COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 2026

Samuel A. Christensen
Clerk of Court of Appeals

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Appeal No. 2025AP112-CR **Cir. Ct. No. 2024CF942**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

RANKEN E. AHTOONG,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: PAYAL KHANDHAR, Judge. *Reversed*.

Before Graham, P.J., Blanchard, and Nashold, JJ.

¶1 NASHOLD, J. The State appeals a circuit court order suppressing evidence, specifically, the phone number assigned to Ranken AhToong's cellular phone and all evidence derived from the phone number. A law enforcement officer obtained AhToong's phone number from a 911 dispatcher after the officer,

while lawfully possessing AhToong's cell phone, pressed the "SOS" button on the side of the phone and called 911. A 911 dispatcher provided the officer with the phone number for the cell phone, which allowed the officer to tie the phone to AhToong and find him a few days later, when he was arrested in this case. AhToong moved to suppress the evidence, arguing that when the officer pressed the SOS button and called 911 to obtain the phone number of the phone, that constituted a "search" of his phone under the Fourth Amendment of the United States Constitution, which was unconstitutional because the officer did not have a search warrant.

¶2 Following an evidentiary hearing, the circuit court granted AhToong's motion to suppress, and the State now appeals. We reverse the court's order because we conclude that the officer's actions did not constitute a Fourth Amendment "search."[1]

BACKGROUND

¶3 The State charged AhToong with attempting to flee or elude an officer and obstructing an officer. AhToong moved to suppress the cell phone number that an officer obtained through the use of AhToong's cell phone and all evidence derived from that number. The circuit court held a hearing on AhToong's motion. Deputy Trent Schafer was the sole witness, and an

[1] As he did in the circuit court, AhToong also argues on appeal that the officer's action constitutes a "search" under article I, section 11 of the Wisconsin Constitution. Wisconsin appellate courts have generally interpreted this provision of the Wisconsin Constitution in accord with the U.S. Supreme Court's interpretation of the Fourth Amendment, ***State v. Felix***, 2012 WI 36, ¶¶4, 36, 339 Wis. 2d 670, 811 N.W.2d 775, and AhToong does not argue that we should interpret or apply this provision in the Wisconsin Constitution differently from our interpretation of the Fourth Amendment. Therefore, we do not separately address article I, section 11 of the Wisconsin Constitution in this opinion.

audiovisual recording from the squad vehicle was admitted into evidence and played for the court. The evidence showed the following.

¶4 While on duty in a squad vehicle, Schafer observed a pickup truck with only one headlight illuminated. Schafer heard the truck's tires squeal and observed the truck swerve and pass Schafer at a high rate of speed. Schafer followed the truck and activated his squad vehicle's emergency lights. The truck accelerated away. Schafer followed the truck for about three and a half minutes, until it reached the end of a dead-end road. As Schafer began to pull up next to the truck, the driver (the sole occupant of the truck) jumped out of the still-moving truck and ran into a wooded area, before the truck came to a stop in the grass at the end of the road. The audiovisual recording shows that when the driver jumped out of the vehicle, a small, black, rectangular object fell onto the road, either from AhToong's pocket or some part of the truck.

¶5 Other officers arrived, including Deputy Allen Horn. The officers did not follow the truck's driver on foot into the woods, but Schafer and several other officers began setting up a perimeter and sending out drones to try to find the suspect.

¶6 Horn found a cell phone on the road near the truck, which he handed to Schafer. After Horn told Schafer that the phone was "on," Schafer said he would call 911. Schafer pressed the SOS button on the side of the phone and called 911 to obtain the phone number for the phone.[2] Schafer testified that an

[2] While it does not matter for purposes of our analysis whether, in order to reach the 911 center, Schafer engaged in a further manipulation of the phone after pushing the SOS button, we note the following for context. Schafer's testimony was ambiguous as to whether he was able to call 911 simply by pressing the side button on the phone or whether, after pressing that button, he also had to separately call 911, either through swiping on the screen or through some other (continued)

SOS button is "a feature on phones so that if you have a phone and you don't know your password, you can still call 911." Schafer did not "go … past the [phone's] SOS emergency call function." He did not access any digital files or open any applications, photographs, contact list, call log, or anything else on the phone. He did not know who owned the phone, although he suspected that it belonged to the driver of the truck. He did not know whether the phone had passcode or biometric features enabled because he "didn't try to … get into the phone," although he assumed that it did.

¶7 After Schafer pressed the SOS button and called 911, he requested and received from a 911 dispatcher the phone number assigned to the phone. Schafer then entered the phone number into the "Spillman system," which is a system operated by the sheriff's office that contains information such as driver's license numbers, photos, and booking photos. Information "popped up" related to AhToong based on the phone number. Using that information, Schafer subsequently learned that AhToong was associated with a specific address. Schafer used the address information, together with the social networking service Facebook on Schafer's own smart phone, to locate AhToong, and officers arrested him two days later.

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method. At one point, Schafer seemed to convey that he took more than one action in calling 911. He testified that he "hit the SOS button on the phone and called 911." When asked to explain what he meant, he testified that "if you hit the button or whatever, SOS will pop up and then you can call 911." However, at another point, Schafer appeared to indicate that he may have taken only one action to connect to 911. When asked on cross-examination if he "manipulated the phone such [as] to hit an SOS button," Schafer responded, "Yes." When asked directly after this response if "that called 911," Schafer again responded, "Yes." Without attempting to resolve this potential ambiguity, we consistently refer to the conduct as pressing the side of the phone and calling 911 to obtain the phone number.

¶8 The circuit court granted AhToong's motion to suppress. Pertinent here, the court rejected the State's argument that Schafer's pressing the SOS button and calling 911 to obtain the phone number did not constitute a search.[3] The court concluded that a person has an expectation of privacy in his or her cell phone, including its phone number, and that it constitutes a "search" when police manipulate a phone to obtain information, such as the phone number of the phone, when the information "was not otherwise apparent" to police.

¶9 The State appeals.

DISCUSSION

¶10 The Fourth Amendment to the United States Constitution requires a warrant or an exception to the warrant requirement to conduct a search or seizure. *See* ***State v. Payano-Roman***, 2006 WI 47, ¶30, 290 Wis. 2d 380, 714 N.W.2d 548. The Fourth Amendment provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. CONST. amend. IV. In reviewing whether law enforcement's conduct violated the Fourth Amendment's protections against an unreasonable search or seizure, we apply a two-step standard of review. ***State v. Eason***, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625. "First, we review the circuit court's findings of historical fact, and will uphold them unless they are clearly erroneous." ***Id.*** "Second, we review the application of constitutional principles to those facts *de novo*." ***Id.***

[3] The circuit court also rejected the two other arguments that the State advanced for upholding any search that occurred, namely, that the phone was abandoned and that exigent circumstances justified the search. The State renews these arguments on appeal. Because we agree with the State that no search occurred, we do not address the State's alternative arguments.

¶11 The issue in this case is narrow: whether a law enforcement officer's pressing a button on the side of a cell phone and calling 911 to obtain the phone number of the cell phone is a "search" for purposes of the Fourth Amendment. AhToong concedes that when Schafer engaged in this conduct, he lawfully possessed the phone; therefore, the lawfulness of the phone's seizure is not at issue.

¶12 Government action is a "search" under the Fourth Amendment when (1) the government physically intrudes or trespasses on a constitutionally protected area (*i.e.*, on "persons, houses, papers, or effects") to obtain objects or information or (2) the government violates a person's reasonable expectation of privacy. *See* ***United States v. Antoine Jones (Antoine Jones)***, 565 U.S. 400, 404-09 & n.5 (2012); *see also* ***Florida v. Jardines***, 569 U.S. 1, 5 (2013) (following the dual approach outlined in ***Antoine Jones***); ***State v. Popp***, 2014 WI App 100, ¶¶18-19, 357 Wis. 2d 696, 855 N.W.2d 471 (discussing these two methods of establishing a search under ***Antoine Jones*** and emphasizing that "[i]t is important to note that a defendant claiming a Fourth Amendment violation may support his or her claim using *either* method").

¶13 We conclude that, under either of the two different ways of showing that a search occurred, here Schafer did not engage in a search when he pressed a button on the side of AhToong's cell phone and called 911 to obtain AhToong's phone number. Because AhToong emphasized at oral argument that his primary argument rests on a theory of physical trespass under the reasoning in ***Antoine Jones***, we begin with that analysis.

¶14 Before doing so, however, we first observe that whether the conduct at issue here constituted a search under the Fourth Amendment is a novel question

in Wisconsin, and there is presently little case law from any jurisdiction addressing this issue. In fact, we are aware of opinions from only two jurisdictions that have directly addressed substantially similar scenarios, and they reach opposite conclusions. *See* ***United States v. Christopher Jones (Christopher Jones I)***, No. 20-CR-99, unpublished slip op., 2020 WL 8512866 (E.D. Wis. Nov. 24, 2020), *report and recommendation adopted*, ***United States v. Christopher Jones (Christopher Jones II)***, No. 20-CR-99-PP, unpublished slip op., 2021 WL 22176 (E.D. Wis. Jan. 4, 2021); ***State v. Hill***, 789 S.E.2d 317 (Ga. Ct. App. 2016).[4] Because these cases primarily address whether the defendants in those cases had reasonable expectations of privacy, we discuss them under that section of our opinion, after first discussing whether a physical trespass occurred.

I. ***Antoine Jones****: Physical Trespass*

¶15 In ***Antoine Jones***, the U.S. Supreme Court concluded that law enforcement's attaching a Global Positioning System (GPS) tracking device to an individual's vehicle and using that device to obtain information regarding the vehicle's movements over an extended period constituted a search within the meaning of the Fourth Amendment. ***Antoine Jones***, 565 U.S. at 402-03. The Court reasoned that, by engaging in this conduct, law enforcement **"**physically

[4] A similar fact pattern was also presented in ***United States v. Onyewu***, 188 F.4th 471 (D.C. Cir. 2026). There, the appellate court declined to address the issue, stating that "[a]lthough the question of whether [the officer's] dialing of 9-1-1 from [the defendant's] phone constituted a search under the Fourth Amendment is a complex—and novel—one," the court did not need to address the question in light of its conclusion that the inevitable discovery exception to the exclusionary rule applied. ***Id.*** at 489-90; *see also* ***State v. Carter***, 2025 ME 77, 345 A.3d 38, 45 (on appeal from an order denying a suppression motion, the court assumed without deciding that the officer's use of the cell phone's emergency call function was a search but affirmed the trial court's ruling based on the independent source doctrine).

occupied private property for the purpose of obtaining information" and that "such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted." ***Id.*** at 404-05. Thus, the Court held that "the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search.'" ***Id.*** at 404 (footnote omitted); *see also* ***id.*** at 408 n.5 (clarifying that "[t]respass alone does not qualify [as a search], but there must be conjoined with that what was present here: an attempt to find something or to obtain information").

¶16 In reaching this conclusion, the Court in ***Antoine Jones*** rejected an argument by the government that was based on an analysis under ***Katz v. United States***, 389 U.S. 347 (1967). In ***Katz***, the Court ruled that the government engaged in a search by eavesdropping on a private phone conversation through an electronic listening device attached to the outside of a public phone booth, ***Katz*** 389 U.S. at 353, because this violated the defendant's reasonable expectation of privacy, ***id.*** at 360 (Harlan J., concurring). *See also* ***Antoine Jones***, 565 U.S. at 406 (recognizing that subsequent U.S. Supreme Court cases have applied the "reasonable expectation of privacy" test from Justice Harlan's concurring opinion in ***Katz***). Relying on ***Katz***, the government in ***Antoine Jones*** argued that there was not a search in that case because the defendant had "no 'reasonable expectation of privacy'" in the vehicle's underbody or in the vehicle's whereabouts on the public roads. ***Antoine Jones***, 565 U.S. at 406. The Court in ***Antoine Jones*** explained that the ***Katz*** reasonable-expectation test "has been *added to,* not *substituted for*," the traditional property-based understanding of the Fourth Amendment. ***Id.*** at 409; *see also* ***Jardines***, 569 U.S. 1 (concluding that, under the physical trespass analysis articulated in ***Antoine Jones***, police violated the Fourth Amendment by

using a trained drug-sniffing dog on a homeowner's front porch as part of a marijuana investigation).

¶17 We reject AhToong's contention that Schafer's pressing the SOS button on the phone and calling 911 to obtain its phone number constitutes a "physical trespass" as contemplated by ***Antoine Jones***. ***Antoine Jones*** involved physically attaching to a vehicle a device that remained there for 28 days (requiring police to replace the device's battery at one point), consistently tracking the vehicle's location to within 50 to 100 feet, and creating more than 2,000 pages of data for use by the government. ***Antoine Jones***, 565 U.S. at 403.

¶18 Here, in contrast, police did not physically attach anything to AhToong's phone and they obtained only a phone number. Moreover, as Schafer's testimony and audiovisual recording make clear, Schafer's act of pressing the SOS button on AhToong's cell phone and calling 911 took only minutes. The ***Antoine Jones*** Court acknowledged that not every technical common-law trespass necessarily constitutes a search for Fourth Amendment purposes; rather, to constitute a search, there must be an intrusion into a constitutionally protected area. ***Id.*** at 411. Indeed, in the Court's subsequent case, ***Riley***, discussed further below in connection with the reasonable expectation of privacy, the Court listed several actions officers could take without a warrant that would involve manipulating a cell phone: turning the phone off, removing its battery, and even "disabl[ing] a phone's automatic-lock feature in order to prevent the phone from locking and encrypting data." ***Riley v. California***, 573 U.S. 373, 391 (2014). Here, Schafer lawfully possessed the phone, and the SOS function is available without a need to unlock it. Under the applicable legal standard, his conduct did not trespass or intrude into a "constitutionally protected area[]." *See* ***Antoine Jones***, 565 U.S. at 406 n.3.

¶19 Accordingly, we conclude that by pressing the SOS button on AhToong's cell phone and calling 911 to obtain the phone number for the cell phone, Schafer did not engage in an unconstitutional trespass under ***Antoine Jones***. We now turn to whether a search occurred under a reasonable-expectation-of-privacy analysis.

II. Reasonable Expectation of Privacy

¶20 In determining whether a person has a reasonable expectation of privacy under the Fourth Amendment, "it is important to begin by specifying precisely the nature of the state activity that is challenged." ***Smith v. Maryland***, 442 U.S. 735, 741 (1979). As noted, the precise conduct at issue here is Schafer's pressing the SOS button on the side of a cell phone and calling 911, and then requesting and obtaining the cell phone's phone number from the 911 dispatcher. In arguing that this conduct violated his reasonable expectation of privacy, AhToong relies heavily on ***Riley***, the seminal opinion on cell phone searches. As we now explain, we conclude that ***Riley*** does not support the view that a search occurred here.

A. ***Riley***

¶21 It is important to note at the outset that in ***Riley***, there was no question that the police conduct at issue constituted searches of the defendants' cell phones. Therefore, unlike the arguments of the parties in this case, the ***Riley*** Court did not have occasion to define the specific type of law enforcement action with respect to cell phones that constitutes a search under the Fourth Amendment. Instead, ***Riley*** addressed whether the searches were lawful under the-search-incident-to-arrest exception to the warrant requirement. ***Riley***, 573 U.S. at 378. More precisely, the question presented in ***Riley*** was "whether the police may,

without a warrant, search *digital information on a cell phone* seized from an individual who has been arrested." ***Id.*** (emphasis added). The ***Riley*** Court concluded that a "warrant is generally required" for such a search, "even when a cell phone is seized incident to arrest." ***Id.*** at 401.

¶22 In ***Riley***, law enforcement seized cell phones from each of two defendants, Riley and Wurie, following their arrests. ***Id.*** at 378-80. The officers did all of the following without first obtaining a search warrant. Regarding Riley, an officer "accessed information on [his] phone" and noticed, in either text messages or a contacts list, words that the officer associated with gang activity. ***Id.*** at 379. Later, a detective "further examined the contents of the phone," testifying that he "'went through' the phone 'looking for evidence.'" ***Id.*** Although there was "'a lot of stuff'" on the phone, "particular files" caught the detective's attention, including videos and photographs. ***Id.*** Regarding Wurie's cell phone, which was a less sophisticated "flip-phone," police "noticed that the phone was repeatedly receiving calls from a source identified as 'my house' on the phone's external screen." ***Id.*** at 380. They then "opened" the flip phone, and saw a "photograph of a woman and a baby set as the phone's wallpaper." ***Id.*** Police then "pressed one button on the phone to access its call log, then another button to determine the phone number associated with the 'my house' label." ***Id.***

¶23 On appeal, the U.S. Supreme Court held that the cell phone searches violated the Fourth Amendment, rejecting the government's contention that the searches were lawful searches incident to arrest. ***Id.*** at 381-403. The Court concluded that, in order to conduct such "searches of data on cell phones," officers must "generally secure a warrant." ***Id.*** at 386. In reaching this conclusion, the Court emphasized the type of digital information that a cell phone contains. "Modern cell phones are not just another technological convenience. With all they

contain and all they may reveal, they hold for many Americans 'the privacies of life.'" ***Id.*** at 403 (quoted source omitted). Moreover, due to their "immense storage capacity," pervasive use, and portability, cell phones can provide "a digital record of nearly every aspect" of a person's life "from the mundane to the intimate." ***Id.*** at 393, 395.

¶24 It is clear from these comments and other similar statements in ***Riley*** that the ***Riley*** Court was concerned with law enforcement's access to the vast amount, and potentially personal nature, of the "digital information on a cell phone." ***Id.*** at 373. Those concerns are not implicated when, as here, Schafer did not obtain access to any such "digital information on [AhToong's] phone," and instead merely pressed the SOS button and called 911, allowing the 911 dispatcher to provide the cell phone's phone number. Further, as previously noted, ***Riley*** does not conclude that all manipulations of a cell phone are impermissible searches incident to arrest. For example, in addressing the concern that a suspect could engage in "remote wiping" of a cell phone seized by police before data could be lawfully accessed, the Court stated that this "can be fully prevented by disconnecting the phone from the network," either by turning off the phone or removing its battery. ***Id.*** at 390. Alternatively, "if officers happen to seize a phone in an unlocked state, they may be able to disable a phone's automatic-lock feature in order to prevent the phone from locking and encrypting data." ***Id.*** at 391. Thus, under ***Riley***, these types of manipulations of a phone, at least in the context of a search incident to arrest, do not require a warrant.

¶25 In sum, we do not construe ***Riley*** as prohibiting an officer in lawful possession of a cell phone from pressing the SOS button and calling 911 in order to learn the phone number for that phone. No statement in ***Riley*** suggests that its holding—which applies to the "digital information on a cell phone"—applies to a

cell phone's phone number, much less that pressing the phone's SOS button and calling 911 to obtain the number, without accessing the digital information it contains, constitutes a search. ***Id.*** at 373. AhToong's arguments to the contrary are not persuasive.

¶26 AhToong argues that using the SOS feature to call 911 does in fact access digital information on a cell phone. In support of this contention, he states, "The cell phone number doesn't just magically appear at the 911 center: it is pushed, in a digital sense, from the phone to the 911 center because government regulations compel the production of that information." Hecites 47 C.F.R. § 9.8 and WIS. STAT. § 256.35(6) (2023-24),[5] which require wireless carriers to provide 911 centers with the caller's phone number and location when a wireless device is used to call 911. To the extent that AhToong argues that government requirements render the conduct at issue here a search, this is an argument well outside the ***Riley*** framework. Moreover, we fail to see how the existence of these requirements render the phone number that Schafer obtained "digital information on a cell phone" as contemplated by ***Riley***. If there is an additional argument to be made regarding a reasonable expectation to privacy based on these regulations, AhToong does not develop it.

¶27 AhToong also appears to argue that even though here Schafer obtained only a phone number from the 911 center, that should not matter to our analysis because, through rapid advancements in technologies, other information is or could be made available to law enforcement by contacting 911 in this manner. For example, AhToong states that "many smartphones are now capable

[5] All references to the Wisconsin Statutes are to the 2023-24 version.

of automatically sharing 'enhanced emergency data' including the user's health information and emergency contact information automatically when 911 is called," although he does not suggest that the phones automatically do this without the phone's user enabling this process. He also states that "companies are developing systems that allow organizations to share detailed data regarding the students, staff, and customers with 911 and field responders" so that, for example, "when an Uber driver or a rider calls 911, Uber shares demographic and medical data for both the rider and driver with 911." However, even if all of this is true, it is not relevant here because the only information made available to Schafer through dispatch was the cell phone's phone number, which was the only information he sought. Assuming that more information might have been available to an officer under other circumstances does not make Schafer's actions here an impermissible search under ***Riley***.[6]

¶28 We also reject as unsupported AhToong's broad assertion that the State "seeks a blank check to access the vast store of sensitive information on a cell phone." Again, the only information that Schafer obtained was the phone number assigned to the phone, which he obtained from the 911 dispatcher after pressing the SOS button on the side of the phone and calling 911.

¶29 For all of these reasons, we conclude that Schafer's conduct was not a prohibited search under ***Riley***.

[6] At oral argument, the State represented, based on WIS. STAT. § 256.35(6), that the only information that cell phone telecommunications providers are required by law to provide to 911 dispatchers is the phone number for the cell phone and its location. AhToong did not dispute that point at oral argument or in his appellate briefs.

¶30 We now examine other relevant legal authority to determine whether a search occurred here under a reasonable-expectation-of-privacy theory. As previously noted, we are aware of opinions from only two jurisdictions that have addressed this scenario: ***Christopher Jones***, which concluded under substantially similar circumstances that a search occurred, and ***Hill***, which concluded otherwise. We briefly discuss these cases and explain why we deem ***Hill*** to be more persuasive.

B. ***Christopher Jones*** and ***Hill***

¶31 In ***Christopher Jones II***, a federal district court adopted the unchallenged report and recommendation of a magistrate judge who concluded that an officer's "dialing the emergency function from the locked screen [of the defendant's cell phone] constituted an impermissible search."[7] ***Christopher Jones II***, unpublished slip op. at *4; ***Christopher Jones I***, unpublished slip op. The district court adopted the magistrate judge's conclusion that the officer conducted a search of the phone because the officer "'had to affirmatively manipulate [the defendant's] phone to access the emergency call feature and call 911.'" ***Christopher Jones II***, unpublished slip op. at *3 (alteration in original). The district court further reasoned that the defendant "may well have a reasonable expectation of privacy in the information one could discover by pushing certain

[7] For context, we note that, unlike in this case and in ***State v. Hill***, 789 S.E.2d 317 (Ga. Ct. App. 2016), the officer in ***Christopher Jones*** did not receive the phone number from a 911 dispatcher. Instead, the officer later "looked at the log of the local 911 emergency line," which was presumably a list of phone numbers that were shown as having called 911, and the officer was able to identify the defendant's cell phone number from that list. ***United States v. Christopher Jones (Christopher Jones II)***, No. 20-CR-99-PP, unpublished slip op. at *1, 2021 WL 22176 (E.D. Wis. Jan. 4, 2021). This difference in ***Christopher Jones*** does not matter to our analysis.

buttons on that phone." ***Id.*** at *4. In support of these conclusions, both the magistrate judge and the district court relied in large part on ***Riley*** and on ***United States v. Gary***, 790 F.3d 704 (7th Cir. 2015). *See* ***Christopher Jones I***, unpublished slip op. at *2-3; ***Christopher Jones II***, unpublished slip op. at *2-3.

¶32 We are not persuaded by the ***Christopher Jones*** decisions, and in particular, the analysis that seeks to draw parallels to ***Riley*** and ***Gary***. In ***Gary***, an officer pressed buttons on a defendant's two cell phones, accessing the call log on one of the phones, and determining that the phone was assigned to a phone number that an undercover detective had called that morning to order heroin. ***Gary***, 790 F.3d at 708. The Seventh Circuit Court of Appeals determined that this constituted a warrantless search incident to arrest, in violation of ***Riley***. ***Id.*** We disagree with the reasoning in the ***Christopher Jones*** decisions which appears to suggest that, under ***Riley*** and ***Gary***, any and all "affirmative manipulation[s]" of a cell phone constitute a search. *See* ***Christopher Jones I***, unpublished slip op. at *3; *see* ***Christopher Jones II***, unpublished slip op. (affirming ***Christopher Jones I***). As stated above, the ***Riley*** Court specifically described certain manipulations of a cell phone that do not require a warrant, at least in the context of an arrest. And critically, both ***Riley*** and ***Gary*** involved the warrantless search of digital information contained on a cell phone. The ***Christopher Jones*** decisions seemingly overlook this distinction. Neither ***Riley*** nor ***Gary*** suggest that merely pressing a button on a phone and calling 911 to obtain the phone number from the 911 dispatcher amounts to a search of digital information on the phone. As the Seventh Circuit Court of Appeals made clear in an opinion issued after ***Gary***, the "common thread" between ***Riley*** and its progeny, including ***Gary***, is that "they involve law enforcement officers affirmatively accessing the *content within cell*

phones to gather evidence against arrestees." ***United States v. Brixen***, 908 F.3d 276, 281 (2018) (emphasis added).

¶33 In contrast to the ***Christopher Jones*** decisions, the Georgia Court of Appeals in ***Hill*** concluded under similar facts that a search had not occurred. We consider ***Hill*** to be persuasive.

¶34 In ***Hill***, a passenger fled a cab driver without paying the fare and left his cell phone behind in the cab. ***Hill***, 789 S.E.2d at 317-18. A police officer obtained the phone and turned it on, but a passcode feature prevented the officer from accessing any data in the phone. ***Id.*** at 318. The officer used an emergency call feature on the phone to contact a 911 dispatcher, who provided the officer with the phone number for the phone as well as the defendant's name and date of birth.[8] ***Id.***

¶35 On appeal, the Georgia Court of Appeals rejected the defendant's Fourth Amendment challenge, concluding that the officer's conduct did not constitute a search. The court reasoned that the defendant "had no reasonable expectation of privacy" in the information that police gathered by calling 911, *i.e.*, the defendant's phone number, name, and birthdate.[9] ***Id.*** In reaching this conclusion, the court relied in part on case law, including ***Smith***, discussed below, for the proposition that, as the ***Hill*** court put it, "a person lacks a legitimate

[8] The court in ***Hill*** does not make clear whether the defendant's name and date of birth automatically went to the 911 dispatcher when the officer called 911, or whether the 911 dispatcher instead retrieved that information some other way after obtaining the phone number through the incoming 911 call.

[9] The ***Hill*** court also stated, without any further explanation, that the officer's conduct did "not involve … a physical intrusion or trespass." ***Hill***, 789 S.E.2d at 318.

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, email, landline telephone, or cellular telephone." ***Id.*** at 319.

¶36 The ***Hill*** court noted that in ***Smith***, the U.S. Supreme Court concluded that a person does not have a reasonable expectation of privacy in a list of calls made by that person which police obtained through a pen register. ***Hill***, 789 S.E.2d at 319 (citing ***Smith***, 442 U.S. at 743-47). The ***Smith*** Court's conclusion was based in part on the limited nature of the primary information obtained through a pen register, namely, outgoing phone numbers. ***Smith***, 442 U.S. at 741. The Court observed that "pen registers do not acquire the *contents* of communications.… These devices do not hear sound. They disclose only the telephone numbers that have been dialed—a means of establishing communication." ***Id.*** (internal quotation marks and quoted source omitted).

¶37 The ***Hill*** court acknowledged that, under ***Riley***, police generally cannot access data stored in a cellular phone without first obtaining a warrant. ***Id.*** at 320. However, the ***Hill*** court distinguished ***Riley*** on the basis that, in ***Hill***, "the officer did not access any files on [the defendant]'s phone, which was protected by a passcode," nor did the officer "attempt to retrieve any information from within the phone, but instead the officer used the phone in a manner that caused it to send [the defendant]'s telephone number to a third party, the 911 dispatcher." ***Id.*** (citation omitted). The court in ***Hill*** did "not construe ***Riley*** to prohibit an officer in lawful possession of a cellular phone from placing a call on that phone in an attempt to obtain identifying information about its owner." ***Id.*** at 320-21. Nor did ***Hill*** interpret ***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." ***Id.***[10]

¶38 We consider the ***Hill*** court's analysis on these points to be persuasive.[11] Because we are not persuaded that Schafer accessed digital information on the phone or otherwise infringed on AhToong's reasonable expectation of privacy, we conclude that a search did not occur for purposes of the Fourth Amendment.

¶39 We acknowledge AhToong's point that the U.S. Supreme Court has recognized a reasonable expectation of privacy in information about an individual's cell phone location that is obtained from a third party, as opposed to being derived from the contents of the phone itself. *See* ***Carpenter v. United States***, 585 U.S. 296, 306, 311 (2018) (addressing cell-site location information, which the Court described as "digital data" that "mapp[ed] a cell phone's location over the course of 127 days" and "provide[d] an all-encompassing record of the holder's whereabouts"); ***Chatrie v. United States***, 609 U.S. 605, 625-26 (2026) (addressing Google's Location History function, which records the location of a user's cell phone approximately every two minutes, for a daily average of 720 chartings, and can pinpoint a person's location "within around twenty meters, which is less than two percent of a mile"). However, AhToong does not develop

[10] The ***Hill*** court also relied on the premise that "'a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties.'" ***Hill***, 789 S.E.2d at 319 (quoted source omitted). However, we do not adopt or rely on that rationale.

[11] As stated, the officer in ***Hill*** obtained from the 911 dispatcher not only the defendant's phone number, but also his name and date of birth, although it is not clear whether the dispatcher retrieved the name and date of birth solely by the officer's act of dialing 911. In addition, before using the emergency function, the officer first turned on the phone. We emphasize that our conclusion in this appeal is confined to the circumstances presented in the instant case.

an argument as to how that precedent—which addresses the extensive and precise tracking of citizens' movements—is applicable here. In this case, Schafer obtained the phone number through a process that did not give him access to any other information. In short, we do not consider AhToong's comparison to these cases to be persuasive.

¶40 As we next explain, our conclusion is also supported by ***State v. Flynn***, 92 Wis. 2d 427, 285 N.W.2d 710 (1979), on which the State relies, and is consistent with two other U.S. Supreme Court opinions on which AhToong relies, ***Kyllo v. United States***, 533 U.S. 27 (2001), and ***Arizona v. Hicks***, 480 U.S. 321, 324-25 (1987). We discuss ***Flynn***, ***Kyllo***, and ***Hicks*** in turn.

C. ***Flynn***

¶41 ***Flynn*** is not directly on point, but it is instructive here. It concerns a limited investigation for purposes of determining a suspect's identity, which is essentially all that occurred in the instant case. Our supreme court addressed whether an officer who is constitutionally justified in stopping a suspect may, when the suspect refuses to provide identification in response to a request, remove and inspect the suspect's wallet during a frisk for the purpose of attempting to find identifying information as part of an investigation based on reasonable suspicion. ***Flynn***, 92 Wis. 2d at 439-40. The court acknowledged that, under ***Terry v. Ohio***, 392 U.S 1 (1968), an officer with reasonable suspicion of a crime may frisk the outer clothing of the suspect "for weapons." ***Id.*** at 441. However, the court concluded that under circumstances such as those presented in ***Flynn***, the officer may also "conduct a limited search of [the] suspect's wallet for the sole purpose of discovering the person's identity." ***Id.*** at 448-49. Relying on authority such as WIS. STAT. § 968.24, which allows law enforcement to request the identity of a

person who has been lawfully stopped, the court reasoned that "unless the officer is entitled to at least ascertain the identity of the suspect, the right to stop him can serve no useful purpose at all. The suspect need only wait for what may be presumed to be a reasonable time, and then proceed on his way." ***Id.*** at 441-42. In "balancing the need for the particular search against the invasion of personal rights that it entailed," the court further observed:

> [A]n officer confronted with a situation in which [the officer] has a reasonable suspicion that a certain individual is involved in criminal activity, but lacks that degree of evidence necessary to effect a lawful arrest, has great need of at least obtaining the individual's name if [the officer] is to be able to adequately perform [the officer's] duty and conduct a proper investigation. Unless informed of the suspect's identity, [the officer] must forego either the possible lead itself or the rest of [the] investigation. Thus, it must be admitted that the state's need for the particular intrusion is clearly substantial.

Id. at 446.

¶42 The ***Flynn*** court also relied on the justification for, and the limited nature of, such a search. The officer "did not arbitrarily seize the defendant as he was walking down the street, reach into his pocket, remove his wallet, and then go leafing through it looking for evidence that could be used against him," nor was this a case "of a police officer acting in bad faith," "seeking to harass another person," or "fishing for whatever evidence [the officer] could find." ***Id.*** at 447-48. Rather, the officers "sought merely to learn defendant's identity." ***Id.*** at 448. Thus, "the scope of the search was no broader than was necessary to obtain the information, the need for which justified the intrusion in the first place." ***Id.***

¶43 As the State pointed out at oral argument in this case, ***Flynn*** involved a frisk of a stopped person, but here AhToong fled into the woods. Had

AhToong not fled, he undoubtedly would have been detained and asked to identify himself. By fleeing, AhToong prevented officers from attempting to identify him. ***Flynn*** lends support to the premise that officers could engage in a limited investigation in an attempt to determine the driver's identity. Pressing the SOS button and calling 911 on the cell phone that was found after AhToong fled was a limited measure to determine the identity of the fleeing driver.

D. ***Kyllo*** and ***Hicks***

¶44 This brings us to two additional U.S. Supreme Court cases that AhToong argues support the conclusion that a search occurred here, ***Kyllo*** and ***Hicks***.

¶45 In ***Kyllo***, the U.S. Supreme Court concluded that law enforcement's use of a thermal imager, as part of an investigation of a suspected marijuana-grow operation, to detect heat radiating from within the defendant's home was a search. ***Kyllo***, 533 U.S. at 27, 34-35. AhToong argues that ***Kyllo*** supports his position that Schafer's conduct constitutes a search because the ***Kyllo*** Court concluded that a search occurred "regardless of the fact that the government did not enter the home."

¶46 But the ***Kyllo*** Court's holding was specifically limited to technology that "is not in general public use." ***Id.*** at 34 (quoted source omitted); *see also* ***id.*** at 40 ("Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant."). Therefore, AhToong's reliance on ***Kyllo*** is unavailing in part because the instant case does not involve technology that is "not in general public use." *See* ***id.*** at 34, 40. There can be no dispute that the cell

phone features at issue here, including the required automatic communication of cell phone numbers to 911 centers, are widely used by the public.

¶47 Further, the Court's holding in ***Kyllo*** is limited to the context of information obtained regarding events or circumstances in the interior of "the home." ***Id.*** Under Fourth Amendment jurisprudence "the home is first among equals." ***Jardines***, 569 U.S. at 6. As the ***Kyllo*** Court stated, "At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." ***Kyllo***, 533 U.S. at 31 (internal quotation marks and quoted source omitted). The Court further observed, "With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no." ***Id.*** The police conduct at issue in this appeal obviously does not involve a search of a home.

¶48 AhToong also relies on ***Hicks*** for the premise that an intrusion can be slight and still be constitutionally impermissible. In ***Hicks***, police entered an apartment looking for a shooter, victims, and weapons after a bullet was fired through the floor of the apartment, striking and injuring a person in the apartment below. ***Hicks***, 480 U.S. at 323. While in the apartment, one of the officers observed expensive stereo components that the officer suspected were stolen, and moved them in order to read and record their serial numbers. ***Id.***

¶49 The ***Hicks*** Court concluded that the officer's "moving of the equipment … constitute[d] a 'search' separate and apart from the search for the shooter, victims, and weapons that was the lawful objective of his entry into the apartment." ***Id.*** at 324-25. The Court reasoned that "taking action, unrelated to the objectives of the authorized intrusion, which exposed to view concealed portions of the apartment or its contents, did produce a new invasion of [the

defendant's] privacy unjustified by the exigent circumstance that validated the entry." ***Id.*** at 325. Again, it was important in ***Hicks*** that the warrantless search occurred inside a home: the officers were authorized to be in the apartment under the exigent circumstances exception to the warrant requirement and made further incursions on the resident's privacy rights by exposing "portions of the apartment or its contents" that were unrelated to the initial exigency. ***Id.***; *see also* ***Kyllo***, 533 U.S. at 38 (discussing ***Hicks*** and observing, "These were intimate details [in ***Hicks***] because they were details of the home, just as was the detail of how warm—or even how relatively warm—Kyllo was heating his residence.").

¶50 Thus, ***Hicks*** has little relevance to the circumstances here. Schafer was not inside, nor examining events inside of, anyone's home; he came into lawful possession of the phone; and he accessed 911 only to determine the phone number for the phone. *See* ***United States v. Watts***, 7 F.3d. 122 (8th Cir. 1993) ("Our case is readily distinguishable from ***Hicks*** on the ground that [the officers here] were properly in possession of the items containing the serial numbers. Thus, the 'plain view' analysis of ***Hicks***, which involves the extent to which officers can manipulate items in their presence but not their possession, is inapplicable.").

***

¶51 In sum, we conclude that when Schafer pressed the button on the side of the cell phone and called 911 to obtain the phone number for the phone, this did not constitute a search under the Fourth Amendment.

CONCLUSION

¶52 For the reasons stated, we reverse the order suppressing the evidence at issue in this case.

By the Court.—Order reversed.

Recommended for publication in the official reports.