



# Keep Your Cellphone WITH YOU

A LOOK AT FOURTH AMENDMENT RIGHTS.

WRITTEN BY PIERRE GROSIDIER

**JAMES HUTCHINGS JR. MIGHT REGRET LEAVING BEHIND HIS PHONE** in Linwood Thorne’s apartment.<sup>1</sup> Surveilling Thorne’s suspected hideaway following his indictment on narcotics and weapons trafficking charges, FBI agents pulled over Hutchings and Mark Harrison nearby in an investigative stop. Harrison tipped the agents about Thorne’s sole presence in the apartment, and the two confederates drove off. The agents subsequently

arrested Thorne in the apartment and seized four cellphones. The FBI secured search warrants for the phones, one of which turned out to be Hutchings’. Evidence therein led to Hutchings’ own indictment and conviction on a weapons trafficking charge. The trial court denied his pre-trial motion to suppress, and the U.S. District Court for the District of Columbia affirmed. It held that the warrant’s probable cause determination depended on the

phone’s association with Thorne, not on its ownership.<sup>2</sup>

The phone’s search warrant attested “that it was ‘associated with’ Thorne and that it ‘may reveal evidence pertaining to Thorne’s alleged violations of federal narcotics laws.’”<sup>3</sup> It justified the search by stating that narcotics traffickers use cellphones to orchestrate their illicit commerce and frequently use multiple phones to confuse and stymie authorities. The phone’s forensic report listed “James’s iPhone” as its owner. Forensic examiners eventually established that the phone belonged to Hutchings, and that the latter acted as middleman between Thorne and a firearms dealer. Prior to trial, Hutchings argued that no probable cause supported the search warrant “because the probable cause finding ‘depended upon [the phone’s] association with Thorne.’” On appeal, Hutchings argued that the FBI violated his Fourth Amendment rights because it should have interrupted its search the moment it realized that the phone was his. At that moment, “‘the factual basis on which the warrant was authorized’ was ‘inaccurate.’”<sup>4</sup>

Hutchings based his argument on *Maryland v. Garrison*.<sup>5</sup> In that case, police officers secured a warrant to search a suspect’s third floor apartment for drugs. The officers found drugs and cash on the third floor, as expected, but then realized that the third floor comprised two apartments and that they had found the contraband in another person’s apartment. The U.S. Supreme Court nonetheless validated the search under the Fourth Amendment because it

judged “the constitutionality of [the officers’] conduct in light of the information available to them at the time they acted.”<sup>6</sup> The officers found the contraband while they reasonably perceived the two apartments as one and based on a warrant mistakenly premised—in good faith—on a single apartment. The officers would have had to cease searching the second apartment the moment they realized the existence of two units and had notice of their warrant’s erroneous scope. In *Garrison*, by then, the officers had found the contraband. Thus, under *Garrison*, police officers must cabin their searches the moment “they know or should know that there is a risk that they are searching an item or a premises that was ‘erroneously included within the terms of the warrant.’”<sup>7</sup>

Here, the phone’s warrant contained no such error. It authorized the search of a phone “recovered” in Thorne’s apartment and “associated with” him. Its validity did not depend on the phone’s ownership. Nothing in the warrant became false or erroneous once the FBI received the forensic report that revealed its ownership, and nothing in the forensic report triggered a *Garrison* duty to interrupt the search. If anything, the label “James’s iPhone” validated the warrant’s assertion that the device was “associated with” Thorne, the leader of a large guns and drugs traffic. It was even plausible that Hutchings intentionally lent his phone to Thorne to use while on the lam, because “[m]ost people take their phones with them.”<sup>8</sup> **TBJ**

#### NOTES

1. *United States v. Hutchings*, 99 F.4th 604 (D.C. Cir. 2024).

2. *Id.* at 605–06.
3. *Id.* at 605.
4. *Id.* at 606–07.
5. *Id.* at 607 (citing *Maryland v. Garrison*, 480 U.S. 79 (1987)).
6. *Garrison*, 480 U.S. at 85.
7. *Hutchings*, 99 F.4th at 607–08 (quoting *Garrison*, 480 U.S. at 87).
8. *Id.* at 608.



#### PIERRE GROSIDIÉ

is a litigation attorney in Houston. He is certified in construction law by the Texas Board of Legal Specialization. Grosdidier’s practice also includes data privacy and unauthorized computer access issues and litigation. Prior to practicing law, he worked in the process control industry. Grosdidier holds a Ph.D. from Caltech and a J.D. from the University of Texas. He is a member of the State Bar of Texas, a registered P.E. in Texas (inactive), a member of the Texas Bar Foundation, and a fellow of the American Bar Foundation. Grosdidier was the State Bar of Texas Computer & Technology Section chair for 2022-2023 and was elected medium section representative to the State Bar of Texas for the 2023-2026 term.

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