

(citation omitted). Rather, in reviewing Fourth Amendment cases, appellate courts must affirm the trial court's ruling if there is any evidence to support it. *Robinson v. State*, 407 S.C. 169, 181, 754 S.E.2d 862, 868 (2014).

III.

The State primarily contends that the limited warrantless search of Petitioner's cell phone was entirely reasonable under the circumstances. We agree. The Fourth Amendment provides, "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). It has long been recognized that the touchstone of the Fourth Amendment is reasonableness. *Riley*, 573 U.S. at 381–82 (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)); *Florida v. Jimeno*, 500 U.S. 248, 250 (1991) (citing *Katz v. United States*, 389 U.S. 347, 360 (1967)).

The trial court denied the motion to suppress on the basis of abandonment. Arguably, some evidence supports the trial court's finding that Petitioner abandoned his flip phone. *Cf. State v. Brown*, 423 S.C. 519, 525, 815 S.E.2d 761, 764–65 (2018) (finding a defendant abandoned his cell phone at the scene of the crime and explaining the defendant made no attempt to call or send text messages to the phone to see if someone would answer; the defendant did not attempt to contact the service provider for information on the whereabouts of the phone; and the defendant did not go back to the scene of the crime to look for the phone or call the police to see if they had it); *Robinson*, 407 S.C. at 181, 754 S.E.2d at 868 (setting forth the deferential "any evidence" standard of review). Yet we acknowledge a close question is presented on the issue of abandonment. We elect to resolve this appeal on other grounds.[4]

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[4] We note the dissent focuses much of its analysis on abandonment, on which we have expressly declined to rule. As a result, we view much of the dissent's analysis as non-responsive. We additionally note it does not appear as simple as the dissent's contention that "*Riley* created a categorical rule that, *absent exigent circumstances*, law enforcement must procure a search warrant before searching the data contents of a cell phone." (second emphasis added) (quoting *Brown*, 423 S.C. at 531, 815 S.E.2d at 767 (Beatty, C.J., dissenting)). Rather, other courts have found the abandonment exception, as well as other exceptions, may continue to justify a warrantless search of a cell phone, even post-*Riley*. *See, e.g.*, *Commonwealth v. Kane*, 210 A.3d 324, 329–32 (Pa. Super. Ct. 2019) (affirming

The Fourth Amendment, as interpreted, requires that the actions of law enforcement be viewed through a lens of reasonableness. The reasonableness inquiry is fact specific and context dependent. Here, law enforcement limited the warrantless portion of their search of the three phones to the SIM cards alone in an effort to establish ownership, which—as will be explained in more detail below—is a search wholly distinct from examining the contents of the phones. Moreover, at the time of the warrantless portion of the search to discover the identities of the cell phones' owners, law enforcement officers were responding to an active crime scene, not knowing the identity and whereabouts of the shooter. The public safety concerns are self-evident. Under the circumstances presented, we hold the limited search of the SIM cards to identify the phone numbers was reasonable and in no manner constituted an unreasonable search or seizure.

A.

A SIM card is a small device which contains a customer's basic information, along with encryption data to allow a device to access a particular carrier's mobile network. Thus, in many ways, a SIM card is simply a key to a specific mobile network. However, a SIM card is not part of a phone. This is evidenced by the facts that (1) not all phones have SIM cards; (2) SIM cards may be transferred from one phone to another; and (3) a single phone can utilize a series of SIM cards to easily change the phone's number and subscriber information. *See, e.g.*, *United States v. Flores-Lopez*, 670 F.3d 803, 810 (7th Cir. 2012) (explaining people may purchase multiple prepaid SIM cards, "each of which assigns a different phone number to the cell phone in which the card is inserted," making it easy for a single phone to be associated with multiple phone numbers), *abrogated on other grounds by Riley*, 573 U.S. at 400; *In re Apple iPhone Antitr. Litig.*, 874 F. Supp. 2d 889, 892 n.5 (N.D. Cal. 2012) ("A SIM card is a removable card that allows phones to be activated, interchanged, swapped out and upgraded. The SIM card is tied to the phone's network, rather than to the physical phone device itself." (internal citations omitted)).

Given its purpose of identifying a phone to a particular mobile network, a SIM card contains limited storage capacity. It therefore never contains the vast majority

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the trial court's finding that a cell phone was abandoned and that law enforcement therefore permissibly executed a warrantless search), *cert. denied*, 218 A.3d 856 (Pa. 2019) (per curiam).

of the information available on an unlocked cell phone. *See Sigram Schindler Beteiligungsgesellschaft mbH v. Cisco Systems, Inc.*, 726 F. Supp. 2d 396, 413 n.27 (D. Del. 2010) ("Generally, a SIM card is a smart card that encrypts voice and data transmissions and stores data about a user *for identification purposes*." (emphasis added)); *see also United States v. Wicks*, 73 M.J. 93, 97 (C.A.A.F. 2014) (explaining that a witness initially attempted to turn over only the SIM card of a suspect's cell phone, but "the SIM card did not contain any [useful] information," so the witness eventually turned over the suspect's entire cell phone, which did contain the incriminating information for which law enforcement was looking).[5] According to one witness at trial, the SIM card on this particular type of older model flip phone "primarily contains the assigned cell phone number," but can also contain incomplete records of the contacts stored on the phone as well as partial call and text logs. A SIM card does not store call or text logs in reverse chronological order but, rather, randomly if at all. We conclude searching a SIM card is fundamentally distinct from searching the full contents of an unlocked cell phone, making much of the language in *Riley* concerning the privacy implications for searching a cell phone inapplicable or, at best, greatly diminished here.[6]

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[5] The dissent disagrees with our recitation of the functionality of a SIM card, resorting to an internet search well outside the record on appeal and citing to a website from www.wisegeek.com titled "What is a SIM card?" We could similarly surf the internet to find information counter to the dissent, but decline to do so given the functionality of a SIM card is adequately set forth in the case law cited above.

[6] Due to the fact that a SIM card's storage is both incomplete and random, we strongly disagree with the dissent's argument that we should view SIM cards as functionally equivalent to flash drives, whose contents are generally protected by the Fourth Amendment. In the case of a flash drive, the user deliberately chooses which information to place on the drive, and destroying the drive destroys access to the information placed on it. In contrast, a cell phone owner does not choose which information is (or is not) stored on his SIM card, and destroying the SIM card does not destroy access to the (incomplete) information stored therein because the full data is duplicated on the phone itself or, at worst, on the provider's servers. Thus, searching the contents of a SIM card is fundamentally distinct from searching *either* a flash drive *or* the full contents of an unlocked cell phone. The privacy implications of searching the digital data contained on SIM cards, flash

B.

As explained previously, "the ultimate measure of the constitutionality of a government search is reasonableness." *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995) (internal quotation marks omitted). However, "a warrant is not required to establish the reasonableness of *all* government searches." *Id.* at 653. For example, law enforcement officers may search lost property to safeguard the property, protect the police department from false claims, and protect the police from danger. *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). Likewise, "[w]hen 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, 683–86 (E.D. Ky. 2013) (quoting *State v. Ching*, 678 P.2d 1088, 1093 (Haw. 1984)) (holding officers acted reasonably in searching a suitcase and the laptop found inside in order to identify the owner); *State v. Polk*, 78 N.E.3d 834, 843 (Ohio 2017) ("[A] person retains a reasonable expectation of privacy in a lost item, 'diminished to the extent that the finder may examine the contents of that item as necessary to determine the rightful owner.'" (quoting *State v. Hamilton*, 67 P.3d 871, 875 (Mont. 2003))); *see also People v. Juan*, 221 Cal. Rptr. 338, 341 (Ct. App. 1985) (finding law enforcement's search through the pockets of a jacket left hanging on the back of a restaurant chair at an empty table was reasonable because the defendant had no reasonable expectation of privacy under those circumstances, and explaining in part, "Indeed, an individual who leaves behind an article of clothing at a public place most likely *hopes* that some Good Samaritan will pick up the garment and search for identification in order to return it to the rightful owner.").

Here, the Spartanburg County Sheriff's Office investigator conducted a limited search of the cell phones found at the crime scene for the targeted purpose of determining the owner. Importantly, he did so by searching only the phones' SIM cards, *not the contents of the phones*—despite the fact that the flip phone was not password protected—and the search lasted a single minute.[7] Once the investigator

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drives, and unlocked cell phones are likewise distinct.

[7] Aside from Petitioner's phone number (which was used to obtain his name), the warrantless portion of the search of the flip phone's SIM card revealed thirty-four contacts and three text messages that had been sent in the year prior to the shooting. Petitioner does not argue the contact entries or text messages were relevant to the shooting or otherwise led law enforcement officers to discover his

identified the owners of the cell phones, a warrant was obtained to search Petitioner's flip phone. Under these circumstances, the limited search of the SIM cards for purposes of identification was reasonable and did not contravene the Fourth Amendment. *Cf. State v. Green*, 164 So. 3d 331, 344 (La. Ct. App. 2015) (holding an officer's removal of a cell phone's battery to acquire the identifying subscriber number (analogous to a serial number) did not implicate the Fourth Amendment because the subscriber had no "reasonable expectation of privacy in the serial number of his cell phone or other identifying information"). The determination of whether a search is permissible should not be the result of varying frameworks depending on whether the person who lost the item is a criminal hoping to avoid detection or a law-abiding citizen hoping for the return of the lost item. To the extent Petitioner retained an expectation of privacy in his cell phone left next to the victim's body, that expectation of privacy was diminished to the point that the finder could properly examine the item in a manner limited to determining the owner. *Cf. State v. Hill*, 789 S.E.2d 317, 319 (Ga. Ct. App. 2016) (holding the police properly obtained the defendant's cell phone number and name in a case in which the defendant left his cell phone at the scene of a crime, and the police used the phone to call 911 in order to get the phone number from the 911 dispatcher; and explaining, "While the application of Fourth Amendment law to this precise set of facts appears to be an issue of first impression in Georgia, there are many cases in Georgia and in other jurisdictions supporting the conclusion that 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." (collecting cases)); *id*. at 321 ("[W]e do not construe *Riley* to recognize a legitimate expectation of privacy in identifying noncontent information such as the person's own phone number, address, or birthdate, simply because that information was associated with a cellular phone account rather than a landline phone account or a piece of physical mail.").

IV.

Of course, we recognize the adage "get a warrant" will always be at play in these Fourth Amendment challenges. We join that chorus as well, as it is always preferable to "get a warrant." However, the question before us is not whether obtaining a warrant would have been preferable; rather, the question here is

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identity or suspect his involvement.

whether obtaining the phone numbers assigned to the SIM cards without a warrant under these circumstances contravened the Fourth Amendment. As explained previously, we hold law enforcement's identification of the number assigned to the flip phone by examining the SIM card was reasonable and did not violate the Fourth Amendment.

Were we, however, to accept the premise of Petitioner's argument regarding a Fourth Amendment violation, his conviction would nevertheless be upheld because the absence of a warrant does not require the categorical suppression of evidence as advocated by Petitioner. *See Herring v. United States*, 555 U.S. 135, 140 (2009) ("The fact that a Fourth Amendment violation occurred—*i.e.*, that a search or arrest was unreasonable—does not necessarily mean that the exclusionary rule applies."). "Indeed, exclusion has always been our last resort, not our first impulse." *Id.* (quoting *Hudson v. Michigan*, 547 U.S. 586, 591 (2006)) (internal quotation marks omitted); *see also Davis v United States*, 564 U.S. 229, 237 (2011) (explaining suppression can be a harsh sanction, for it "exacts a heavy toll on both the judicial system and society at large").

The purpose of the exclusionary rule is to deter law enforcement officers from committing Fourth Amendment violations. *Davis*, 564 U.S. at 236–37. As a result, when suppression will fail to yield "appreciable deterrence," exclusion is clearly unwarranted. *Id.* at 237 (quoting *United States v. Janis*, 428 U.S. 433, 454 (1976)). "To that end, courts have recognized several exceptions to the exclusionary rule," including, among others, the independent source doctrine, inevitable discovery, and good-faith reliance. *See State v. Adams*, 409 S.C. 641, 647 & n.3, 763 S.E.2d 341, 345 & n.3 (2014) (collecting cases). We find that—even if law enforcement committed a Fourth Amendment violation by searching the SIM cards for identification purposes—each of these three exceptions applies, rendering the exclusionary rule inappropriate in this instance.

A.

Previously, this Court explained the independent source exception as follows:

> The "fruit of the poisonous tree" doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. However, the challenged evidence is admissible if it was obtained from a lawful source independent of the illegal conduct.

State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996) (internal citation omitted).

Here, in a portion of the investigation wholly unrelated to or affected by the cell phones, law enforcement obtained incriminating video from a nearby gas station located approximately one-and-a-half miles from the Taco Bell where the victim was shot. The video—taken around three to five minutes after the shooting—showed Petitioner and Thomas driving the distinctive getaway vehicle into the parking lot and loitering around the car for several minutes while police cars drove past the gas station with their blue lights flashing and sirens blaring. Petitioner and Thomas then grabbed a bag from the car and threw it in the trash before entering the gas station. Inside, Petitioner bought a package of cigarettes, which caused him to have to give his (real) date of birth, and the sales clerk dutifully noted the birthdate on a receipt that was later introduced at trial. Other video recordings introduced at trial showed Petitioner and Thomas in the getaway vehicle driving it towards the location where it was subsequently found by law enforcement that same night—the house of a relative of Petitioner.

The Sheriff's Office investigators could not recall exactly when they identified Thomas as the second man in the video recordings; however, they located and arrested him on February 26, one day after the shooting.[8] Thomas initially denied being at the Taco Bell at all on February 25. However, an investigator confronted Thomas with a picture of Thomas at the gas station after the shooting, and Thomas recanted his non-involvement, giving a second written statement. In this second statement, Thomas named Petitioner as the second man involved.

At trial, Thomas testified Petitioner had called Hall, the victim, multiple times directly before the shooting in order to set up a meeting (a drug deal).[9] However, Thomas and Petitioner had prearranged to rob Hall at the meeting and armed themselves accordingly. Thomas stated that as soon as Petitioner climbed into Hall's car for the drug deal, Petitioner pulled out a gun, and the two men started

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[8] This is the same day the magistrate signed the warrant allowing the investigators to examine the contents of Petitioner's flip phone.

[9] At least one other witness confirmed Hall had received a series of phone calls attempting to set up a meeting with him before the shooting. That witness was of the impression that Hall knew the person calling him. While Petitioner and Hall were longstanding friends, Hall was not acquainted with Thomas.

"tussling real heavy." Eventually, Petitioner shot Hall, jumped back into the getaway vehicle, and drove off against traffic and over the median, nearly hitting a pedestrian on the way out of the parking lot.

We conclude that none of this evidence "has been come at by exploitation of [any possible] violation of [Petitioner's] Fourth Amendment rights." *See United States v. Crews*, 445 U.S. 463, 471 (1980) (quoting *Wong Sun v. United States*, 371 U.S. 471, 488 (1963)) (internal quotation marks omitted). We find Petitioner's identity and the possible presence of incriminating call logs on Hall's and Petitioner's cell phones came from an independent source in the investigation untainted by any alleged Fourth Amendment violation. *Cf. id.* at 474 ("Insofar as respondent challenges his own presence at trial, he cannot claim immunity from prosecution simply because his appearance in court was precipitated by [a Fourth Amendment violation]. [A Fourth Amendment violation], without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction. The exclusionary principle of *Wong Sun* and *Silverthorne Lumber Co.*[10] delimits what proof the Government may offer against the accused at trial, closing the courtroom door to evidence secured by official lawlessness. Respondent is not himself a suppressible 'fruit,' and the illegality of his detention [due to a Fourth Amendment violation] cannot deprive the Government of the opportunity to prove his guilt through the introduction of evidence wholly untainted by the police misconduct." (footnote omitted) (internal citations omitted)); *id.* at 478–79 & n.* (White, J., concurring) (rejecting, in a portion of his concurrence that received a majority vote of the Justices on the United States Supreme Court, the notion that a defendant's face or identity can be considered evidence suppressible for no other reason than the defendant's presence in the courtroom is the fruit of a Fourth Amendment violation (citing *Frisbie v. Collins*, 342 U.S. 519, 522 (1952))).[11]

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[10] *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920).

[11] In focusing on the abandonment issue, the dissent does not address all of the bases we discuss in reaching our decision, namely, the independent source doctrine. In fact, the gas station video and Thomas's confession were the key pieces of evidence against Petitioner, not the flip phone or its call logs. While the testimony about the phone helped confirm various aspects of some witnesses' testimony, the phone's call logs and its role in revealing Petitioner's involvement in the crime were purely cumulative.

B.

"[T]he inevitable discovery doctrine provides that illegally obtained information may nevertheless be admissible if the prosecution can establish by a preponderance of the evidence that the information would have ultimately been discovered by lawful means." *Cardwell*, 425 S.C. at 601, 824 S.E.2d at 454 (citing *Nix v. Williams*, 467 U.S. 431, 444 (1984)). Here, after receiving a "shots fired" call, law enforcement officers found Hall shot in the head and three cell phones on the floorboard at his feet. Correctly suspecting that it would have been highly unusual for all three phones to belong to Hall, investigators took action to identify the cell phones' owners and determine if there was a connection between the phones, first by searching the SIM cards and then by obtaining a warrant to examine the contents of the phones. While the officers obtained the call logs between the two phones by executing the warrant on Petitioner's flip phone, they could have also obtained the same information by searching Hall's phones, which they had in their lawful possession. Particularly given the fact that other portions of the investigation revealed that, prior to driving to the Taco Bell, Hall had been phoned multiple times in the presence of witnesses and seemed to be setting up a meeting in the hour prior to his shooting, we find the State established that law enforcement was keyed into and actively investigating Hall's phone records and would have obtained the call logs regardless of the search of Petitioner's phone. Obtaining the call logs—including Petitioner's five calls to Hall in the hour prior to the shooting—would have allowed the investigators to obtain Petitioner's phone number and run it through their internal database (as actually occurred), thus giving them Petitioner's name. As a result, we find the evidence Petitioner seeks to have suppressed would have been inevitably discovered, and we therefore find the exclusionary rule inapplicable here because it would not sufficiently deter police conduct in the future. *See Nix*, 467 U.S. at 444 ("If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense." (footnote omitted)).

C.

Finally, it is beyond dispute that law enforcement in this case acted in good faith. Even accepting the premise of Petitioner's Fourth Amendment challenge, none of the purposes served by the exclusionary rule would be achieved by suppressing any of the evidence obtained from searching his cell phone. *See United States v.*

Leon, 468 U.S. 897, 907–08 (1984) ("The substantial social costs exacted by the exclusionary rule for the vindication of Fourth Amendment rights have long been a source of concern. Our cases have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of governmental rectitude would impede unacceptably the truth-finding functions of judge and jury. An objectionable collateral consequence of this interference with the criminal justice system's truth-finding function is that some guilty defendants may go free or receive reduced sentences as a result of favorable plea bargains. *Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system*." (emphasis added) (footnote omitted) (internal citations omitted) (internal quotation marks omitted)).

Petitioner, as did the dissenting opinion in the court of appeals, relies principally on the United States Supreme Court's *Riley v. California* decision from 2014, which emphasized the degree of governmental intrusion resulting from warrantless searches of cell phones incident to an arrest due to the wealth of private information contained within modern cell phones. Notably, when law enforcement responded to the Taco Bell in Spartanburg County on February 25, 2013, *Riley* had not yet been decided. At the time, the law was far from settled in terms of the necessity of obtaining a warrant to search *a cell phone*, much less *a SIM card alone*.[12] *See id.* at 919 ("If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed *only* if it can be said that the law enforcement officer had knowledge, *or may properly be charged with knowledge*, that the search was unconstitutional under the Fourth Amendment." (emphasis added) (quoting *United States v. Peltier*, 422 U.S. 531, 542 (1975))). Finally, it must be remembered that law enforcement did obtain a warrant to search Petitioner's phone once his identity as owner was determined.

[12] In fact, the law is still far from settled regarding the propriety of searching a SIM card alone, rather than the full contents of a cell phone. We have found little case law on the constitutionality of such searches, as much of the relevant case law either (1) appears to have been decided post-*Riley*; (2) is distinguishable because it involves searches of cell phone contents and not SIM card contents; or (3) more commonly, reflects both of these problems.

IV.

For the foregoing reasons, the judgment of the court of appeals is affirmed as modified.

AFFIRMED AS MODIFIED.

FEW and JAMES, JJ., concur. HEARN, J., concurring in part and dissenting in part in a separate opinion. BEATTY, C.J., dissenting in a separate opinion.

JUSTICE HEARN: I concur with the majority to affirm Moore's conviction based upon the inevitable discovery and independent source doctrines. Thus, regardless of whether there was a Fourth Amendment search—which I believe there was—the exclusionary rule would not apply. However, even though Moore cannot avail himself of this remedy, I part company with the majority's discussion of the good-faith exception as a basis for declining to apply the exclusionary rule.

The good-faith exception ensures that evidence will not be suppressed when law enforcement acts in an objectively reasonable manner. The purpose of the exclusionary rule is deterrence, and this consideration must be weighed against the social costs of excluding relevant, incriminating evidence. *Hudson v. Michigan,* 547 U.S. 586, 599 (2006) (noting the "substantial social costs" of the exclusionary rule). We have previously addressed this exception in analyzing whether binding precedent supported law enforcement's warrantless search. *State v. Adams*, 409 S.C. 641, 652, 763 S.E.2d 341, 347 (2014). In *Adams*, police attached a GPS device to the defendant's vehicle and monitored his movements, suspecting he was transporting drugs. Police tracked Adam's vehicle and conducted a stop on the interstate, where an officer discovered cocaine. Adams filed a motion to suppress the evidence, which the trial court denied. We reversed, and in doing so, rejected the contention that law enforcement acted in good faith based on purported precedent supporting the warrantless search. The State relied on two cases—*United States v. Knotts*, 460 U.S. 276, 281 (1983) (holding law enforcement's placement of a beeper in a container of chloroform with the seller's consent and their subsequent monitoring did not constitute a search under the Fourth Amendment because individuals do not possess a reasonable expectation of privacy in traveling on public highways), and *United States v. Karo*, 468 U.S. 705, 713 (1984) (holding the placement of an electronic beeper in a container with the owner's consent before being sold did not constitute a search because the buyer's privacy interests were not infringed when he received possession of the container). We also noted a statute required police to procure a warrant before installing and monitoring a GPS device. S.C. Code Ann. § 17-30-140 (2014). In addressing the good-faith exception, we rejected the State's argument that *Knotts* and *Karo* constituted binding precedent that permitted law enforcement to install and monitor GPS devices without a warrant.

Our focus in *Adams* concerned whether binding precedent supported the warrantless search. That made sense because the default is that a search without a warrant is unreasonable. *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007) ("Generally, a warrantless search is *per se* unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures.").

While we will not penalize law enforcement by suppressing evidence obtained when police follow precedent, that is not the case here. Indeed, even the majority characterizes the state of the law as "far from settled," which obviously is short of controlling precedent. In light of the unsettled nature of our case law, I believe our Fourth Amendment jurisprudence requires this fact to militate in favor of requiring a warrant. Nevertheless, because I agree that the inevitable discovery and independent source doctrines apply, the exclusionary rule has no bearing in this case.

CHIEF JUSTICE BEATTY: I respectfully dissent. I would reverse the decision of the court of appeals and remand Moore's case for a new trial. In my view, the warrantless removal of the SIM card and forensic examination of its digital contents constituted a search in violation of the Fourth Amendment. Accordingly, I would find the trial court erred in denying Moore's motion to suppress.

I.

The Fourth Amendment to the United States Constitution protects a person's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. "Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement." *State v. Brown*, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012) (citation omitted). The State bears the burden of establishing "the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures." *State v. Gamble*, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013).

"The touchtone of Fourth Amendment analysis is whether a person has a 'constitutionally protected reasonable expectation of privacy.'" *California v. Ciraolo*, 476 U.S. 207, 211 (1986) (quoting *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)). "*Katz* posits a two-part inquiry: first, has the individual manifested a subjective expectation of privacy in the object of the challenged search? Second, is society willing to recognize that expectation as reasonable?" *Id.*

In determining whether the expectation of privacy is reasonable, "'[t]he test of legitimacy is not whether the individual chooses to conceal assertedly 'private' activity,' but instead 'whether the government's intrusion infringes upon the personal and societal values protected by the Fourth Amendment.'" *Ciraolo*, 476 U.S. at 212 (quoting *Oliver v. United States*, 466 U.S. 170, 182–83 (1984)).

Here, the object of the challenged search is the SIM card in Moore's cell phone found at the crime scene.[13] The majority holds "the limited search of the SIM cards

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[13] A SIM card is defined as follows:

> A Subscriber Identity Module (SIM) card is a portable memory chip used mostly in cell phones that operate on the Global System for Mobile Communications (GSM) network. *These cards hold the personal information of the account holder, including his or her phone number,*

to identify the phone numbers was reasonable and in no manner constituted an unreasonable search or seizure." In so holding, the majority explains that "searching a SIM card is fundamentally distinct from searching the full contents of an unlocked cell phone, making much of the language in *Riley* concerning the privacy implications for searching a cell phone inapplicable or, at best, greatly diminished here."

For several reasons, I disagree with the majority's conclusion. Initially, I disagree with the majority's apparent dismissal of the import of *Riley v. California*, 134 S. Ct. 2473 (2014). As I stated in my dissent in *Brown*, "*Riley* creates a categorical rule that, absent exigent circumstances, law enforcement must procure a search warrant before searching the data contents of a cell phone." *State v. Brown*, 423 S.C. 519, 531, 815 S.E.2d 761, 767 (2018) (Beatty, C.J., dissenting). I believe the circumstances of the instant case fall within this rule.

Moore had a reasonable expectation of privacy in the digital contents of the SIM card.[14] *See Riley*, 134 S. Ct. at 2473 (concluding society is willing to recognize an expectation of privacy in the digital information on a cell phone). In my view, there is no distinction between the digital contents of a SIM card and the full contents of a cell phone. At issue is the digital data, not the type of device or the amount of storage capacity. While the SIM card has limited storage capacity, it contains significant personal information about the cell phone account holder, including the phone number, call logs, address books, text messages, and other data.[15] Thus, even

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> *address book, text messages, and other data*. When a user wants to change phones, he or she can usually easily remove the card from one handset and insert it into another. SIM cards are convenient and popular with many users, and are a key part of developing cell phone technology.

https://www.wisegeek.com/what-is-a-sim-card.htm (last visited Dec. 10, 2019 (emphasis added).

[14] Given the trial court ruled that Moore abandoned his cell phone, the court implicitly found Moore had an expectation of privacy in the cell phone, which included the SIM card.

[15] The majority minimizes the privacy implication of the digital data because the SIM card is "simply a key to a specific mobile network" and "not part of a phone."

if law enforcement claims to confine their search to identify the phone number, the search nevertheless provides law enforcement access to all of the information stored on the SIM card. I do not believe one can dissect digital data to determine what information is afforded Fourth Amendment protection. Once law enforcement removes a SIM card in order to conduct a forensic examination, it has unrestricted access to personal information that is protected by the Fourth Amendment. *See Riley*, 134 S. Ct. at 2492 (rejecting proposed rule that would restrict the scope of a cell phone search to those areas of the phone where an officer reasonably believes there would be information relevant to a crime such as the arrestee's identity and stating, "[t]his approach would sweep in a great deal of information, and officers would not always be able to discern in advance what information would be found where").

Further, law enforcement recognized the amount of information that was accessible as Detective McGraw explained the SIM card "primarily contains the assigned cell phone number[,]. . . continuing call logs, stored contacts, things of that nature." During the warrantless search, Detective McGraw recovered the cell phone number, thirty-four contact entries, and three text messages. Therefore, despite the claim that the scope of the search was limited, the search provided access to and ultimately yielded much more than a phone number. Contrary to the majority's characterization, such a search cannot be deemed reasonable.

Because Moore had a reasonable expectation of privacy in the digital contents of the SIM card, I would hold the warrantless search violated the Fourth Amendment's prohibition against unreasonable searches and seizures. *See Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018) ("When an individual seeks to preserve something as private, and his expectation of privacy is one that society is prepared to recognize as reasonable, we have held that official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause." (internal quotation marks omitted)).

If this analysis is taken to its logical extreme, one would have no expectation of privacy in the digital contents of a flash drive given (1) not all computers have USB ports; (2) flash drives may be transferred from one computer to another; and (3) a single computer can utilize a series of flash drives.

II.

Even if Moore had a reasonable expectation of privacy in the digital contents of the SIM card, the State argued and the trial court found Moore divested himself of the Fourth Amendment protection by abandoning the cell phone.

In my view, the State failed to establish the abandonment exception to the Fourth Amendment warrant requirement. *See State v. Dupree*, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995) (recognizing the doctrine of abandonment as an exception to the Fourth Amendment warrant requirement).

When determining whether a defendant abandoned property for Fourth Amendment purposes, "the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure and search is reasonable within the limits of the Fourth Amendment." *Id.* at 457, 462 S.E.2d at 281 (quoting *City of St. Paul v. Vaughn*, 237 N.W.2d 365, 370–71 (Minn. 1975)). "[A]bandonment is a question of intent and exists only if property has been voluntarily discarded under circumstances indicating no future expectation of privacy with regard to it." 68 Am. Jur. 2d *Searches and Seizures* § 23, at 135 (2010). In the context of abandonment, intent is "inferred from words, acts, and other objective facts." 79 C.J.S. *Searches* § 43, at 70 (2017).

In this case, the objective facts known to law enforcement at the time of the search were as follows. The phone was found on the floorboard of the victim's vehicle. Although the vehicle was clearly a crime scene, law enforcement did not see Moore in possession of the phone, did not see him throw the phone in an effort to evade police, and did not know when the phone was left. Additionally, the record shows no denial of ownership by Moore, nor was there any evidence showing Moore had intentionally discarded the cell phone. In fact, Investigator Clark testified: "I'm sure [the flip phone] was left by mistake."

At trial, Detective McGraw testified he received the flip phone within two hours of the shooting. The two-hour period was in the afternoon (approximately 2:00 p.m. to 4:00 p.m.),[16] and there was no report that the phone was lost or stolen

[16] Unlike the situation where an officer needs to make an instant decision to determine whether a suspect is reaching for identification or a weapon, no such exigencies existed. *See Riley*, 134 S. Ct. at 2485 ("Once an officer has secured a phone and eliminated any potential physical threats, however, data on a phone can endanger no one."). At trial, Investigator Lorin Williams testified: "[T]he quicker

prior to the first search. Notably, the record is unclear as to whether the screen was locked.[17]

Next, I note, by law enforcement's own admission, the phone was left by mistake. The record does not reveal a single instance in which officers referred to the phone as "abandoned." Furthermore, law enforcement's actions and testimony clearly indicate an intent to identify the owner. Had the flip phone not contained calls to the victim, law enforcement likely would have interviewed Moore and returned the phone.

In my view, considered as a whole, the objective facts known to the officer at the time of the initial search do not satisfy the State's burden to show Moore

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we can get our hands on those phones . . . the quicker it helps us with the investigation." However, there is no testimony in the record that the officers believed Moore posed an imminent threat to law enforcement. *See Harris v. O'Hare*, 770 F.3d 224, 235 (2d Cir. 2014) (stating "general knowledge, without more, cannot support a finding of exigency"); *cf. Barton v. State*, 237 So. 3d 378, 381 (Fla. Dist. Ct. App. 2018) (holding that defense counsel was not ineffective for failing to file a motion to suppress evidence discovered from the warrantless search of Barton's abandoned cell phone where the following exigent circumstances existed: "police knew the gunman fired several bullets towards fifteen to twenty-five students at a bus stop near an elementary school; a student was seriously injured; the gunman had not been detained; and the gun had not been located").

[17] From the record, it is not clear if the flip phone was password protected. The State claims it was not password protected; however, from my reading, it appears the officer did not know, and the report makes no comment on whether or not a password was required.

> [Defense Counsel:] This phone was password protected, wasn't it?
>
> [Investigator Williams:] I could not answer that.
>
> [Defense Counsel:] [I]n [Detective McGraw's] report, does he say it was password [protected]?
>
> [Investigator Williams:] I don't see that it was.

abandoned his phone. My conclusion, however, in no way limits law enforcement's ability to investigate an active crime scene.

When law enforcement finds a phone, they have several less intrusive options at their disposal to identify the owner of the phone. These options include examining the exterior of the phone, using the emergency dialer to call 911 so that the dispatcher may identify the number associated with the phone, or contacting the phone's wireless service provider to determine the owner. *See* Mikah Sargent, *How to Find the Owner of a Lost or Stolen iPhone, iMore* (Dec. 28, 2016), https://www.imore.com/how-find-owner-lost-or-stolen-iphone. Ultimately, the protection of privacy must keep up with technological advances.

III.

Finally, I do not believe the warrantless search can be cured through the inevitable discovery doctrine. "[T]he inevitable discovery doctrine provides that illegally obtained information may nevertheless be admissible if the prosecution can establish by a preponderance of the evidence that the information would have ultimately been discovered by lawful means." *State v. Cardwell*, 425 S.C. 595, 601, 824 S.E.2d 451, 454 (2019) (citing *Nix v. Williams*, 467 U.S. 431, 444 (1984)).

Here, Detective McGraw testified he performed a limited forensic examination of all three phones found at the scene of the shooting prior to the issuance of a warrant. From this search, law enforcement retrieved cell phone numbers associated with each of the phones and, through their database, determined that one of the phones did not belong to the victim but, instead, belonged to Moore. After obtaining the search warrant, Detective McGraw determined the flip phone was used to make five phone calls to one of the victim's phones shortly before the shooting occurred.

The State maintains this evidence would have been inevitably discovered because law enforcement "had the victim's phone in their possession[,]" and they "had every right to search the victim's phone." However, nowhere in the record does the State claim law enforcement pulled call logs from any of the victim's phones, or even if law enforcement's forensic examination equipment was capable of accessing the victim's iPhones' call logs.[18] "The independent source doctrine allows admission

[18] Detective McGraw recalled that he pulled the SIM card from the iPhone 4 to identify the number and, also, identified the number associated with the iPhone 3. However, he testified the extraction of call logs and text messages from the flip

of evidence that has been discovered by means *wholly independent* of any constitutional violation." *Nix*, 467 U.S. at 443 (emphasis added). Without the illegal search, the officers had no evidence connecting the phone to Moore. It was only through the unlawful action of the officers—accessing Moore's cell phone without a warrant—that the officers were able to connect Moore to the flip phone and the flip phone to the victim.

While the State claims the information was available from the victim's cell phone, it cannot point to any place in the record to substantiate that claim. Therefore, without assuming, this Court cannot conclude Moore's phone number, and the call log implicating Moore, would have been inevitably discovered. As a result, I would find the information was inadmissible. *See id*. 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).[19]

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phone was not supported by the equipment and, thus, he had to take pictures of the call log on the flip phone. Detective McGraw also noted the victim's iPhone 4 "was damaged." Based on the flip phone's call log, he was ultimately able to determine the flip phone communicated with the iPhone 3 prior to the shooting.

[19] Additionally, the State—without citing support—asks the Court to redact the information obtained through the illegal search and find the warrant valid. However, the redaction principle applies when the defendant seeks to challenge false statements in a search warrant affidavit. *See Franks v. Delaware*, 438 U.S. 154 (1978) (holding a defendant has the right to challenge misstatements in a search warrant affidavit); *State v. Robinson*, 415 S.C. 600, 606–08, 785 S.E.2d 355, 358–59 (2016) (finding probable cause no longer existed after redacting misstatements in the search warrant affidavit and considering the remaining content). Most importantly, I believe the purpose of the exclusionary rule is defeated if a court applies the redaction principle to a search that violates the Fourth Amendment. If law enforcement obtains evidence by means of an illegal search and then belatedly obtains a search warrant based, in part, on the evidence, it is self-evident that applying the redaction principle to the search warrant on judicial review should not serve to cure the constitutional defect.

IV.

Based on the foregoing, I would find the warrantless search violated Moore's rights under the Fourth Amendment. In reaching this conclusion, I adhere to my dissent in *Brown* as I believe *Riley* gave a clear directive that law enforcement, absent exigent circumstances, must obtain a warrant prior to searching the digital contents of a cell phone. Accordingly, I would reverse the decision of the court of appeals and remand for a new trial.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control, Petitioners,

v.

South Carolina Department of Health and Environmental Control and South Carolina State Ports Authority, Respondents.

Appellate Case No. 2018-000137

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from the Administrative Law Court
Ralph King Anderson III, Administrative Law Judge

Opinion No. 27949
Heard June 11, 2019 – Filed February 19, 2020

REVERSED AND REMANDED

J. Blanding Holman IV, of Southern Environmental Law Center, of Charleston; Amy E. Armstrong and Jessie A. White, both of South Carolina Environmental Law Project, of Pawleys Island; and Jefferson Leath Jr., of

Leath, Bouch & Seekings, LLP, of Charleston, for Petitioners.

Bradley D. Churdar, of South Carolina Department of Health and Environmental Control, of North Charleston; Randolph R. Lowell, of Willoughby & Hoefer, PA, of Charleston; and Tracey C. Green and Chad N. Johnston, both of Willoughby & Hoefer, PA, of Columbia, for Respondents.

JUSTICE JAMES: Petitioners seek a contested case hearing in the administrative law court (ALC) to challenge the propriety of state environmental authorizations issued by the South Carolina Department of Health and Environmental Control (DHEC) for a project relocating and expanding the passenger cruise facility at the Union Pier Terminal (the Terminal) in downtown Charleston. Petitioners maintain they have standing to seek this hearing as "affected persons" under section 44-1-60(G) of the South Carolina Code (2018). The ALC concluded Petitioners did not have standing and granted summary judgment to Respondents. The ALC terminated discovery and also sanctioned Petitioners for requesting a remand to the DHEC Board. The court of appeals affirmed. *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Envtl. Control*, Op. No. 2017-UP-403 (S.C. Ct. App. filed Oct. 18, 2017). This Court granted a petition for a writ of certiorari. Because we find Petitioners have standing, we reverse the grant of summary judgment and remand the matter to the ALC for a contested case hearing. We instruct the ALC to establish a reasonable schedule for the completion of discovery. We also reverse the sanction imposed by the ALC.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioners, consisting of several citizens groups and neighborhood associations, filed a request for a contested case hearing in the ALC in February 2013 against Respondents—DHEC and the South Carolina State Ports Authority (the Ports Authority). Petitioners seek to challenge DHEC's issuance of a Critical Area Permit and Coastal Zone Consistency Certification in December 2012 allowing the Ports Authority to construct a new cruise ship facility at the Terminal by renovating Building 322, a vacant warehouse. DHEC authorized structural changes to the building; the construction of two covered staging areas to handle passengers, luggage, and shipping supplies; and the installation of five clusters of concrete pilings to support adding three elevators and two escalators.

The Terminal is owned and operated by the Ports Authority and sits on a 63-acre property on the eastern side of the Charleston peninsula along the Cooper River. The site is near the Charleston Historic District, which has been designated a National Historic Landmark on the National Register of Historic Places. Because the project is planned for a statutorily defined critical area of South Carolina's coastal zone, the Ports Authority is required to obtain a permit from DHEC prior to taking any action in the critical area. In addition to the state permit, the Ports Authority is required to obtain a federal permit from the United States Army Corps of Engineers (the Army Corps). The Army Corps issued a federal permit, but, as noted below, the issuance of that permit was successfully challenged before the United States District Court for the District of South Carolina.

Petitioners are community organizations dedicated to preserving and protecting historic districts and neighborhoods and to maintaining historic resources that affect the quality of life. These organizations have members who are property owners in the neighborhoods very close to the proposed project. Petitioners contest both DHEC's permitting decision and its application of the critical area statutes and regulations. Petitioners contend they have standing as "affected persons" to obtain a contested case hearing in the ALC pursuant to section 44-1-60(G) of the South Carolina Code (2018), which provides "[a]n applicant, permittee, licensee, or affected person may file a request with the [ALC] for a contested case hearing" within a specified time frame. Determining whether Petitioners are "affected persons" pursuant to section 44-1-60(G) is the key to resolving the issue of standing.

Petitioners assert the new passenger facility would be several times larger than the existing facility and would be engineered to sustain larger cruise ships. The ships would also be located much closer to the properties of Petitioners' members, as the planned project relocates the passenger facility from one part of the Terminal to what is currently a "storage shed." Petitioners contend relocation and expansion of the facility would generate substantial increases in traffic, hazardous diesel soot emissions, and water pollution that would directly and adversely affect their nearby members. For example, Petitioners note in their request for a contested case hearing that the fuel burned by cruise ships was then "667 times dirtier than diesel fuel burned by 18-wheel trucks" (although new emission standards were being introduced). Petitioners also submitted affidavits from some of their individual members. The affiants state they have soot covering their homes that has to be cleaned regularly and they are forced to retreat indoors because of breathing problems caused by cruise ships utilizing the existing facility. The affiants also claim these problems would increase with a closer, significantly expanded facility.

The Charleston Historic District and the Port of Charleston have been designated "Geographic Areas of Particular Concern" under DHEC's Coastal Management Program (CMP). State law requires that DHEC give areas with this designation heightened consideration when DHEC reviews activities for consistency with the CMP. Additionally, the National Trust for Historic Preservation has formally recognized the endangerment to Charleston's historic resources by placing Charleston on "Watch Status" on the National Trust's list of America's Most Endangered Places, and the World Monuments Fund has listed Charleston as a "Watch Site."

The United States District Court for the District of South Carolina issued an order ruling the federal permit for the project was void because the Army Corps failed to follow prescribed procedures in issuing the permit.[1] Petitioners then filed a motion in the ALC to vacate the state Critical Area Permit and Coastal Zone Consistency Certification issued to the Ports Authority by DHEC. In a December 20, 2013 order, the ALC denied Petitioners' motion to vacate the state permit and certification. The ALC found this case involved joint permitting applications filed with both state and federal regulatory bodies; however, the ALC further found jurisdiction of the permitting agencies was distinct and the federal district court's ruling did "not negate the [state] critical area permit and CZC Certification at issue in this case." The ALC stated, "At this stage of the litigation, there is not sufficient evidence for [the ALC] to determine the extent of DHEC's review or the procedures that were followed in issuing the permit."

The Ports Authority quickly moved for summary judgment, maintaining discovery had ended some seven months prior and contending Petitioners lacked standing to challenge the state permit and certification. In examining the issue of standing, the ALC observed the South Carolina General Assembly did not define the term "affected person" as used in section 44-1-60 and found that, "where a clear,

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[1] *See Pres. Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, No. 2:12CV2942-RMG, 2013 WL 6488282 (D.S.C. Sept. 18, 2013). District Court Judge Richard Gergel determined the challengers had constitutional standing under Article III to contest the federal permit, and he further ruled the federal permit was void because it was improperly issued by the Army Corps. In relevant part, Judge Gergel found the Army Corps did not properly consider the scope of the project, which he found involved more than just the five clusters of concrete pilings to be installed in the protected zone. Judge Gergel found this unduly limited view of the scope of the project affected the Army Corps' analysis of the procedures to be applied in reviewing the propriety of the federal permit.

specific definition of 'affected person' is not available," the principles of constitutional standing set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), should be applied. Using the *Lujan* framework for its analysis, the ALC concluded Petitioners lacked standing to seek a contested case hearing. Consequently, on April 11, 2014, the ALC granted summary judgment to Respondents.

In a footnote to the summary judgment order, the ALC also ruled on Petitioners' motion seeking reconsideration of a discovery order filed March 3, 2014. The March 3 order denied Petitioners' motion to expand discovery on several grounds. The ALC vacated that order and denied the motion to expand discovery as moot in light of the grant of summary judgment.

In a separate order, the ALC granted the Ports Authority's motion for a sanction against Petitioners under SCALC Rule 72. The ALC found a sanction was warranted for what it deemed Petitioners' "frivolous" pursuit of a motion to remand the matter to the DHEC Board, and it required Petitioners to pay Respondents' attorney's fees ($9,300) as a sanction.

Petitioners appealed the ALC's rulings. The court of appeals affirmed.

II. DISCUSSION

A. STANDING

As noted above, the ALC granted summary judgment against Petitioners on the ground Petitioners lack standing to seek a contested case hearing, and the court of appeals affirmed. Petitioners contend this was error, and we agree. We will review the general concepts of standing before we examine the test for associational standing that applies to organizations pursuing actions on behalf of their members.

(1) Overview of Standing Principles

"Standing has been called one of 'the most amorphous [concepts] in the entire domain of public law.'" *Flast v. Cohen*, 392 U.S. 83, 99 (1968) (alteration in original) (citation omitted). Standing in environmental cases has always been particularly problematic, and observers have noted that the results, even from the Supreme Court of the United States, have been variable. *See* Cassandra Barnum, *Injury in Fact, Then and Now (and Never Again):* Summers v. Earth Island Institute *and the Need for Change in Environmental Standing Law*, 17 Mo. Envtl. L. & Pol'y Rev. 1, 7-8 (2009) (noting statutory standing and constitutional standing have become confused in our jurisprudence, especially in the realm of environmental

law); Erwin Chemerinsky, *Constitutional Law Principles and Policies* 59 (4th ed. 2011) ("Standing frequently has been identified by both Justices and commentators as one of the most confused areas of the law."). The growth of administrative agencies since the last century has also complicated the standing analysis. *See* William A. Fletcher, *The Structure of Standing*, 98 Yale L.J. 221, 226 (1988) (noting standing in the administrative context could refer to who may participate in agency rule-making or adjudicatory proceedings, who may bring original proceedings to challenge an agency's actions, or who may appeal from an agency's adjudicatory proceedings).

In its most basic sense, "[s]tanding refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 7, 809 S.E.2d 223, 226 (2018) (quoting *Michael P. v. Greenville Cty. Dep't of Soc. Servs.*, 385 S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009)). "Standing to sue is a fundamental requirement in instituting an action." *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). Standing may be acquired (1) by statute, (2) under the principle of "constitutional standing," or (3) via the "public importance" exception to general standing requirements. *Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012). Petitioners do not assert standing via the public importance exception. The concepts of statutory and constitutional standing are front and center in this appeal.

"Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation." *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013). "The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute." *Freemantle*, 398 S.C. at 194, 728 S.E.2d at 44; *see also ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 195-98, 669 S.E.2d 337, 339-40 (2008) (turning to constitutional standing only after first considering and rejecting the application of statutory standing); *Bevivino v. Town of Mt. Pleasant Bd. of Zoning Appeals*, 402 S.C. 57, 64, 737 S.E.2d 863, 867 (Ct. App. 2013) (holding it is unnecessary to address constitutional standing or the public importance exception when the basis for the independent concept of statutory standing exists).

Constitutional standing is based on Article III of the United States Constitution, which limits the jurisdiction of the federal courts to actual cases or controversies. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547-48 (2016) (stating "[i]t is settled that Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing" (alteration in original) (citation omitted)). In *Lujan*, the Supreme Court of

the United States stated "the irreducible constitutional minimum of [Article III] standing contains three elements": (1) the plaintiff must have suffered an "injury in fact," i.e., an invasion of a legally protected interest that is concrete and particularized, and actual or imminent; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be redressed by a favorable decision. 504 U.S. at 560-61.

The concept of Article III standing as applied in the federal courts does not limit a state's ability to statutorily formulate standing criteria. *See Duncan v. FedEx Office & Print Servs., Inc.*, 123 N.E.3d 1249, 1256 (Ill. App. Ct. 2019) (noting, for example, that a state court need not even define an "injury" the same way as in the federal forum); *see also Freemantle*, 398 S.C. at 194-95, 728 S.E.2d at 44-45 (observing South Carolina's FOIA statute legislatively grants standing to "any citizen of the State" to enforce a FOIA request and holding where the appellant asserted he was a citizen of South Carolina, "[n]othing more" was required for standing, i.e., the appellant did not have to show that he had a personal stake in the outcome of the matter). However, this Court has held that "[w]hen no statute confers standing, the elements of constitutional standing must be met."[2] *Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518.

Here, Petitioners are community and neighborhood organizations comprised primarily of members who own property near the proposed passenger cruise facility. As we will now discuss, an organization has associational standing to bring suit on behalf of its members when (1) at least one member would otherwise have standing (statutory, constitutional, or otherwise) to sue in his or her own right, (2) the interests at stake are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *See Beaufort Realty Co. v. Beaufort Cty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) (citing the three-part test set forth in *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

Associational standing advances some important objectives: it promotes judicial economy and efficiency by avoiding repetitive and costly independent actions by individual members, and it allows members who would have standing in their own right to pool their financial resources and legal expertise to help ensure complete and vigorous litigation of the issues. *Save the Valley, Inc. v. Indiana-*

[2] "[T]he public importance exception may [alternatively] provide standing where the elements of constitutional standing are not met . . . ." *Youngblood*, 402 S.C. at 317 n.5, 741 S.E.2d at 518 n.5. As noted previously, Petitioners do not assert the public importance exception to this Court.

Kentucky Elec. Corp., 820 N.E.2d 677, 680-81 (Ind. Ct. App. 2005). An additional advantage noted in some jurisdictions is that organizations are generally less susceptible than individuals to retaliation by offices responsible for executing the challenged policies. *Id.* at 681.

(2) Application of Test for Associational Standing

(a) First Element

To establish associational standing, an organization must first show that at least one of its members has standing in his or her own right. *See Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 589; *see also Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600-01, 550 S.E.2d 287, 291 (2001) (stating a plaintiff that is an organization may possess associational standing if it alleges that "one or more of its members will suffer an individual injury by virtue of the contested act"). Here, for any given Petitioner to have standing, at least one of its members must be an "affected person" as contemplated by section 44-1-60(G); as noted above, section 44-1-60(G) provides "[a]n applicant, permittee, licensee, or affected person may file a request with the [ALC] for a contested case hearing."

Unfortunately, section 44-1-60 does not define the term "affected person." Ordinarily, when a term is not defined in a statute, "the Court must interpret the term in accordance with its usual and customary meaning." *Travelscape, LLC v. S.C. Dep't of Rev.*, 391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011). "Courts should consider not merely the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the whole purpose of the statute and the policy of the law." *Id.*

There is no dispute that Petitioners (and their individual members) are "persons" for the purposes of section 44-1-60(G). That brings us to the usual and customary meaning of the word "affected." *Black's Law Dictionary* 70 (11th ed. 2019) defines "affect" as "[m]ost generally, to produce an effect on; to influence in some way." *Black's Law Dictionary* 53 (5th ed. 1979) similarly defines "affect" as "[t]o act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things."

Petitioners argue that, instead of simply applying the usual and customary meaning of the term "affected person" per *Travelscape*, the ALC and the court of appeals erroneously evaluated Petitioners' status as statutory "affected persons" by applying the criteria used to evaluate Article III standing. Petitioners argue the ALC and the court of appeals compounded this error by finding Petitioners must prove

not only that they are "affected persons" under the statute but also that they meet the *Lujan* test for constitutional standing. Petitioners argue the lower courts' approach renders the statutory term "affected person" meaningless and creates a heightened standard for statutory standing that could not have been the intent of the General Assembly.

In analyzing whether Petitioners have standing, the court of appeals acknowledged that section 44-1-60 does not define "affected persons." Citing *Travelscape*, the court of appeals agreed the term should be given its usual and customary meaning, but then found the *Lujan* test for constitutional standing should be applied. This was error. In concluding the *Lujan* test applies, the court of appeals relied on statutes and regulations governing *judicial* review, which set forth particularized requirements for invoking the jurisdiction of the appellate courts.[3] It also relied on *Smiley v. S.C. Dep't of Health & Envtl. Control*, 374 S.C. 326, 649 S.E.2d 31 (2007), a case in which this Court did not specifically rule on the issue of whether a constitutional standard should be applied to a statute allowing all "affected persons" to seek administrative review of an agency's permitting decision. *See generally Humane Soc'y of the U.S. v. Hodel*, 840 F.2d 45, 59 n.24 (D.C. Cir. 1988) (noting prior cases cannot serve as binding authority where particular objections as to a party's standing were never raised). We find these authorities are not controlling of the definition of "affected persons" in section 44-1-60.

Citing the *Lujan* test, the court of appeals found Petitioners had shown only potential injury to the public at large and had not shown that any of their members had sustained an injury in fact from the proposed Terminal expansion project. The court of appeals relied on *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014), in which this Court applied *Lujan* and found several organizations lacked standing to bring nuisance and zoning claims in the circuit court. In *Carnival Corp.*, we held the organizations lacked standing because the allegations of injury in fact advanced by the plaintiffs were insufficient.

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[3] A contested case hearing in the ALC is distinguishable from judicial review. "[T]he ALC conducts a de novo hearing in contested cases, complete with the presentation of evidence and testimony." *Engaging & Guarding Laurens Cty.'s Env't ("EAGLE") v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014). "[T]he ALC is authorized to make a final determination—after a final agency decision and subject to judicial review—as to whether an administrative agency should have granted or denied a particular permit." *Id.* The ALC acts as the fact-finder and is not bound by an agency's factual findings or permitting decision. *Id.*

As to the nuisance claim, we cited the absence of allegations that any of the organizations' members had personally and individually suffered any of the asserted harms. As to the zoning claim, we found the organizations did not allege that any of their members were adjacent or neighboring property owners as required by the statute allowing a private action for violation of a zoning ordinance.

Here, the court of appeals acknowledged Petitioners presented affidavits from individual members expressing concern over their reduced quality of life arising from the effects upon them *individually*, such as pollution and health effects, traffic congestion, property values, effects on their businesses in the area, and effects on the historical integrity of the area where they resided. For example, a member of the Coastal Conservation League stated in her affidavit that smoke emitting from cruise ships already physically impacted her and required her to retreat indoors when the ships were in town and that a larger facility, which would be much closer to her home, would only increase this adverse effect. Others attested to soot on and in their homes. Nevertheless, the court of appeals, relying on *Carnival Corp.*, agreed with the ALC that the claims of possible environmental and personal harm were purely speculative or were merely generalized grievances equally affecting the public as a whole.

Our approach in *Carnival Corp.* is not applicable here because *Carnival Corp.* involved nuisance and zoning claims initiated in the circuit court, not the statutory grant of administrative review in the ALC that is at issue here. Further, the plaintiffs in *Carnival Corp.* did not submit affidavits regarding individualized harm. We find Petitioners' allegations of potential harm to members in nearby neighborhoods, through affidavits and other filings, are not speculative.

The courts below essentially, and erroneously, required Petitioners to prove the existence of an environmental impact on their members and the surrounding neighborhoods as part of establishing standing. The ALC and the court of appeals failed to consider that the purpose of Petitioners' action is to seek administrative review of whether DHEC engaged in a proper environmental analysis in the first instance, including complying with all statutory and regulatory requirements, before issuing the permit for the Terminal project.[4] *Cf. City of Davis v. Coleman*, 521 F.2d

[4] Petitioners note these considerations include the extent to which all feasible safeguards were taken to avoid adverse environmental impacts, the project's effect on the value and enjoyment of surrounding landowners, the extent to which the development could affect irreplaceable historic and archeological sites in South Carolina's coastal zone, air and water quality impacts, and whether certain permit

661, 670-71 (9th Cir. 1975) ("Were we to agree with the district court that a NEPA plaintiff's standing depends on 'proof' that the challenged federal project will have particular environmental effects, we would in essence be requiring that the plaintiff conduct the same environmental investigation that he seeks in his suit to compel the agency to undertake." (footnote omitted)); *Palm Beach Cty. Envtl. Coal. v. Fla. Dep't of Envtl. Prot.*, 14 So. 3d 1076, 1078 (Fla. Dist. Ct. App. 2009) ("The ALJ's standing analysis essentially boils down to a finding that the petitioners lacked standing because the petitioners failed to prevail on the merits, *i.e.,* they had failed to establish that the injected wastewater would migrate and impact water quality. This analysis 'confuse[s] standing and the merits such that a party would always be required to prevail on the merits to have had standing' . . . ." (alteration in original) (citation omitted)); *United Copper Indus., Inc. v. Grissom*, 17 S.W.3d 797, 803 (Tex. App. 2000) ("United Copper confuses the preliminary question of whether an individual has standing as an affected person to *request* a contested-case hearing with the ultimate question of whether that person will *prevail* in a contested-case hearing on the merits. In essence, United Copper suggests that Grissom should be required to prove that he will *prevail* in a contested-case hearing just to show that he has the standing necessary to *request* such a hearing. We reject this argument . . . .").

The underlying action here is an administrative proceeding in which Petitioners seek a contested case hearing in the ALC to determine whether the proper procedures were followed by DHEC in issuing an environmental permit. The General Assembly surely intended DHEC to receive input from all persons affected by a project with potentially harmful environmental impacts. Such input, which continues until the administrative review process concludes with a contested case hearing, allows the agency's permit review process to fully assess the project's impact.

The purpose of this administrative process is to discover and evaluate harm to the surrounding environment and to persons who would be affected by the proposed project. Those living near the project are most likely to be impacted in ways that are distinguishable from the impacts generally falling upon the public at large, and some jurisdictions have emphasized the significance of this geographic proximity in cases involving the assessment of a project's environmental consequences. *Cf. City of Davis*, 521 F.2d at 671 ("The procedural injury implicit in agency failure to prepare an EIS[—]the creation of a risk that serious environmental impacts will be

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conditions should be imposed to lessen the effects of the project on the homes and health of nearby homeowners.

overlooked[—]is itself a sufficient 'injury in fact' to support standing, provided this injury is alleged by a plaintiff having a sufficient geographical nexus to the site of the challenged project that he may be expected to suffer whatever environmental consequences the project may have. This is a broad test, but because the nature and scope of environmental consequences are often highly uncertain before study we think it an appropriate test."). While geographic proximity may not be a determinative factor in every case, it is highly relevant to our analysis in this case. Here, members would suffer the environmental consequences Petitioners allege the project will create, such as breathing problems and other adverse health effects; increases in hazardous diesel soot; and increases in noise, traffic, and water pollution. Therefore, the members fall within the scope of any reasonable, ordinary definition of "affected persons." Accordingly, we hold Petitioners have established the first element of associational standing.

(b) Second and Third Elements

We find Petitioners have also established the second and third elements of associational standing. As for the second element (the interests at stake are germane to the organization's purpose), numerous jurisdictions have emphasized "that the germaneness requirement is undemanding." *See St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 625 (Mo. 2011) (en banc) ("Requiring otherwise would undermine the primary rationale of associational standing, which is that organizations are often more effective at vindicating their members' shared interests than would be any individual member."). Here, the interests Petitioners seek to protect through the review process—impacts on noise and soot pollution, traffic, human health, and the historic neighborhoods in which their members reside—clearly are germane to the purposes of these organizations. *Cf. White Plains Downtown Dist. Mgmt. Ass'n v. Spano*, 833 N.Y.S.2d 868, 874 (Sup. Ct. 2007) (holding "[t]he interests BID seeks to protect—existing patterns of population concentration, distribution or growth, existing community or neighborhood character, human health and economic interests—are germane to its purpose").

The third element requires Petitioners to establish that neither the claim asserted nor the relief requested requires the participation of Petitioners' individual members. Petitioners do not seek monetary damages on behalf of their members for specific instances of environmental harm; rather, Petitioners seek administrative review of the agency's permitting process. Although affidavits of individual members have been submitted in support of Petitioners' request for administrative review, administrative review of DHEC's permitting process does not require the individual members' substantial participation. *See generally Winnebago Cty. Citizens for Controlled Growth v. Cty. of Winnebago*, 891 N.E.2d 448, 457-58 (Ill.

App. Ct. 2008) (observing an association's standing to sue on behalf of its members "depends in substantial measure on the nature of the relief sought" and finding while individual testimony might be taken from nearby property owners to establish some facts in the case, this did not establish a substantial need for the individual members' participation and did not bar associational standing, particularly in light of the fact that the only relief sought by the associations did not involve monetary damages (citation omitted)); *White Plains Downtown Dist. Mgmt. Ass'n*, 833 N.Y.S.2d at 874 (holding the organization did not seek compensatory damages on behalf of its members, so the action did not require the individual participation of its members for the relief sought).

To conclude our discussion of Petitioners' status as "affected persons," we note section 44-1-60 provides for the participation of "affected persons" during other stages of the agency's permitting process; for example, an "affected person" is entitled to receive notice of the staff decision pursuant to section 44-1-60(E) and is entitled to request a final review conference pursuant to section 44-1-60(F). *See* S.C. Code Ann. § 44-1-60(E), (F) (2018). There is no dispute that Petitioners were considered "affected persons" with regard to these other stages of the permitting process. The dispute over their status arose only when Petitioners requested a contested case hearing. *See, e.g.*, *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 390 S.C. 418, 431, 702 S.E.2d 246, 253 (2010) (holding "the [South Carolina Coastal Conservation] League was an affected person who asked to be notified" of the permitting decision under section 44-1-60).

If nearby property owners who have made individualized assertions of real, anticipated harm cannot satisfy the statutory standard in section 44-1-60 to acquire "affected person" status, it does not appear that anyone in this state could qualify to seek review of permits for the Terminal expansion project. This could not have been the intent of the General Assembly. We find at least one of Petitioners' members would have standing to sue in his own right, the interests the action seeks to protect are germane to the purposes of Petitioners' organizations, and neither the claim asserted nor the relief requested requires the participation of Petitioners' individual members in the action. Consequently, we hold Petitioners have established associational standing. We reverse the grant of summary judgment and remand the matter to the ALC for a contested case hearing.[5] However, we emphasize that our

[5] Because we find Petitioners have statutory standing, we need not address Petitioners' argument that the Ports Authority was collaterally estopped from disputing Petitioners' standing to challenge the state permit based on the fact that Judge Gergel previously found some of Petitioners' organizations had Article III

decision as to standing should in no way be construed as a signal of our view of the merits of the issues to be examined in either the contested case hearing or any other part of the permitting process.

B. TERMINATION OF DISCOVERY

Petitioners next argue the court of appeals erred in upholding the ALC's ruling denying their motion to expand discovery and imposing a retroactive date for its termination. Petitioners assert the issue of discovery is not moot if summary judgment is reversed. We agree.

SCALC Rule 21(A) provides that in ALC matters, discovery shall generally be completed within 90 days of the date of the Notice of Assignment. However, discovery may be expanded or curtailed upon either (1) a motion for good cause shown, or (2) *sua sponte* by the ALC. *Id.*

The ALC denied Petitioners' motion to expand discovery pursuant to SCALC Rule 21(A) on the basis the motion was untimely (having been made after the 90-day default period) and because Petitioners had not shown additional discovery was warranted. Petitioners filed a motion for reconsideration. At that time, the Ports Authority's motion for summary judgment was still pending. The ALC issued an order granting summary judgment based on Petitioners' lack of standing. In a footnote included in the summary judgment order, the ALC vacated its original order regarding discovery and stated Petitioners' motion to expand discovery was denied as moot in light of the grant of summary judgment.

On appeal, the court of appeals stated it did not dispute Petitioners' assertion that there was correspondence among counsel of record, as well as communications with the ALC, that suggested the ALC and all parties proceeded as if discovery would continue after the 90-day period following the Notice of Assignment. However, the court of appeals ultimately upheld the ALC's determination, citing, *inter alia*, Petitioners' failure to move earlier for an extension under SCALC Rule 21(A). The court of appeals did not address the issue of mootness, although it also upheld the grant of summary judgment.

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standing to challenge the federal permit. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (explaining an appellate court need not address any issues remaining if another issue is dispositive).

Petitioners contend the court of appeals erred in upholding the ALC's discovery determination, and they maintain Respondents have fabricated procedural arguments on appeal in an effort to insulate the discovery issue from review. We reject Respondents' assertions that none of the discovery rulings are reviewable. Although the ALC held the discovery issue was moot after it granted summary judgment, common sense dictates that the issue of discovery is no longer moot if summary judgment is reversed. In addition, Petitioners did not waive the ability to challenge the discovery issue by stating they sought expanded discovery for the contested case hearing, not summary judgment. Petitioners were simply stating expanded discovery was not a critical component in evaluating Petitioners' standing to seek a contested case hearing, which was the sole subject of the summary judgment motion.

Having reversed the order granting summary judgment in Part A of this opinion, we find the issue of discovery is no longer moot. We further find Petitioners' motion to expand discovery was not untimely, as the parties informed the ALC of their need for expanded discovery, and the parties continued discovery well after the 90-day period, all with the ALC's knowledge and tacit approval. Under SCALC Rule 21(A), the ALC can *sua sponte* grant expanded discovery, which is effectively what occurred here. In addition, Petitioners' explanations as to why the parties delayed taking depositions until most of the discovery documents had been received and their need for additional time to take depositions in this complex case satisfied the good cause standard. Consequently, we reverse the rulings regarding discovery and instruct the ALC to issue a reasonable scheduling order for concluding discovery.

C. SANCTION FOR FILING REMAND MOTION

Petitioners contend the court of appeals erred in upholding the ALC's imposition of a sanction under SCALC Rule 72 after the ALC found Petitioners' motion to remand the case to the DHEC Board for a final review conference was frivolous. We agree and reverse the imposition of a sanction.

"If the presiding administrative law judge determines that a contested case, appeal, motion, or defense is frivolous or taken solely for purposes of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." SCALC Rule 72. "In determining whether a case or defense is frivolous, the administrative law judge may refer to S.C. Code Ann. § 15-36-10, the Frivolous Civil Proceedings Sanctions Act [FCPSA]." 2014 Revised Notes to SCALC Rule 72. "The amount and type of

sanction to be imposed is within the discretion of the presiding administrative law judge." *Id.*

The ALC indeed referred extensively to the FCPSA in reaching its decision to impose a sanction on Petitioners. While the Revised Notes to SCALC Rule 72 recognize that the "amount and type of sanction to be imposed" are matters for the sound discretion of the administrative law judge, a judge's threshold decision to apply sanctions under the FCPSA sounds in equity rather than at law. *See Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 167, 758 S.E.2d 483, 499 (2014). Therefore, we review the ALC's findings of fact with respect to its threshold decision to grant sanctions under the FCPSA by taking our own view of the preponderance of the evidence. *See id.*

The FCPSA provides an attorney or a pro se litigant in a civil or administrative action may be sanctioned for filing a frivolous motion or document if "a reasonable attorney presented with the same circumstances would believe the [item filed] is frivolous, interposed for merely delay, or merely brought for any purpose other than . . . adjudication of the claim or defense . . . ." S.C. Code Ann. § 15-36-10(A)(4)(a)(iv) (Supp. 2019). A sanction may also be imposed for "making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law." § 15-36-10(A)(4)(c). While subsection (A)(4) speaks only in terms of an attorney or pro se litigant being subject to sanctions under this act, subsections 15-36-10(C) and (E) extend the specter of a sanction to a party to the action. In determining whether to impose a sanction, a court must consider such factors as the explanation offered for the filing, the complexity of the case, any prior violations, and such other factors the court deems appropriate. § 15-36-10(E).

Here, DHEC issued a staff decision granting a Critical Area Permit and Coastal Zone Consistency Certification to the Ports Authority on December 18, 2012. Petitioners requested a final review conference from DHEC, asserting DHEC staff did not engage in a full analysis of the proper considerations in evaluating the permit application. After DHEC notified the parties that it had decided not to conduct a final review conference, Petitioners submitted a request for a contested case hearing with the ALC.

Petitioners thereafter filed a motion with the ALC requesting a remand to the DHEC Board for a final review conference. Petitioners argued the DHEC Board's failure to conduct a final review conference violated the mandatory language in section 44-1-60 imposing a duty on DHEC to conduct a review of the staff decision

upon timely request by an "affected person" to ensure the decision was consistent with agency policy and supported by the administrative record. *See* S.C. Code Ann. § 44-1-60(F) (2018) ("No later than sixty calendar days after the date of receipt of a request for final review, a final review conference *must* be conducted by the board, its designee, or a committee of three members of the board appointed by the chair." (emphasis added)). Petitioners asserted a final review conference would enable additional information to be supplied, if needed, and allow DHEC to apply its statutorily recognized "'specialized knowledge' in an evidence-based setting" so that "the agency's rationale (as opposed to [the] staff's rationale)" would be reviewed by the ALC.

The ALC found that although the word "must" initially could lead to the conclusion that whenever a request is made, the DHEC Board is required to conduct a conference, other language in the statute clarified that the DHEC Board has the discretion to "decline" to hold a final review conference. *See id.* ("If the board declines in writing to schedule a final review conference or if a final review conference is not conducted within sixty calendar days, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person [may request] pursuant to subsection (G) a contested case hearing before the [ALC]."). The ALC found the use of the word "must" in section 44-1-60(F) means that in instances in which the DHEC Board actually *elects* to hold a conference, it must do so within the statutorily prescribed time. The ALC noted this meaning is further recognized in section 44-1-60(G)(1) of the South Carolina Code (2018). The ALC analyzed the statutes referring to DHEC's "specialized knowledge"[6] cited by Petitioners and found they applied to evidence presented by DHEC in the ALC hearing and did not impact the procedure for requesting a final review conference.

The Ports Authority subsequently sought the imposition of a sanction against Petitioners pursuant to SCALC Rule 72, including dismissal of the action, on the ground Petitioners' motion for a remand to the DHEC Board was a frivolous filing that was unsupported by any reasonable legal theory and interposed solely for purposes of delay. After a hearing, the ALC issued an order sanctioning Petitioners for making the remand motion and directing Petitioners to pay $9,300 to the Ports Authority for attorney's fees incurred in opposing the motion. The ALC found the motion was frivolous because Petitioners erroneously relied upon a single word ("must") in section 44-1-60(F) while ignoring other language in the statute and administrative rulings and appellate cases recognizing the DHEC Board's discretion.

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[6] *See* S.C. Code Ann. § 44-1-60(F)(2) (2018); *see also* S.C. Code Ann. § 1-23-330(4) (2005).

The court of appeals affirmed the ALC, finding Petitioners disregarded a settled rule of statutory construction by failing to consider the statute as a whole.

The Ports Authority contends Petitioners have not preserved this issue for review because Petitioners did not appeal the ALC's order denying Petitioners' motion for remand. We disagree. The ALC's order denying the remand motion analyzed the statutory language and ruled solely on the issue of a remand to the DHEC Board for a final review conference. Petitioners did not appeal the remand order but did appeal the ALC's subsequent order finding their motion frivolous and imposing a sanction. While the remand order interpreting the statute is the law of the case, Petitioners' failure to appeal the remand order does not preclude them from appealing the order finding their motion frivolous and imposing a sanction.

Petitioners argue they did not disregard the additional language in the statute indicating ALC review is available if the DHEC Board "declines" to hold a conference. Rather, they read the provisions together (1) to mean the DHEC Board "must," in fact, hold a review conference, and (2) to provide an avenue for redress in the ALC if the Board fails to fulfill this statutory obligation. Petitioners acknowledge there are cases referring to the DHEC Board's discretionary authority to hold a conference; however, Petitioners assert they are not conclusive because the statements in those cases were made in general recitations about the facts or the permitting process, and the mandatory-versus-discretionary nature of a final review conference was not disputed. *See Ex parte Goodyear Tire & Rubber Co.*, 248 S.C. 412, 418, 150 S.E.2d 525, 527 (1966) ("It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision." (quoting *Cohens v. Virginia*, 19 U.S. 264, 399 (1821))). Petitioners argue they have a duty to diligently advance their members' interests, and courts have routinely rejected sanctions for far more aggressive advocacy. Petitioners maintain the imposition of a sanction in these circumstances suppresses the vigorous representation that is needed to protect the public interest.

In upholding the sanction, the court of appeals cited no cases directly on point and relied instead on general authority holding a statute shall not be construed by concentrating on an isolated phrase. We agree with Petitioners that the cases cited by the ALC are not controlling because they did not involve a dispute over the particular point pertaining to a remand advanced by Petitioners. While Petitioners were incorrect on the law, our review of the preponderance of the evidence leads us to conclude their filing of the remand motion was not frivolous; we therefore reverse the ALC's imposition of a sanction.

III. CONCLUSION

Because we find Petitioners have standing, we reverse the grant of summary judgment and remand the matter to the ALC for a contested case hearing, at which time the ALC shall establish a reasonable schedule for the completion of discovery. In addition, we reverse the order imposing a sanction on Petitioners.

REVERSED AND REMANDED.

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

JUSTICE FEW: The majority finds Petitioners have "associational" standing because at least one member of each Petitioner has "statutory" standing under subsection 44-1-60(G) of the South Carolina Code (2018). The finding of statutory standing depends on whether the person is "affected." To understand what the Legislature meant by "affected," it is necessary to consider context. No person *positively* affected by government action would sue to challenge the action. A person will sue only when *negatively* affected. Being negatively affected is the same as being injured as we define constitutional standing. Therefore, the ALC and the court of appeals correctly understood the subsection 44-1-60(G) requirement of "affected person" to be the equivalent of having suffered an "injury in fact" under constitutional standing.

Constitutional standing requires a party challenging government action to allege an injury different in character—not merely by degree—from the manner in which the action will "affect" the general public. The majority appears to agree Petitioners do not have constitutional standing. Even under subsection 44-1-60(G), Petitioners are no more "affected" than I am, and thus do not have standing. The effects alleged by Petitioners are of the same character members of the general public will see from the DHEC permit. As a recent resident of Greenville County and a current resident of Berkeley County, I too will experience increased noise and traffic, air pollution, and water pollution when I visit the City of Charleston peninsula. In addition, *if* there are soot and breathing concerns—a very serious scientific question Petitioners should be required to answer with scientific proof—when I park my truck to walk the streets of the City, I too will find soot on my truck when I return, and I will suffer breathing issues while I walk. The manner in which the issuance of DHEC's permit will affect me is different only by degree from the manner in which it will affect the South of Broad residents driving this challenge.

I respectfully dissent.

The Supreme Court of South Carolina

In the Matter of Jacob Gillens, Sr., Respondent

Appellate Case No. 2020-000191

ORDER

The Office of Disciplinary Counsel (ODC) has filed a petition asking the Court to place Respondent on interim suspension pursuant to Rules 17(a) and 17(b) of the Rules for Judicial Disciplinary Enforcement (RJDE) contained in Rule 502 of the South Carolina Appellate Court Rules (SCACR).

The petition is granted, and Respondent is placed on interim suspension from any and all judicial duties until further order of this Court. The County of Orangeburg is under no obligation to pay Respondent his salary during his suspension. *See In re Ferguson*, 304 S.C. 216, 219, 403 S.E.2d 628, 631(1991) ("[A] public officer who is suspended from office is not entitled to compensation.").

Respondent is enjoined from access to any monies, bank accounts, and records related to any court in this state. Chief Magistrate Derrick F. Dash is hereby appointed to take charge of all such monies, bank accounts, and records for Orangeburg County. Further, Respondent shall release any public records in his possession to the Orangeburg County magistrate court. This Order authorizes the appropriate government or law enforcement official to implement any of the prohibitions as stated in this Order.

This Order, when served on any bank or other financial institution maintaining any judicial accounts of Respondent, shall serve as notice to the institution that Respondent is enjoined from having access to or making withdrawals from the accounts.

s/ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina

February 12, 2020

The Supreme Court of South Carolina

In the Matter of K. Douglas Thornton, Respondent.

Appellate Case No. 2019-002120

ORDER

Respondent has submitted a motion to resign in lieu of discipline pursuant to Rule 35, RLDE, Rule 413, SCACR. We grant the motion to resign in lieu of discipline. In accordance with the provisions of Rule 35, Respondent's resignation shall be permanent. Respondent will never be eligible to apply, and will not be considered, for admission or reinstatement to the practice of law or for any limited practice of law in South Carolina.

Within fifteen (15) days from the date of this order, Respondent shall file an affidavit with the Clerk of Court showing Respondent has complied with Rule 30, RLDE, and shall also surrender his Certificate of Admission to Practice Law to the Clerk of Court.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina

February 14, 2020