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Who Has More Privacy?: State v. Brown and Its Effect on South Carolina Criminal Defendants

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**WHO HAS MORE PRIVACY?: STATE V. BROWN AND ITS EFFECT ON SOUTH
CAROLINA CRIMINAL DEFENDANTS**

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I. INTRODUCTION

Since its adoption, the Fourth Amendment of the United States Constitution has shielded individuals from “unreasonable searches and seizures.”¹ In general,

1. U.S. CONST. amend. IV; *see, e.g.*, *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (“[W]herever an individual may harbor a reasonable ‘expectation of privacy,’ he is entitled to be free from unreasonable governmental intrusion. Of course, the specific content and incidents of this right must be shaped by the context in which it is asserted. For ‘what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures.’” (citation omitted) (quoting *Katz v.*

the Fourth Amendment requires the government, whether federal, state, or local,² to secure a warrant based upon probable cause that specifically describes the nature of the search.³ Nevertheless, the United States Supreme Court has interpreted the Fourth Amendment to contain a number of implicit exceptions to the warrant requirement.⁴ These judicially created exceptions demonstrate the Court's willingness to shift toward a narrower scope for individual freedom from governmental searches and seizures.⁵

South Carolina courts have generally conformed to the Court's Fourth Amendment jurisprudence. In particular, South Carolina courts have looked to the warrant exceptions in determining whether a warrantless search violated a criminal defendant's constitutional rights.⁶ The majority of recent South

United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring); *Elkins v. United States*, 364 U.S. 206, 222 (1960)).

2. See generally *Wolf v. Colorado*, 338 U.S. 25, 27–28 (1949) (“The security of one’s privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in ‘the concept of ordered liberty’ and as such enforceable against the States through the Due Process Clause.”).

3. U.S. CONST. amend. IV; see also *Chambers v. Maroney*, 399 U.S. 42, 51 (1970) (“In enforcing the Fourth Amendment’s prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution. As a general rule, it has also required the judgment of a magistrate on the probable-cause issue and the issuance of a warrant before a search is made.”).

4. See *Johnson v. United States*, 333 U.S. 10, 14–15 (1948). For instance, in *Warden v. Hayden*, 387 U.S. 294 (1967), the Court held that exigent circumstances waived the warrant requirement, explaining that “[t]he Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others.” *Id.* at 298–99. Further, in *Chimel v. California*, 395 U.S. 752 (1969), the Court stated that it will uphold the validity of a warrantless “search incident to arrest,” so long as the arrest was lawful and the arresting officer confines the search to “the arrestee’s person and the area within his immediate control.” *Id.* at 762–63 (internal quotation marks omitted). With respect to vehicle searches, the Court has concluded that a police officer conducting a vehicle search need not secure a search warrant if the officer has probable cause to believe that the vehicle contains contraband or other incriminating evidence. See, e.g., *Chambers*, 399 U.S. at 51 (“[A] search warrant [is] unnecessary where there is probable cause to search an automobile stopped on the highway; the car is movable, the occupants are alerted, and the car’s contents may never be found again if a warrant must be obtained. Hence an immediate search is constitutionally permissible.”). Notably, the Court has concluded that an officer need not have a search warrant or probable cause if a vehicle search occurs in the context of a routine inventory search. See *South Dakota v. Opperman*, 428 U.S. 364, 373 (1976). However, the Court has also cautioned that “an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence,” *Florida v. Wells*, 495 U.S. 1, 4 (1990), and instead must be based on some “standard criteria,” *Colorado v. Bertine*, 479 U.S. 367, 375 (1987).

5. Cf. Fabio Arcila, Jr., *The Death of Suspicion*, 51 WM. & MARY L. REV. 1275, 1287 (2010) (“At some point, the list of ‘carefully defined exceptions’ to a presumptive warrant rule can grow so large that the rule itself is no longer valid. It is easy to conclude that we have reached that point.”).

6. See generally *State v. Brown*, 389 S.C. 473, 479, 698 S.E.2d 811, 814–15 (Ct. App. 2010) (“It is well established that warrantless searches and seizures by the police are per se unreasonable, unless they fall within one of several recognized exceptions. These exceptions include: (1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile

Carolina court decisions have replicated the Supreme Court's shift towards limiting individual privacy rights in the search and seizure context,⁷ but in June 2010, the South Carolina Court of Appeals appeared to reshape the constitutional rights of criminal defendants in the state. In *State v. Brown*,⁸ the arresting police officer conducted a warrantless search of the defendant's duffel bag and recovered cocaine.⁹ The government contended that numerous warrant exceptions justified the search, but the court rejected the government's arguments and vacated the defendant's conviction and sentence for trafficking cocaine.¹⁰ While the court conceded that at least one exception to the warrant requirement probably validated the search, it nonetheless concluded that the government had not met its burden of proof.¹¹

At first glance, *Brown* appears to diverge from analogous South Carolina cases in that the court readily quashed the search.¹² By contrast, the courts in prior cases seemed to have deliberately sought out a warrant exception to validate a search.¹³ While *Brown* and earlier South Carolina cases reach plainly different conclusions, the court in *Brown* properly distinguished the facts from those presented in earlier state cases. *Brown* did not disturb precedent in South Carolina because it did not overturn any prior rulings. Nevertheless, *Brown* may have implicitly provided criminal defendants in South Carolina with greater protections against governmental searches and seizures than those afforded to federal criminal defendants.

This Note analyzes the impact that *Brown* may have on the constitutional rights of future South Carolina criminal defendants. Part II provides a brief

exception; (5) plain view doctrine; (6) consent; and (7) abandonment." (citation omitted) (citing *State v. Weaver*, 361 S.C. 73, 80–81, 602 S.E.2d 786, 790 (Ct. App. 2004)).

7. See, e.g., *State v. Herring*, 387 S.C. 201, 211, 692 S.E.2d 490, 495 (2009) (determining that exigent circumstances justified an officer's "de minimis intrusion"); *State v. Weaver*, 374 S.C. 313, 321, 649 S.E.2d 479, 482 (2007) (concluding that the automobile exception justified a warrantless search of a vehicle); *State v. Banda*, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006) (recognizing that a law enforcement officer may conduct a frisk for weapons during a vehicle stop); *State v. Freiburger*, 366 S.C. 125, 133, 620 S.E.2d 737, 741 (2005) (applying the search incident to arrest exception).

8. 389 S.C. 473, 698 S.E.2d 811 (Ct. App. 2010).

9. *Id.* at 478, 698 S.E.2d at 814.

10. See *id.* at 480–84, 698 S.E.2d at 815–17. For further discussion of *Brown*, see *infra* Part II.

11. See *id.* at 484, 698 S.E.2d at 817. Because police had arrested the driver as well as the defendant, a passenger in the vehicle, the court recognized that the police probably would have impounded and then conducted a routine inventory search of the vehicle. *Id.* However, the court stated, "The State provided very scant testimony, at best, that the duffel bag or car would have been taken into police custody after [the defendant] and the driver were arrested." *Id.* Because the State failed to present evidence of standard procedures used for conducting inventory searches, the court concluded it had not met its "burden to establish by a preponderance of the evidence that the evidence would inevitably have been discovered." *Id.* (citing *Nix v. Williams*, 467 U.S. 431, 444 (1984)).

12. See discussion *infra* Part II.

13. For a discussion of earlier South Carolina cases, see *infra* Part III.

synopsis of *Brown* to highlight its importance. Part III traces the development of the United States Supreme Court's interpretation of the Fourth Amendment and discusses parallel South Carolina cases. With this background in place, Part IV compares *Brown* to analogous South Carolina cases. Part IV then suggests that while the South Carolina Court of Appeals could have upheld the search on grounds unrelated to the defendant's constitutional rights, the court may have invalidated the search in an effort to expound and define the heightened privacy rights provided by the South Carolina Constitution. Finally, Part V concludes.

II. SYNOPSIS OF *BROWN*

In a pragmatic sense, *Brown* merely signifies a criminal defendant's successful attempt at suppressing incriminating evidence, but such a cursory review overlooks the South Carolina judiciary's modified position on privacy rights guaranteed to state criminal defendants.¹⁴ In *Brown*, a police officer witnessed Danny Brown, the defendant, a passenger in a vehicle, "drinking what appeared to be a beer."¹⁵ When the officer pulled the vehicle over to the side of the road, he noticed a small duffel bag located on the passenger floorboard.¹⁶ After the defendant eventually admitted to drinking the beer by showing the officer the can, the officer removed the defendant from the vehicle, placed the defendant under arrest for an open container violation, and moved the duffel bag onto the adjacent sidewalk.¹⁷ The officer then searched the duffel bag and found cocaine, but only after he had secured the defendant in the patrol car.¹⁸ Shortly thereafter, the driver, who had remained in the vehicle during the search, was placed under arrest for driving under a suspended license.¹⁹

On appeal, the South Carolina Court of Appeals vacated the defendant's conviction and sentence for trafficking cocaine, holding that no exception to the warrant requirement justified the search of his duffel bag.²⁰ Specifically, the court first denied the applicability of the search incident to arrest exception, reasoning that the defendant had not been close to the duffel bag at the time of the search.²¹ The court also noted that the officer failed to conduct a proper vehicle search incident to arrest, given the defendant's location at the time of the search and the improbability of discovering additional alcoholic beverages in the

14. See discussion *infra* Part IV.

15. *Brown*, 389 S.C. at 478, 698 S.E.2d at 814.

16. *Id.*

17. *Id.*

18. *Id.* The officer found the cocaine "concealed inside a Fritos bag" that was in the defendant's duffel bag. *Id.*

19. *Id.*

20. *Id.* at 479, 484, 698 S.E.2d at 814, 817. The court of appeals reversed the trial court, concluding that it had "erred by denying [the defendant's] motion to suppress the drugs seized after his arrest for an open container violation." *Id.* at 478, 698 S.E.2d at 814.

21. See *id.* at 480–81, 698 S.E.2d at 815.

duffel bag.²² The court similarly rejected the applicability of the automobile exception, reasoning that the officer did not have probable cause to believe that the duffel bag contained additional beer cans.²³ Finally, the court denied the applicability of the inevitable discovery doctrine, reasoning that the government had not adequately proved that the vehicle would have been impounded and searched in accordance with standard inventory procedures.²⁴ In concluding that the officer violated the defendant's Fourth Amendment rights, the court of appeals appears to have adopted a different and more liberal ideology than that of other South Carolina decisions. Even so, the court expressly based its reasoning and holding on prior cases decided by the United States Supreme Court and other South Carolina appellate courts.²⁵

III. OVERVIEW OF SEARCH AND SEIZURE PRECEDENT

A. *Constitutional Protections Against Searches and Seizures*

The Fourth Amendment of the United States Constitution 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; and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.²⁶

The United States Supreme Court has interpreted these words to mandate a validly executed warrant or some adequate justification for any government search or seizure.²⁷ If the government runs afoul of the warrant requirement and cannot present a compelling excuse, then the remedy for the Fourth Amendment violation is the exclusion of any improperly recovered evidence.²⁸ These principles seem simple enough, but in practice the Court has confronted

22. See *id.* at 481, 698 S.E.2d at 815. In *Arizona v. Gant*, 129 S. Ct. 1710 (2009), the U.S. Supreme Court held, "Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Id.* at 1723. The court in *Brown* concluded that neither of the *Gant* exceptions applied to justify the search. *Brown*, 389 S.C. at 480–81, 698 S.E.2d at 815.

23. See *Brown*, 389 S.C. at 482–83, 698 S.E.2d at 816.

24. See *id.* at 484, 698 S.E.2d at 817.

25. See *id.* at 479–84, 698 S.E.2d at 814–17.

26. U.S. CONST. amend. IV.

27. See, e.g., *Herring v. United States*, 129 S. Ct. 695, 698 (2009) ("The Fourth Amendment forbids 'unreasonable searches and seizures,' and this usually requires the police to have probable cause or a warrant before making an arrest.").

28. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

complicated questions concerning what constitutes a search or a seizure and the scope of the warrant requirement.

The Fourth Amendment does not apply unless the government has performed a constitutionally protected search or seizure.²⁹ In *Katz v. United States*,³⁰ the Court examined whether a constitutionally protected search necessitates government intrusion into a physical space.³¹ In earlier cases, the Court had declared that the absence of any “physical penetration” precluded Fourth Amendment protection,³² but in *Katz* the Court expressly rejected this reasoning.³³ The Court explained that the Fourth Amendment safeguards people, not places, from unreasonable searches and seizures; accordingly, a search does not depend upon a physical intrusion.³⁴ Thus, *Katz* clarified that a search has occurred where the government “violated the privacy upon which [an individual] justifiably relied.”³⁵

The Fourth Amendment also provides protection if the government conducts a seizure.³⁶ In *United States v. Karo*,³⁷ the Court discussed the meaning of a constitutionally protected seizure of property³⁸—for such a seizure to occur,

29. See *Smith v. Maryland*, 442 U.S. 735, 740 (1979) (“[T]he application of the Fourth Amendment depends on whether the person invoking its protection can claim a ‘justifiable,’ a ‘reasonable,’ or a ‘legitimate expectation of privacy’ that has been invaded by government action.”).

30. 389 U.S. 347 (1967).

31. See *id.* at 350–51. Charles Katz, the petitioner, had used a public telephone to transmit wagering information across state lines. *Id.* at 348. Federal agents learned of these communications by placing “an electronic listening and recording device to the outside of the public telephone booth from which [Katz] had placed his calls.” *Id.* As a result, Katz was arrested and convicted of violating a federal statute that proscribed the “knowing[] use[] of a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers.” *Id.* at 348 n.1 (quoting 18 U.S.C. § 1084(a) (2006)) (internal quotation marks omitted).

32. *Id.* at 352 (citing *Goldman v. United States*, 316 U.S. 129, 134–35 (1942); *Olmstead v. United States*, 277 U.S. 438, 457, 464, 466 (1928)).

33. *Id.* at 353.

34. *Id.*

35. *Id.* Employing this framework, the Court concluded that Katz had a reasonable expectation of privacy when he used the public telephone, thereby triggering the Fourth Amendment. See *id.* Because the government had not secured a warrant and had failed to prove an exception to the warrant requirement, the Court concluded that the government had violated Katz’s Fourth Amendment rights. See *id.* at 354–59.

36. See, e.g., *Brendlin v. California*, 127 S. Ct. 2400, 2405 (2007) (“A person is seized by the police and thus entitled to challenge the government’s action under the Fourth Amendment when the officer by means of physical force or show of authority terminates or restrains his freedom of movement, *through means intentionally applied*.” (citations omitted) (quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991); *Brower v. County of Inyo*, 489 U.S. 593, 597 (1989)) (internal quotation marks omitted)); *Illinois v. McArthur*, 531 U.S. 326, 330 (2001) (“[I]n the ordinary case, seizures of personal property are unreasonable within the meaning of the Fourth Amendment, without more, unless . . . accomplished pursuant to a judicial warrant, issued by a neutral magistrate after finding probable cause.” (omission in original) (quoting *United States v. Place*, 462 U.S. 696, 701 (1983)) (internal quotation marks omitted)).

37. 468 U.S. 705 (1984).

38. See *id.* at 712–13. Respondents James Karo, Horton, and Harley had ordered a large quantity of ether from a government informant to extract cocaine from clothing that had been used

there must be “some meaningful interference with an individual’s possessory interests in that property.”³⁹ The Court explained that trespass of property, without more, will not constitute a seizure for purposes of the Fourth Amendment;⁴⁰ rather, an individual claiming a Fourth Amendment violation must demonstrate that he had a reasonable expectation to be free from interference with that property.⁴¹

B. The Requirements for a Validly Obtained and Executed Warrant

If the government has performed a constitutionally protected search or seizure, then generally the government is required to have secured a valid warrant.⁴² First, a search warrant requires a finding of probable cause.⁴³ The Court has explained that probable cause exists “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.”⁴⁴ Moreover, the Court has cautioned that probable cause to support a search warrant requires

to smuggle the drugs into the United States. *Id.* at 708. Prior to the respondents’ receipt of the shipment, the government had placed a beeper inside one of the cans of ether in order to monitor its whereabouts. *See id.* After several months of extensive visual and electronic surveillance, federal agents obtained a warrant to search a residence rented by the respondents, based in part on the information that they received through using the beeper. *Id.* at 709–10. Agents recovered cocaine and laboratory equipment, and the respondents were subsequently arrested and indicted for conspiracy “to possess cocaine with intent to distribute it and with the underlying offense.” *Id.* at 710 (citing 21 U.S.C. §§ 841(a)(1), 846 (2006)).

39. *Id.* at 712 (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)) (internal quotation marks omitted).

40. *See id.* at 712–13. The Court conceded that the installation of the beeper inside the ether can might have been a trespass, but concluded that this did not violate the Fourth Amendment because the respondents did not have any possessory interest in the can. *See id.*

41. *See id.* at 714. While the respondents did not have any reasonable expectation of privacy in the can, the Court acknowledged that they did have valid interests in the privacy of the house. *Id.* at 714. The Court noted that monitoring a “device such as a beeper is, of course, less intrusive than a full-scale search, but it does reveal a critical fact about the interior of the premises that the Government is extremely interested in knowing and that it could not have otherwise obtained without a warrant.” *Id.* at 715. Even so, the Court ultimately held that the district court should not have granted respondents’ motion to suppress the evidence because, even without the information gained from monitoring the beeper, there was sufficient evidence “to furnish probable cause for the issuance of the search warrant.” *Id.* at 721.

42. *See Katz v. United States*, 389 U.S. 347, 357 (1967) (“[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” (footnote omitted)).

43. *See Nathanson v. United States*, 290 U.S. 41, 47 (1933).

44. *Ornelas v. United States*, 517 U.S. 690, 696 (1996).

“more than bare suspicion.”⁴⁵ The express language of the Fourth Amendment further requires that search warrants be “supported by Oath or affirmation.”⁴⁶

Second, a proper search warrant requires a particular description of the location to be searched and of the items to be seized.⁴⁷ In *Lo-Ji Sales, Inc. v. New York*,⁴⁸ the Court denounced the issuance of general warrants, which granted law enforcement officers unfettered discretion in determining where and how to conduct a search.⁴⁹ At a minimum, a warrant must particularly identify the facets of a search at the outset.⁵⁰

Third, “a neutral and detached magistrate” must issue a search warrant.⁵¹ Presumably, police officers can discern when probable cause exists to justify a search, but disinterested judicial officers act as safeguards to preserve a criminal defendant’s Fourth Amendment rights.⁵² In other words, police officers focus on the prevention of crime, whereas judicial officers objectively weigh public interests against criminal defendants’ rights.

45. *Brinegar v. United States*, 338 U.S. 160, 175 (1949).

46. U.S. CONST. amend. IV; *cf.* *Franks v. Delaware*, 438 U.S. 154, 155–56 (1978) (holding that, in light of the warrant requirement of the Fourth Amendment, a criminal defendant may have the opportunity to challenge the veracity of the affidavit supporting a search warrant).

47. U.S. CONST. amend. IV.

48. 442 U.S. 319 (1979).

49. *See id.* at 325. The Court began its analysis by noting that the Fourth Amendment was adopted to protect against “the general warrant or writ of assistance.” *Id.* In *Lo-Ji Sales*, a state law enforcement investigator had purchased “adult” films from a store owned by *Lo-Ji Sales*, and after “viewing them, he concluded the films violated New York’s obscenity laws.” *Id.* at 321. Thereafter, the investigator showed the films to a magistrate, who issued a warrant authorizing law enforcement to search *Lo-Ji Sales*’s store; however, the warrant specifically listed only copies of the two films the investigator had previously purchased. *Id.* at 321–22. The officers who executed the search warrant conducted a general search of the *Lo-Ji Sales* premises and seized over 300 magazines and over 400 reels of film. *Id.* at 322–23. Because the search “was not limited at the outset as a search for other copies of the two ‘sample’ films,” but instead “expanded into a more extensive search” that was not supported by probable cause, the Court held that the warrant was invalid. *Id.* at 325–26.

50. *Id.* at 325 (“[T]he Fourth Amendment [does not] countenance open-ended warrants, to be completed while a search is being conducted and items seized or after the seizure has been carried out.”).

51. *Johnson v. United States*, 333 U.S. 10, 14 (1948). In *Johnson*, a detective had received information from an informant that *Johnson*, the petitioner, had been smoking opium in a hotel room. *Id.* at 12. The informant, “who was also a known narcotic user,” further advised the detective that “he could smell burning opium in the hallway.” *Id.* Finding that probable cause existed, the detective then proceeded to search *Johnson*’s room without a warrant and uncovered opium and a “smoking apparatus.” *Id.* Thereafter, *Johnson* was convicted for violating federal narcotics laws, *id.* at 11, but the Supreme Court reversed her conviction and concluded that a determination made by an officer involved with the case cannot be equated with a finding of probable cause by a disinterested judicial officer. *See id.* at 13–14, 16–17.

52. *See, e.g., id.* at 14 (“[T]he Fourth Amendment’s] protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. . . . When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.”).

Even if a search warrant satisfies the requirements named earlier, a police officer must execute the warrant in a constitutionally permissible manner— “[t]he general touchstone [is] reasonableness.”⁵³ The Court has concluded that, as a general principle, the Fourth Amendment’s reasonableness requirement demands that a police officer knock and announce his presence before entering the premises.⁵⁴ However, the Court also has also recognized that in exceptional circumstances the knock and announce rule may have to yield to “countervailing law enforcement interests.”⁵⁵ This is not a bright-line rule, but the Court definitively has concluded that the Fourth Amendment contains an implicit instruction governing the execution of search warrants.⁵⁶

C. *Exceptions to the Warrant Clause*

1. *The Exigent Circumstances Exception*

If a police officer performs a search or seizure without a valid warrant, then only if the government can prove an adequate justification will the search or seizure be upheld.⁵⁷ One scenario that provides a sufficient justification for dispensing with the warrant requirement is the exigent circumstances exception.⁵⁸ For instance, the Court has recognized that the recent flight of an

53. *United States v. Ramirez*, 523 U.S. 65, 71 (1998).

54. *See, e.g., Wilson v. Arkansas*, 514 U.S. 927, 936 (1995) (noting a “presumption in favor of announcement” for when police enter a dwelling to execute a search warrant). In *Wilson*, the Court discussed some of the relevant factors for determining whether a search was reasonable. *See id.* at 936. In that case, state police officers had obtained a valid warrant to search petitioner Wilson’s residence for narcotics. *Id.* at 929. Upon arriving at the residence, the police found the main door open and entered through an unlocked screen door; the officers announced their presence only after they had begun to enter the residence. *Id.* The officers searched the premises and “seized marijuana, methamphetamine, valium, narcotics paraphernalia, a gun, and ammunition,” *id.*, which the prosecution used as evidence against Wilson at trial. *See id.* at 930. Recognizing that a “common-law ‘knock and announce’ principle” existed when the Fourth Amendment was adopted, *id.* at 929, the Court held that under “some circumstances[,] an officer’s unannounced entry into a home might be unreasonable under the Fourth Amendment,” *id.* at 934.

55. *Id.* These countervailing interests include threat of physical harm to a police officer, the pursuit of a recently escaped arrestee, and a reasonable belief that a prior announcement would result in the destruction of evidence. *Id.* at 936. In this case, the Court agreed that a prior announcement could have resulted in physical harm to the officers and in the destruction of evidence (i.e., the narcotics); therefore, the Court remanded the case to the state court for further findings of fact and a determination of whether the entry was reasonable. *Id.* at 937.

56. *Ramirez*, 523 U.S. at 71; *see also Wilson*, 514 U.S. at 934. *See generally* *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997) (“[I]n each case, it is the duty of a court confronted with the question to determine whether the facts and circumstances of the particular entry justified dispensing with the knock-and-announce requirement.”).

57. *See Katz v. United States*, 389 U.S. 347, 357 (1967).

58. *See generally* *Payton v. New York*, 445 U.S. 573, 590 (1980) (“In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.”).

armed robber can justify a warrantless search of the robber's refuge.⁵⁹ In that context, the fact that exigent circumstances exist means that a warrantless search usually does not run afoul of the Fourth Amendment because "[t]he Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others."⁶⁰ The Court has since clarified the meaning of exigent circumstances, explaining that "a warrantless intrusion may be justified by hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling."⁶¹

South Carolina courts have employed this doctrine to resolve questions concerning the legality of warrantless searches,⁶² and courts have agreed that exigent circumstances justify a warrantless search "when there is a compelling need for official action *and no time to secure a warrant*."⁶³ Accordingly, South Carolina courts have looked for guidance to examples of exigencies that the United States Supreme Court has addressed in its decisions. For instance, the South Carolina Court of Appeals has concluded that exigent circumstances exist when a police officer conducts a cursory search of an area to prevent further criminal activity and to ensure the safety of potential victims.⁶⁴ Additionally, the

59. *See* *Warden v. Hayden*, 387 U.S. 294, 298 (1967). In *Warden*, police officers received a report of an armed robbery from a cab dispatcher, who had received information about the robbery from two eyewitnesses. *Id.* at 297. The dispatcher described to the police the suspect's physical appearance and where he had fled; shortly thereafter, the police arrived at the suspect's residence. *Id.* Given the potential for future physical harm, the Court judged the officers' search of the residence to have been reasonable. *See id.* at 299.

60. *Id.* at 298–99.

61. *Minnesota v. Olson*, 495 U.S. 91, 100 (1990) (citation omitted) (quoting *State v. Olson*, 436 N.W.2d 92, 97 (Minn. 1989) (en banc)) (internal quotation marks omitted) (citing *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984)).

62. *See e.g.*, *State v. Herring*, 387 S.C. 201, 210–11, 692 S.E.2d 490, 494–95 (2009) (discussing the exigent circumstances exception); *State v. Brown*, 289 S.C. 581, 587–88, 347 S.E.2d 882, 885–86 (1986) (same); *State v. Abdullah*, 357 S.C. 344, 350–52, 592 S.E.2d 344, 348–49 (Ct. App. 2004) (same).

63. *Brown*, 289 S.C. at 587, 347 S.E.2d at 886 (quoting *Michigan v. Tyler*, 436 U.S. 499, 509 (1978)) (internal quotation marks omitted).

64. *See Abdullah*, 357 S.C. at 351–52, 592 S.E.2d at 348. There, police officers received a report of an armed robbery at an apartment. *Id.* at 348, 592 S.E.2d at 346. When the officers arrived at the apartment, they noticed Abdullah, the respondent, standing in the doorway. *Id.* The officers did not know the man's identity and requested his cooperation, but Abdullah refused to comply and obstructed the officers' entry into the apartment bedroom. *See id.* After a struggle between the officers and Abdullah, the officers handcuffed him so they could search the premises. *See id.* at 348–49, 592 S.E.2d at 346–47. Because the officers had noticed bullet holes throughout the apartment, one officer "conducted a protective sweep of the apartment to search for victims, suspects, and to preserve the crime scene." *Id.* at 348–49, 592 S.E.2d at 347. The search revealed money, illegal drugs, and drug paraphernalia, which was confiscated and admitted into evidence against Abdullah. *Id.* at 349, 592 S.E.2d at 347. After reviewing the facts, the court concluded that, given the evidence of bullet holes and Abdullah's failure to cooperate, exigent circumstances justified the warrantless search of the apartment. *Id.* at 352, 592 S.E.2d at 348.

South Carolina Supreme Court has held that exigent circumstances exist to justify an officer's look through the window of a suspect's residence to see if he was inside when the suspect had recently fled the scene of a violent crime and the officer had a reasonable concern for the safety of himself and others.⁶⁵

2. *The Automobile Exception*

In addition, the United States Supreme Court, reasoning that evidence located inside an automobile can quickly be moved and destroyed, has recognized an automobile's mobility as creating an exigency.⁶⁶ Thus, a police officer properly conducts a warrantless vehicle search if "there is probable cause to search an automobile stopped on the highway; the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained."⁶⁷ More recently, the Court has expanded the scope of the automobile exception somewhat by permitting warrantless searches of containers and compartments located inside vehicles, so long as probable cause exists to conduct the search.⁶⁸ Importantly, an automobile's "ready mobility"⁶⁹

65. *Herring*, 387 S.C. at 206–207, 210–11, 692 S.E.2d at 492–93, 495. The police officers in *Herring* had responded to a report of a homicide at a nightclub, where eyewitnesses informed them that Herring, the appellant, had fatally shot the victim and left the nightclub in his vehicle, which the eyewitnesses described to the officers. *See id.* at 205–06, 692 S.E.2d at 492–93. The officers were able to determine the location of Herring's home address from his vehicle registration information, and upon arriving at the home, one officer noticed a light inside the garage and peered through a window to see if he could see Herring. *Id.* at 206, 692 S.E.2d at 493. The officer did not see Herring, but he did notice Herring's vehicle inside the garage. *Id.* Soon after, the officers returned after obtaining a warrant to search Herring's residence; inside, they found the murder weapon. *Id.* at 207, 692 S.E.2d at 493. At a suppression hearing, Herring argued that the police had conducted an illegal search by looking inside his garage. *Id.* at 208, 692 S.E.2d at 493. The Supreme Court of South Carolina disagreed and held that the recent flight of a murder suspect constituted "exigent circumstances then and there presenting," such that the officer's "minimal intrusion was objectively reasonable and did not constitute a Fourth Amendment violation." *Id.* at 211, 692 S.E.2d at 495.

66. *See Chambers v. Maroney*, 399 U.S. 42, 48 (1970) (citing *Carroll v. United States*, 267 U.S. 132, 153 (1925)).

67. *Id.* at 51. In *Chambers*, police officers responded to a report of an armed robbery. *Id.* at 44. Based on the descriptions of the suspects and their vehicle, the officers arrested Chambers, the petitioner, and then impounded the vehicle. *See id.* While searching the vehicle, officers found two revolvers and other evidence that the suspects had been involved with the robbery; thereafter, Chambers was convicted of two counts of armed robbery. *Id.* at 44–45. On appeal, the Court upheld Chambers's conviction, reasoning that the police officers had probable cause to search the vehicle and that the circumstances called for an immediate search. *Id.* at 52.

68. *See California v. Acevedo*, 500 U.S. 565, 580 (1991). Prior to 1991, the Court had distinguished between probable cause to search a vehicle and probable cause to search a container located within a vehicle. To illustrate, a police officer who had probable cause to search an automobile in its entirety for contraband did not need to secure a warrant to search parts and containers within the vehicle, such as the glove compartment. *See United States v. Ross*, 456 U.S. 798, 800 (1982). However, a police officer who had probable cause to search a vehicle could not search personal containers located in the vehicle without a search warrant. *See Arkansas v. Sanders*, 442 U.S. 753, 763–66 (1979).

69. *California v. Carney*, 471 U.S. 386, 391 (1985).

and an individual's diminished expectation of privacy form the primary justifications upon which warrantless vehicle searches are based.⁷⁰

Accordingly, South Carolina courts have incorporated the automobile exception into state search and seizure jurisprudence, reaffirming the justifications⁷¹ and the guidelines expounded by the Supreme Court.⁷² The South Carolina Supreme Court has understood the automobile exception as authorizing a warrantless vehicle search "if there is probable cause to search a vehicle, . . . so long as the search is based on facts that would justify the issuance of a warrant."⁷³ For example, the courts have upheld a criminal defendant's conviction when police officers had probable cause to believe that an automobile harbored evidence of a homicide,⁷⁴ as well as when there was probable cause that an automobile contained illegal contraband.⁷⁵ Notably, in addressing the scope of the automobile exception, the South Carolina Supreme Court implied that the state constitution may provide a greater level of privacy protection than that guaranteed by its federal counterpart;⁷⁶ however, the court ultimately rejected this contention and instead reaffirmed the basic underpinnings of the automobile exception.⁷⁷

70. *See id.* (citing *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976)) (noting that, while the Court traditionally relied solely on an automobile's mobility to justify warrantless vehicle searches, subsequent cases suggest that a reduced expectation of privacy has arisen as the second justification).

71. *See State v. Cox*, 290 S.C. 489, 491, 351 S.E.2d 570, 571 (1986) (per curiam) (underscoring the mobility and reduced expectation of privacy bases for the automobile exception).

72. *See, e.g., State v. Weaver*, 374 S.C. 313, 319–21, 649 S.E.2d 479, 482 (2007) (reviewing a Fourth Amendment search and seizure case using guidelines established by the Supreme Court); *State v. Moore*, 377 S.C. 299, 310, 659 S.E.2d 256, 262 (Ct. App. 2008) (same); *State v. Bultron*, 318 S.C. 323, 332–33, 457 S.E.2d 616, 621–22 (Ct. App. 1995) (same).

73. *Weaver*, 374 S.C. at 320, 649 S.E.2d at 482 (citing *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (per curiam)).

74. *See id.* (concluding that police officers' knowledge of the defendant's use of his vehicle and observation of his apparent effort to destroy evidence within it amounted to a showing of probable cause justifying the warrantless vehicle search); *Moore*, 377 S.C. at 309–10, 659 S.E.2d at 261–62 (concluding that a report of a hit-and-run accident and description matching the defendant's automobile justified the police officers' processing of the vehicle).

75. *See Bultron*, 318 S.C. at 333, 457 S.E.2d at 622 (concluding that police officers' knowledge of the precise location of illegal drug activity and of the exact vehicle used to transport the illegal drugs justified the officers' warrantless vehicle search).

76. *See Weaver*, 374 S.C. at 321, 649 S.E.2d at 483 (citing *State v. Forrester*, 343 S.C. 637, 643–45, 541 S.E.2d 837, 840–41 (2001)).

77. *See id.* at 322, 649 S.E.2d at 483. Because the court held that the benchmark for a warrantless vehicle search in South Carolina is whether an officer has probable cause, it held that "the state constitution's requirement that the invasion of one's privacy be reasonable [was] met." *Id.*

3. *The Search Incident to Arrest Exception*

The United States Supreme Court has further determined that an arrest by itself can provide sufficient justification for an attendant warrantless search.⁷⁸ The search incident to arrest exception stems from the need to maintain the arresting officer's safety and to prevent the destruction of evidence close to the arrestee.⁷⁹ Consequently, the Court has deemed a warrantless search incident to an arrest to be constitutionally permissible if the arresting officer conducts "a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."⁸⁰ In examining the extent to which an arresting officer can search an arrestee, the Court has concluded that "in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment."⁸¹

Vehicle searches incident to arrest embody the same general principles underlying the search incident to arrest exception,⁸² but the Court has specifically defined what constitutes an area within the arrestee's "immediate control" for the purposes of conducting vehicle searches. In *New York v. Belton*,⁸³ the Court held that:

78. See *Chimel v. California*, 395 U.S. 752, 762–63 (1969).

79. *Id.*

80. *Id.* at 763. Previously, the Court had authorized warrantless searches of the general place where the arrest had occurred; the Court called this a "right to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed." *United States v. Rabinowitz*, 339 U.S. 56, 61 (1950) (quoting *Agnello v. United States*, 269 U.S. 20, 30 (1925)) (internal quotation marks omitted). However, in *Chimel*, the Court challenged prior reasoning and limited the area of the search, stating that while "ample justification" exists for a search incident to arrest, "[t]here is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself." *Chimel*, 395 U.S. at 763.

81. *United States v. Robinson*, 414 U.S. 218, 235 (1973). In *Robinson*, a police officer had lawfully stopped and arrested Robinson, the respondent, for driving under a revoked license and for having obtained a permit by misrepresentation. *Id.* at 220. The officer thereafter conducted a full search of Robinson's person and found a "crumpled up cigarette package" that contained heroin capsules. *Id.* at 221–23 (internal quotation marks omitted). Robinson was convicted of possessing and facilitating the concealment of heroin. *Id.* at 219. The United States Court of Appeals for the District of Columbia reversed Robinson's conviction and held that an arresting officer may conduct a full search of an arrestee's person only if there is a "possibility of discovery of evidence or fruits." *Id.* at 233. The United States Supreme Court disagreed, concluding that a lawful arrest, without more, justifies a full search of an arrestee's person. See *id.* at 235.

82. See *Arizona v. Gant*, 129 S. Ct. 1710, 1714 (2009) (citing *Chimel*, 395 U.S. at 763).

83. 453 U.S. 454 (1981).

[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, *as a contemporaneous incident of that arrest*, search the passenger compartment of that automobile.

It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach.⁸⁴

Subsequently, the Court clarified the scope of *Belton* by addressing the issue of whether “the span of the area generally within the arrestee’s immediate control is determined by whether the arrestee exited the vehicle at the officer’s direction, or whether the officer initiated contact with him while he remained in the car.”⁸⁵ The Court rejected the notion that whether an officer initiates contact with an occupant of a vehicle is relevant to determining whether *Belton* applies; thus, an officer may conduct a vehicle search incident to an arrest so long as the arrestee was a “recent occupant” of the vehicle⁸⁶ and had reasonable access to the passenger compartment at the time of the search.⁸⁷ Moreover, a police officer may perform a vehicle search incident to an arrest if there is reason to

84. *Id.* at 460 (emphasis added) (footnotes omitted) (citing *Robinson*, 414 U.S. at 235; *Draper v. United States*, 358 U.S. 307, 314 (1959)). In *Belton*, a police officer had arrested the occupants of a vehicle for illegal possession of marijuana after he had pulled the car over for speeding and noticed the smell of burnt marijuana. *Id.* at 455–56. The officer had each of the occupants exit the vehicle, and then proceeded to search the car’s passenger compartment, where he found cocaine in a jacket belonging to Roger Belton, the respondent. *Id.* On a motion to suppress the evidence, Belton argued that the officer’s seizure of the cocaine had violated his rights under the Fourth Amendment, but the trial court disagreed and denied his motion. *See id.* at 456. The Supreme Court determined that the search of Belton’s jacket was analogous to a search of an area “within the arrestee’s immediate control,” previously approved of in *Chimel*. *Id.* at 462 (internal quotation marks omitted). Therefore, because Belton could have reached the passenger compartment at the time of the search, the Court upheld it as a “search incident to a lawful custodial arrest.” *Id.* at 453–54.

85. *Thornton v. United States*, 541 U.S. 615, 620–21 (2004).

86. *Id.* at 623–24 (internal quotation marks omitted).

87. *See Gant*, 129 S. Ct. at 1723. In *Gant*, police officers had arrested Rodney Gant, the respondent, for driving under a suspended license after they had received an anonymous tip about drugs being sold in the area. *See id.* at 1714–15. After handcuffing Gant and securing him in a patrol car, the officers searched Gant’s vehicle without a warrant and discovered a gun and a bag of cocaine. *Id.* at 1715. A jury convicted Gant of “possession of a narcotic drug for sale and possession of drug paraphernalia” after the trial court denied Gant’s suppression motion. *Id.* On appeal, the State had urged the Supreme Court to accept a broad reading of *Belton* that would permit all vehicle searches incident to a lawful arrest; the State argued that such an “expansive rule correctly balances law enforcement interests, including the interest in a bright-line rule, with an arrestee’s limited privacy interest in his vehicle.” *Id.* at 1720. The Court rejected the State’s interpretation, explaining that “[t]o read *Belton* as authorizing a vehicle search incident to every recent occupant’s arrest would thus untether the rule from the justifications underlying the *Chimel* exception.” *Id.* at 1719. Accordingly, the Court held that the search incident to arrest exception did not justify the officers’ search of Gant’s vehicle. *See id.* at 1723–24.

believe that “the vehicle contains evidence of the offense of arrest.”⁸⁸ In sum, in order to properly conduct a warrantless search of a vehicle after making a lawful arrest, an officer must either be able to point to the fact that the arrestee is within reach of the vehicle or that it is likely that offense-related evidence will be found; otherwise, the search incident to arrest exception will not apply to sustain the search.⁸⁹

South Carolina courts have similarly adopted the search incident to arrest exception.⁹⁰ The South Carolina Supreme Court has identified that a search incident to arrest must be “substantially contemporaneous with the arrest and . . . confined to the immediate vicinity of the arrest.”⁹¹ Likewise, state courts recognize that “the need to disarm the suspect in order to take him into custody, and . . . the need to preserve evidence for later use at trial” provide the justifications for the search incident to arrest exception.⁹²

The South Carolina Court of Appeals has further upheld a warrantless vehicle search on the basis of the search incident to arrest exception. In *State v. Dunbar*,⁹³ the court determined that “[o]nce probable cause exists for an arrest, [p]olice officers may make a search of an arrestee’s person and the area within his immediate control for weapons and destructible evidence.”⁹⁴ Therefore, a state or local police officer performs a proper vehicle search incident to arrest

88. *Id.* at 1723. Because Gant was already in a patrol car and had been arrested for a traffic offense—“an offense for which police could not expect to find evidence in the passenger compartment of Gant’s car”—the search was unreasonable. *Id.* at 1719.

89. *See id.* at 1723–24 (“When these justifications are absent, a search of an arrestee’s vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.”).

90. *See, e.g., State v. Freiburger*, 366 S.C. 125, 132–34, 620 S.E.2d 737, 740–41 (2005) (discussing and applying the search incident to arrest exception); *State v. Ferrell*, 274 S.C. 401, 408–09, 266 S.E.2d 869, 872–73 (1980) (same).

91. *State v. Brown*, 289 S.C. 581, 587, 347 S.E.2d 882, 885 (1986) (citing *Shipley v. California*, 395 U.S. 818, 819 (1969) (per curiam)). With respect to the contemporaneous requirement, the court of appeals has clarified that a search that immediately “precedes a formal arrest is nonetheless valid” as a search incident to arrest. *State v. Moultrie*, 316 S.C. 547, 551, 451 S.E.2d 34, 37 (Ct. App. 1994) (citing *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980); *United States v. Miller*, 925 F.2d 695, 698 (4th Cir. 1991)).

92. *Freiburger*, 366 S.C. at 132, 620 S.E.2d at 740 (citing *Knowles v. Iowa*, 525 U.S. 113, 116 (1998)).

93. 354 S.C. 479, 581 S.E.2d 840 (Ct. App. 2003), *vacated on other grounds*, 356 S.C. 138, 587 S.E.2d 691 (2003) (per curiam). In *Dunbar*, police officers had organized an undercover drug transaction involving an informant, Jonathan Small, and Michael Dunbar, the appellant. *See id.* at 482, 581 S.E.2d at 842. Small and Dunbar arrived in their vehicle with the drugs at a specified location and time. *Id.* Upon learning this information from the informant, police officers went to the designated location and approached the vehicle harboring the drugs; after asking Dunbar to exit the vehicle (Small had run away), the officers searched it and discovered a paper bag that contained five ounces of cocaine. *Id.* Dunbar was convicted of three drug-related offenses, including trafficking in cocaine. *Id.*

94. *Id.* at 483, 581 S.E.2d at 842 (second alteration in original) (quoting *Ferrell*, 274 S.C. at 405, 266 S.E.2d at 871) (internal quotation marks omitted).

only if the arrestee is within close proximity to the vehicle at the time of the search.

4. *The Vehicle Inventory Search Exception*

Federal and state governments have justified a number of warrantless vehicle searches by showing the existence of probable cause, yet the United States Supreme Court has validated warrantless vehicle searches, even in the absence of probable cause, on the basis of a vehicle inventory search exception.⁹⁵ This warrant exception authorizes vehicle searches that are conducted according to “standard police procedures” and are not a pretext to conceal an “investigatory police motive.”⁹⁶ Vehicle inventory proceedings derive from the need to preserve the owner’s property when a car is impounded,⁹⁷ to protect the police from frivolous claims concerning lost or stolen property,⁹⁸ and to prevent physical harm to the police.⁹⁹ For these reasons, a vehicle inventory search constitutes a presumptively reasonable search under the Fourth Amendment.¹⁰⁰

South Carolina courts agree that a police officer conducting a routine vehicle inventory search does not need to obtain a warrant.¹⁰¹ Specifically, the supreme court has held that the vehicle inventory search exception applies when an officer intends to secure and protect the car and its contents.¹⁰² Likewise, a

95. See *South Dakota v. Opperman*, 428 U.S. 364, 375–76 (1976). In this case, Donald Opperman, the respondent, had illegally parked his vehicle in a restricted zone. *Id.* at 365. Because Opperman had neglected to move his vehicle, police officers had it towed to the city impound lot. See *id.* at 365–66. In compliance with standard police procedures, the officers inventoried the contents of the vehicle and discovered a plastic bag that contained marijuana. *Id.* at 366. Opperman was convicted of possession of marijuana. *Id.* Because the officers had discovered the marijuana during the course of a routine inventory search, the Court concluded that the search did not violate the Fourth Amendment. See *id.* at 375–76.

96. *Id.* at 372, 376.

97. See *United States v. Mitchell*, 458 F.2d 960, 961 (9th Cir. 1972).

98. See *United States v. Kelehar*, 470 F.2d 176, 178 (5th Cir. 1972).

99. See *Cooper v. California*, 386 U.S. 58, 61–62 (1967).

100. See generally *Opperman*, 428 U.S. at 373 (“[T]his Court has consistently sustained police intrusions into automobiles impounded or otherwise in lawful police custody where the process is aimed at securing or protecting the car and its contents.”).

101. See, e.g., *State v. Lemacks*, 275 S.C. 181, 184, 268 S.E.2d 285, 286 (1980) (approving of a warrantless vehicle inventory searches); *State v. Morris*, 312 S.C. 116, 118, 439 S.E.2d 291, 292 (Ct. App. 1993) (same); *State v. Boyd*, 288 S.C. 206, 208, 341 S.E.2d 144, 145 (Ct. App. 1986) (per curiam) (same).

102. See *Lemacks*, 275 S.C. at 184, 268 S.E.2d at 286. In *Lemacks*, a police officer had observed a parked automobile “jutting into the roadway,” creating a traffic hazard. *Id.* at 182, 268 S.E.2d at 285. The officer spoke with the driver, left, and returned shortly thereafter, noticing that the vehicle had not moved and that the keys were on the floorboard. *Id.* at 182, 268 S.E.2d at 285–86. To avoid obstruction with oncoming traffic, the officer called for a tow truck and inventoried the vehicle. *Id.* at 182–83, 268 S.E.2d at 286. An inventory search of the trunk revealed evidence of criminal theft. See *id.* at 181–83, 268 S.E.2d at 285–86. The automobile owner, Lemacks, was convicted of housebreaking and grand larceny. *Id.* at 181–82, 268 S.E.2d at 285. The court

vehicle inventory search does not trigger Fourth Amendment protection if the vehicle has been abandoned.¹⁰³ Notably, the South Carolina Supreme Court also addressed whether the search of the inventory of a locked trunk of an automobile ran afoul of the state constitution—after analyzing the circumstances surrounding the search, the court concluded that it did not violate any state constitutional provision.¹⁰⁴

D. Remedies for the Violation of an Individual's Fourth Amendment Rights

1. The Exclusionary Rule and the Fruit of the Poisonous Tree Doctrine

If the government performs a search or seizure without a warrant and cannot prove the applicability of an exception, then courts can remedy the Fourth Amendment violation by using the exclusionary rule, which allows courts to suppress evidence obtained via an illegal search or seizure.¹⁰⁵ The Supreme Court has held “that defendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have in fact been violated.”¹⁰⁶ If a criminal defendant meets this standing requirement, then any evidence that is the direct result of an unconstitutional search or seizure will not be admissible in federal or state court.¹⁰⁷

In addition, the Court has ordered the suppression of any incriminating information stemming from unconstitutional governmental conduct.¹⁰⁸ This principle, known as the “fruit of the poisonous tree” doctrine,¹⁰⁹ provides:

The Government cannot violate the Fourth Amendment—in the only way in which the Government can do anything, namely through its agents—and use the fruits of such unlawful conduct to secure a conviction. Nor can the Government make indirect use of such

affirmed Lemacks’s conviction, reasoning that officers searched the trunk “to secure and protect the contents” as part of a “routine inventory.” *Id.* at 184, 268 S.E.2d at 286.

103. *See id.*

104. *See id.* (reasoning that by abandoning the vehicle, Lemacks relinquished any claim to privacy he may have had).

105. *See Mapp v. Ohio*, 367 U.S. 643, 657 (1961) (“[O]ur holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense.”).

106. *United States v. Salvucci*, 448 U.S. 83, 85 (1980).

107. *See Mapp*, 367 U.S. at 655–57.

108. *See generally Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920) (“The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all.”). Under the exclusionary prohibition of *Silverthorne*, then, both the direct and the indirect products of a Fourth Amendment violation are inadmissible. *See id.* at 391–92.

109. *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (internal quotation marks omitted).

evidence for its case, or support a conviction on evidence obtained through leads from the unlawfully obtained evidence.¹¹⁰

Therefore, the government cannot use any evidence at trial that has a sufficient causal connection to a Fourth Amendment violation.¹¹¹

2. *Exceptions to Fourth Amendment Remedies: The Inevitable Discovery Doctrine*

Despite the judicially created remedies discussed above, the government can still circumvent the exclusion of improperly recovered evidence by showing that an exception to the exclusionary rule applies.¹¹² The Court has declared that the exclusionary rule will not foreclose admission of evidence if the government can obtain knowledge of it “from an independent source.”¹¹³ Specifically, the Court has allowed the admission of unlawfully obtained evidence when the government was able to prove that it would have secured the evidence through lawful means.¹¹⁴ This doctrine, known as the inevitable discovery doctrine, developed out of a recognition that excluding such evidence would place the government in a worse position than “if no illegality had transpired.”¹¹⁵ Moreover, the exclusion of such evidence would not deter police misconduct,

110. *Walder v. United States*, 347 U.S. 62, 64–65 (1954) (footnote omitted) (citations omitted) (citing *Silverthorne*, 251 U.S. at 392; *Weeks v. United States*, 232 U.S. 383, 393 (1914)); *see also Wong Sun*, 371 U.S. at 485 (“[T]he Fourth Amendment may protect against the overhearing of verbal statements as well as against the more traditional seizure of ‘papers and effects.’ . . . [V]erbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest . . . is no less the ‘fruit’ of official illegality than the more common tangible fruits of the unwarranted intrusion.”).

111. *See Silverthorne*, 251 U.S. at 392. However, where there is a causal connection, “such connection may have become so attenuated as to dissipate the taint.” *Nardone v. United States*, 308 U.S. 338, 341 (1939).

112. *See Powell v. Nevada*, 511 U.S. 79, 91 n.1 (1994) (Thomas, J., dissenting).

113. *Silverthorne*, 251 U.S. at 392.

114. *See Nix v. Williams*, 467 U.S. 431, 443–44 (1984). In *Nix*, police officers had obtained a warrant to arrest Williams, the respondent, for the abduction of a young girl who disappeared in Des Moines, Iowa. *Id.* at 434–35. Police officers arrested Williams 160 miles east of Des Moines, and had to drive him back to Des Moines. *Id.* During the drive, one of the police officers induced Williams to disclose the location of the missing girl’s body. *Id.* at 435–36. Without the assistance of counsel, Williams directed the officers to the girl’s body. *See id.* at 436. Williams was indicted and convicted of first-degree murder. *Id.* at 436–37. Williams argued for the suppression of the body and all related evidence as fruits of his incriminating statements to the police. *Id.* The Court affirmed an earlier reversal of Williams’s conviction and held that the incriminating statements Williams made to police had been obtained in violation of his Sixth Amendment right to counsel. *Id.* at 437 (citing *Brewer v. Williams*, 430 U.S. 387, 405–06 (1977)). At the second trial, the government argued that, even had Williams not revealed the location of the girl’s body, her body would inevitably have been discovered in the course of a lawful search. *See id.* at 437–38. The Court agreed, concluding that the challenged evidence was admissible. *Id.* at 449–50.

115. *Id.* at 443.

and would only fail to hold a guilty defendant accountable for his actions.¹¹⁶ Consequently, improperly seized evidence will be admissible if the government can prove by a preponderance of the evidence that it would have inevitably obtained the evidence through other, constitutionally permissible means.¹¹⁷

While South Carolina courts have yet to fully explore the doctrine, they have accepted inevitable discovery as an exception to the exclusionary rule.¹¹⁸ The South Carolina Court of Appeals has examined the rationales used by the Supreme Court and concluded that “[s]uppression [of such evidence] would do nothing whatever to promote the integrity of the trial process, but would inflict a wholly unacceptable burden on the administration of criminal justice.”¹¹⁹ At the very least, then, the court of appeals has acknowledged the significance attached to the inevitable discovery doctrine.

Court decisions over the last century demonstrate an expansive development of exceptions to the warrant requirement of the Fourth Amendment.¹²⁰ In fact, these exceptions arguably have largely abrogated the warrant requirement.¹²¹ If state and local government officials in South Carolina had any doubts, however, the South Carolina Court of Appeals certainly reaffirmed the viability of the warrant requirement when it announced its recent opinion in *Brown*.¹²² The *Brown* decision derives from established legal principles, but it may have implicitly granted heightened protection against unreasonable searches and seizures to state criminal defendants.

IV. ANALYSIS OF *BROWN*’S APPLICATION TO FOURTH AMENDMENT JURISPRUDENCE

A. *Comparison to Analogous South Carolina Cases*

In *Brown*, the South Carolina Court of Appeals denied the applicability of the search incident to arrest exception,¹²³ the automobile exception,¹²⁴ and the inevitable discovery doctrine.¹²⁵ First, the government argued that there was probable cause to arrest Brown for an open container violation and that the

116. *See id.* at 443–44.

117. *Id.* at 444.

118. *See, e.g.,* State v. McCord, 349 S.C. 477, 485 n.2, 562 S.E.2d 689, 693 n.2 (Ct. App. 2002) (“Assuming the blood sample was obtained in violation of the Fourth Amendment, such violation would not require exclusion of the DNA test results because they inevitably would have been discovered by lawful means.”).

119. *Id.* (quoting *Nix*, 467 U.S. at 447) (internal quotation marks omitted).

120. *See* discussion *supra* Part III.C.

121. *See* California v. Acevedo, 500 U.S. 565, 582 (1991) (Scalia, J., concurring) (“Even before today’s decision, the ‘warrant requirement’ had become so riddled with exceptions that it was basically unrecognizable.”).

122. State v. Brown, 389 S.C. 473, 484, 698 S.E.2d 811, 817 (Ct. App. 2010).

123. *Id.* at 481, 698 S.E.2d at 815.

124. *Id.* at 481–83, 698 S.E.2d at 815–16.

125. *Id.* at 484, 698 S.E.2d at 817.

subsequent search of the duffel bag thus constituted a lawful search incident to that arrest.¹²⁶ The court rejected this argument, noting that Brown's inability to reach the duffel bag at the time of the search and the improbability of finding open alcohol containers in the bag precluded applicability of the search incident to arrest exception.¹²⁷ In earlier cases, South Carolina appellate courts had sustained warrantless searches on the basis of the search incident to arrest exception,¹²⁸ but they so held only where the officer had searched the arrestee's person¹²⁹ or the area within the arrestee's immediate control.¹³⁰ Also, the South Carolina Supreme Court has held that this doctrine justifies a warrantless search when the officer seeks to preserve evidence.¹³¹ Because Brown was detained in the patrol car at the time of the search,¹³² and because the officer did not have probable cause to believe that the duffel bag contained evidence,¹³³ the court deemed the search improper with regard to Brown's arrest.

Second, the government had argued that the automobile exception justified the warrantless search because the duffel bag was in the vehicle.¹³⁴ However, the court disagreed, reasoning that the officer did not have the requisite probable cause to search the vehicle or any containers therein (i.e., the duffel bag).¹³⁵ In

126. *See id.* at 479–80, 698 S.E.2d at 814–15.

127. *Id.* at 481, 698 S.E.2d at 815.

128. *See, e.g., State v. Freiburger*, 366 S.C. 125, 133–34, 620 S.E.2d 737, 741 (2005) (“We find the search conducted by Trooper Meredith was a legitimate search incident to arrest, necessary to ensure his safety in order to transport Freiburger to the jail.”); *State v. Cannon*, 336 S.C. 335, 339, 520 S.E.2d 317, 319 (1999) (“[T]he evidence seized as a result of the valid search incident to arrest was properly admitted in respondent’s trial for possession of crack cocaine with intent to distribute.”); *State v. Dunbar*, 354 S.C. 479, 485, 581 S.E.2d 840, 844 (Ct. App. 2003) (“[T]he warrantless arrest of Dunbar, as well as the search incident to Dunbar’s arrest, was proper. The trial court did not err in refusing to suppress the cocaine found inside the car.”).

129. For example, in *State v. Freiburger*, 366 S.C. 125, 620 S.E.2d 737 (2005), the supreme court upheld a warrantless search of Freiburger’s person, reasoning that the officer had a need to disarm Freiburger before taking him into custody. *Id.* at 133–34, 620 S.E.2d at 741. The officer stopped Freiburger, the appellant, for hitchhiking on a road late at night, and patted Freiburger down before placing him under arrest. *Id.* at 130, 620 S.E.2d at 739. Upon discovering that Freiburger was carrying a loaded revolver, the officer arrested him for “carrying arms” and confiscated the weapon. *Id.* (internal quotation marks omitted). When later tests revealed that this revolver had been used to kill a taxi-cab driver, Freiburger was arrested and convicted of murder. *Id.* at 130–31, 620 S.E.2d at 739–40. Similarly, in *State v. Cannon*, 336 S.C. 335, 520 S.E.2d 317 (1999), a police officer arrested Cannon, the respondent, for criminal domestic violence and, before placing him in a patrol car, searched Cannon’s person and discovered crack cocaine. *See id.* at 337, 520 S.E.2d at 318. The court of appeals affirmed Cannon’s conviction for possessing crack cocaine with an intent to distribute because the court concluded that the officer had conducted a lawful search incident to arrest. *Id.* at 339–40, 520 S.E.2d at 319.

130. *See, e.g., Dunbar*, 354 S.C. at 484–85, 581 S.E.2d at 843–44 (upholding a warrantless vehicle search where the defendant could reasonably reach the evidence).

131. *See Freiburger*, 366 S.C. at 132, 620 S.E.2d at 740–41 (citing *Chimel v. California*, 395 U.S. 752, 763 (1969)).

132. *Brown*, 389 S.C. at 478, 698 S.E.2d at 814.

133. *Id.* at 481, 698 S.E.2d at 815.

134. *See id.* at 481–83, 698 S.E.2d at 815–16.

135. *See id.* at 482–83, 698 S.E.2d at 816.

earlier cases, South Carolina courts had upheld warrantless vehicle searches, but in each of those cases, the officer had probable cause to believe that the automobile contained evidence of a particular crime.¹³⁶ In other words, the officer had learned prior to the search that the vehicle might have been used to facilitate a crime¹³⁷ or that it might have been used in the commission of a crime.¹³⁸ In *Brown*, the officer had no reason to believe that the vehicle or any containers inside harbored cocaine (or any other drugs, for that matter).¹³⁹ Therefore, the court rejected the applicability of the automobile exception.

Third, the government argued that police officers would inevitably have discovered the cocaine in the course of a routine vehicle inventory search.¹⁴⁰ The court rejected this argument because the government could not prove that police officers would have inventoried the vehicle in accordance with standard police procedures.¹⁴¹ In earlier cases, South Carolina courts had approved of the inevitable discovery doctrine as a valid exception to the exclusionary rule. Moreover, the South Carolina Supreme Court had upheld a warrantless vehicle search based on the vehicle inventory search exception.¹⁴² In that case, however, officers conducted a routine inventory search incident to a lawful impoundment of the vehicle; the officers did not have any hidden investigatory motive when they searched the trunk and found incriminating evidence.¹⁴³ In *Brown*, police officers did not discover the cocaine during a routine inventory search, and the government could not prove that officers would have impounded and searched the vehicle without an investigatory motive.¹⁴⁴ Therefore, the court concluded that the inevitable discovery doctrine could not support Brown's conviction.

B. Affirming the Conviction: How the Court Could Have Upheld the Search

The South Carolina Court of Appeals distinguished the facts of *Brown* from analogous cases, but the court still could have affirmed Brown's conviction and sentence for trafficking cocaine on other grounds. Specifically, the court could have held that the arresting officer conducted a valid search premised on the driver. Because the driver remained in the vehicle and could have accessed the

136. See *State v. Weaver*, 374 S.C. 313, 320–21, 649 S.E.2d 479, 482 (2007); *State v. Bultron*, 318 S.C. 323, 333, 457 S.E.2d 616, 622 (Ct. App. 1995).

137. See *Weaver*, 374 S.C. at 321, 649 S.E.2d at 482.

138. See *Bultron*, 318 S.C. at 333, 457 S.E.2d at 622 (determining that an informant's tip and officers' observations were sufficient to furnish probable cause to search).

139. See *Brown*, 389 S.C. at 483, 698 S.E.2d at 816.

140. *Id.*

141. See *id.* at 484, 698 S.E.2d at 817.

142. See *State v. Lemacks*, 275 S.C. 181, 183–84, 268 S.E.2d 285, 286 (1980) (upholding an inventory search of the locked trunk of an automobile).

143. See *Lemacks*, 275 S.C. at 184, 268 S.E.2d at 286.

144. See *Brown*, 389 S.C. at 484, 698 S.E.2d at 817.

duffel bag at the time of the search,¹⁴⁵ the search incident to arrest exception likely would have applied to the driver. The arresting officer could have demonstrated that he searched the duffel bag to preclude the driver from retrieving and using weapons.¹⁴⁶ The officer arrested the driver shortly after searching the duffel bag; thus, the search would have been sufficiently contemporaneous with the driver's arrest.¹⁴⁷

Accordingly, the search would not have presented any violations of the driver's constitutional rights.¹⁴⁸ It follows that the driver would not have had standing under the exclusionary rule to argue for suppression of the cocaine.¹⁴⁹ Assuming the government had charged both the driver and Brown with trafficking cocaine,¹⁵⁰ the government would then have had independent and valid grounds to submit the cocaine into evidence,¹⁵¹ meaning that the cocaine would have been admissible against Brown. In this manner, Brown's conviction and sentence would have been affirmed.

145. See *id.* at 478, 698 S.E.2d at 814.

146. See generally *Chimel v. California*, 395 U.S. 752, 763 (1969) (recognizing that the search incident to arrest exception derives from the need to preserve an arresting officer's safety).

147. See generally *New York v. Belton*, 453 U.S. 454, 460 (1981) ("[An officer] may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile."); *State v. Brown*, 289 S.C. 581, 587, 347 S.E.2d 882, 885 (1986) ("A search may be conducted incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest." (citing *Shipley v. California*, 395 U.S. 818, 819 (1969) (per curiam))).

148. See *Chimel*, 395 U.S. at 762–63.

149. See generally *United States v. Salvucci*, 448 U.S. 83, 95 (1980) ("[T]he values of the Fourth Amendment are preserved by a rule which limits the availability of the exclusionary rule to defendants who have been subjected to a violation of their [own] Fourth Amendment rights.").

150. But see *Brown*, 389 S.C. at 478, 698 S.E.2d at 814 (indicating that only Brown was charged with trafficking cocaine). In *State v. Bultron*, 318 S.C. 323, 457 S.E.2d 616 (Ct. App. 1995), the South Carolina Court of Appeals recognized that a group of individuals may be charged with trafficking cocaine if each accused individual had constructive possession—meaning "knowledge of and dominion or control over either the drugs or the premises upon which the drugs were found." *Id.* at 334, 457 S.E.2d at 622 (citing *State v. Ellis*, 263 S.C. 12, 22, 207 S.E.2d 408, 413 (1974)). Based on the driver's nervous behavior in *Brown*, he presumably knew there were drugs in the vehicle. See *Brown*, 389 S.C. at 478, 698 S.E.2d at 814. Moreover, at all relevant times, the driver had control over the car in which the duffel bag with cocaine was located. See *id.* Therefore, the government arguably could have charged the driver under the applicable state law. See S.C. CODE ANN. § 44-53-370 (2002 & Supp. 2010) (providing that "actual or constructive possession" of cocaine constitutes a felony).

151. See *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920) (authorizing use of evidence produced by an illegal search or seizure if the evidence could have been recovered through an independent source).

C. The Guarantee of “Privacy” in the South Carolina Constitution

1. Textual Difference Between the Federal and State Constitutional Provisions

In reaching its decision, the court of appeals did not explicitly address the relationship between the federal constitution and the state constitution, but the court’s ruling could stand for the proposition that Article I, Section Ten of the South Carolina Constitution imparts a greater degree of privacy than the Fourth Amendment of the United States Constitution does.¹⁵² Simply, there are clear textual differences between these federal and state constitutional provisions. The Fourth Amendment of the United States Constitution safeguards only “unreasonable searches and seizures.”¹⁵³ By contrast, Article I, Section Ten of the South Carolina Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.¹⁵⁴

Because the South Carolina Constitution explicitly protects against “unreasonable invasions of privacy,” South Carolina appellate courts have speculated as to whether this provision abrogates or limits the scope of some of the warrant exceptions. For instance, the supreme court has evaluated whether the vehicle inventory search exception runs afoul of the state constitution’s right to privacy.¹⁵⁵ Moreover, the supreme court has also analyzed whether the South Carolina Constitution requires a probable cause determination prior to a search of an offender’s bodily fluids,¹⁵⁶ despite the fact that the Fourth Amendment has no similar requirement.¹⁵⁷ Similarly, the South Carolina Supreme Court has examined whether the South Carolina Constitution requires a search warrant for

152. See *Brown*, 389 S.C. at 479–84, 698 S.E.2d at 814–17. Because *Brown* did not base his motion to suppress on state constitutional grounds, the court of appeals did not have a direct opportunity to explore the implications of Article I, section 10 of the South Carolina Constitution. See S.C. R. EVID. 103(a) (grounds for appeal). Even so, the court may have implicitly confirmed earlier suggestions that state criminal defendants have a greater degree of privacy.

153. U.S. CONST. amend. IV.

154. S.C. CONST. art. I, § 10.

155. See *State v. Lemacks*, 275 S.C. 181, 183–84, 268 S.E.2d 285, 286 (1980).

156. See *State v. Houey*, 375 S.C. 106, 109–10, 113, 651 S.E.2d 314, 316, 317–18 (2007).

157. See *Skinner v. Ry. Labor Excs. Ass’n*, 489 U.S. 602, 633 (1989) (declining to use a traditional probable cause analysis and holding that the compelling government interest in ensuring the safety of the public by way of toxicological testing outweighed any privacy interest implicated by the Fourth Amendment).

automobiles parked on private property,¹⁵⁸ despite the fact that the Fourth Amendment makes no distinctions among vehicles searches based upon where they occur.¹⁵⁹ In each instance, the court declined to interpret the state constitution in a manner that would impose additional constraints upon state and local government officials.¹⁶⁰

2. *The Legislative History of the State Constitutional Provision*

Despite these decisions, the appellate courts of South Carolina continue to appreciate that the state constitution may afford greater protection than the federal constitution.¹⁶¹ Apart from the textual difference between the federal and state constitutional provisions, the legislative history of Article I, Section Ten demonstrates that its drafters intended to extend protection beyond the context of traditional searches and seizures.¹⁶² The drafters recognized that “the circumstances are going to change and what might be reasonable today might not be reasonable in the future.”¹⁶³ Accordingly, the drafters conceded that they could not predict the factors surrounding an unreasonable invasion of privacy, and concluded that “this is something that the courts are going to write.”¹⁶⁴ Therefore, the legislative history shows that the drafters were depending upon the state judiciary to construct a precise meaning of this phrase.¹⁶⁵

3. *Potential Implications of Brown*

In *Brown*, the South Carolina Court of Appeals did not use the phrase “unreasonable invasion of privacy” in its opinion.¹⁶⁶ Nonetheless, the court may

158. See *State v. Weaver*, 374 S.C. 313, 317–18, 321–22, 649 S.E.2d 479, 481, 482–83 (2007).

159. See generally *California v. Acevedo*, 500 U.S. 565, 580 (1991) (“[There is] one rule to govern all automobile searches. The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.”).

160. See *Weaver*, 374 S.C. at 322, 649 S.E.2d at 483 (“Once the officers have probable cause to search a vehicle, the state constitution’s requirement that the invasion of one’s privacy be reasonable will be met.”); *Houey*, 375 S.C. at 113, 651 S.E.2d at 317–18 (“[W]e hold that probable cause based on individualized suspicion that an offender carries [a particular disease] is not required by the Fourth Amendment of the United States Constitution or by Article I, section 10, of the South Carolina Constitution.”).

161. See, e.g., *State v. Forrester*, 343 S.C. 637, 644, 541 S.E.2d 837, 841 (2001) (“[S]earches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution. . . .”); *State v. Austin*, 306 S.C. 9, 16, 409 S.E.2d 811, 815 (Ct. App. 1991) (noting that an exception that exists under the federal constitution need not exist under the South Carolina Constitution).

162. See *Proceedings of the Committee to Make a Study of the Constitution of South Carolina* (1895), Gen. Assemb., 97th Sess. 3–5 (S.C. Oct. 6, 1967).

163. *Id.* at 6 (statement of T. Emmet Walsh).

164. *Id.* (statement of Huger Sinkler).

165. *Id.* at 5.

166. See *State v. Brown*, 389 S.C. 473, 698 S.E.2d 811 (Ct. App. 2010).

have taken the first step in defining an unreasonable invasion of privacy. Assuming that *Brown* has roughly sketched a “zone[] of privacy”¹⁶⁷ guaranteed by Article I, Section Ten of the South Carolina Constitution, the judiciary may have imposed a higher burden of proving the validity of a warrantless search. First, Article I, Section Ten may reject the validity of the inevitable discovery doctrine, in that a warrantless search and seizure that will have transpired would have irrefutably violated the defendant’s right to privacy.¹⁶⁸ Second, Article I, Section Ten may require state and local police officers to articulate the facts surrounding a warrantless search in greater detail. If the facts do not adhere exactly to the guidelines propounded by the warrant exceptions,¹⁶⁹ then the search probably will have violated Article I, Section Ten. Finally, Article I, Section Ten may demand that state and local police officers secure a search warrant if they have any conceivable opportunity to do so. While the South Carolina Supreme Court previously rejected the notion that Article I, Section Ten limits the scope of certain warrant exceptions,¹⁷⁰ the South Carolina Court of Appeals may have reintroduced this possibility through its decision in *Brown*.

V. CONCLUSION

At first glance, the court in *Brown* confined its analysis to the facts of the case and to the application of Fourth Amendment principles. Because it could have upheld the warrantless search on unrelated grounds, the court may have implicitly confirmed that Article I, Section Ten affords greater protection than the Fourth Amendment, and the court may have begun to construct a framework for “unreasonable invasions of privacy.”¹⁷¹ Presently, only a handful of published cases have discussed the interplay between these state and federal constitutional provisions, and therefore, the meaning behind “unreasonable invasions of privacy” remains unclear.¹⁷² While the South Carolina judiciary probably will need years to develop a comprehensive history of this concept, *Brown* may have begun to challenge the acquiescence to law enforcement action and to initiate a movement in an era where “the ‘warrant requirement’ ha[s] become so riddled with exceptions that it [is] basically unrecognizable.”¹⁷³

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167. *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).

168. See Melanie D. Wilson, *An Exclusionary Rule for Police Lies*, 47 AM. CRIM. L. REV. 1, 25 (2010) (explaining that the inevitable discovery doctrine “may save the evidence” that is “seized in violation of the Constitution”).

169. See *Brown*, 389 S.C. at 480–84, 698 S.E.2d at 814–17.

170. See discussion *supra* Part IV.C.1.

171. S.C. CONST. art. I, § 10; see also discussion *supra* Part IV.B–C.

172. See discussion *supra* Part IV.C.1.

173. *California v. Acevedo*, 500 U.S. 565, 582 (1991) (Scalia, J., concurring).

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