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The Federal Law Enforcement -Informer-

A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR LAW ENFORCEMENT OFFICERS AND AGENTS

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer)*. The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. You can join *The Informer* Mailing List, and have *The Informer* delivered directly to you via e-mail by clicking on the link below.

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CASE SUMMARIES

Circuit Courts of Appeals

First Circuit

United States v. John, 59 F.4th 44 (1st Circuit 2023)

On November 10, 2018, police officers responded to a domestic disturbance call made by Nichelle Brison from her apartment. The officers knocked on the door and Howard John opened it. While two officers spoke with John in the hallway, a third officer entered the apartment.

Inside, the officer found Brison and her six-year-old son. Brison was bleeding from her face, and she stated that John had struck her face with his hand. The child was bleeding from his left hand. When the officer asked the child about his injury, he pointed to John and said, "[H]e cut me." The child also said, without prompting, "He has a gun," referring to John. When asked where the gun was located, the child responded, "[O]n his back." The officers arrested John for domestic assault and battery and took him to the police station.

After John was taken to the police station, an officer entered the apartment and spoke with Brison. Brison explained that John had arrived unannounced at her apartment at approximately 11:30 p.m., saying he was there to "gather some of his belongings." John and Brison argued over his unannounced visit because "he did not live there anymore." Brison reported that John slapped and choked her until their child "interceded." John then removed bags from the apartment, including a black backpack. When John returned to the apartment, Brison called the police. An argument ensued, during which Brison armed herself with a knife. John grabbed the knife from Brison, cutting himself in the process. Their son was also cut while trying to intervene. Brison added that she did not own any firearms, and if there were any firearms in the apartment, they belonged to John.

When officers spoke with Brison's son, he stated that he had seen a gun with something yellow on it in John's black backpack. The child also told officers that there was "a suitcase with guns" in the apartment.

Brison asked the officers to locate and remove any firearms in the apartment and signed a consent-to-search form. The officers opened a black case that John had left on the kitchen table near the front door. Brison told the officers that she had never seen the black case before that night when she observed John pull the case out from underneath an armoire in her apartment. The black case contained the lower receiver of an AR-15 rifle, two magazines loaded with 30 rounds of 5.56mm ammunition, three rifle scopes, two clips of 7.62mm ammunition, and other items.

Officers then searched John's car. The officers "believed that there was probable cause to believe that the rest of the rifle could be inside Mr. John's vehicle" based on the "the lower receiver of the rifle [found inside the case] . . . coupled with the fact that Mr. John had just removed a backpack from the apartment and placed it in his vehicle." The child had also told police that the black backpack contained a gun. In the car's trunk, an officer found a black backpack. Inside the backpack was a yellow glove and the upper receiver and barrel of an AR-15 rifle.

The government charged John with being a felon in possession of a firearm.

John argued that Brison's consent to search the black case was invalid because he retained a reasonable expectation of privacy in the case. John claimed that his expectation of privacy in the black was reasonable because he previously lived in Brison's apartment, he kept the case private, and he was in the process of removing it from the apartment. John added that if the evidence from the search of the case was suppressed, there would have been insufficient information to support probable cause for the subsequent search of his car.

The district court denied John's motion. The court concluded that John did not have reasonable expectation of privacy in his black case "because his presence in the apartment was not legitimate. [John] entered an apartment he had no permission to be in and assaulted the apartment's occupant." Upon conviction, John appealed.

The Fourth Amendment of U.S. Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." To prevail on a claim that a search or seizure violated the Fourth Amendment, a defendant must show, as a threshold matter, that he had a legitimate expectation of privacy in the place or item searched. To determine this, a court uses a two-part test: 1) whether the defendant had an actual, subjective expectation of privacy; and 2) whether that expectation "is one that society is prepared to recognize as objectively reasonable."

Without deciding whether John had an actual, subjective expectation of privacy in the contents of the black case, the First Circuit Court of Appeals held that John did not have an objectively reasonable expectation of privacy in the black case because he did not have permission to be in Brison's apartment, where he also did not have permission to store the black case.

The court found that, on November 10, John was a trespasser in Brison's apartment where he left his black case for a prolonged period without Brison's permission. As trespassers have no legitimate expectation of privacy "that society is prepared to recognize," the court held that John could not reasonably have expected that Brison or others at her request would not open the unlocked case, especially when his own actions gave rise to Brison's fear that the contents of the case might pose a danger. Consequently, the court affirmed the district court's denial of John's motion to suppress the evidence found in the black case and the later discovered evidence.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca1/21-1862/21-1862-2023-02-03.pdf?ts=1675458037

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Seventh Circuit

Pierner-Lytge v. Hobbs, 60 F.4th 1039 (7th Cir. 2023)

Amanda Pierner-Lytge lives in West Allis, Wisconsin, and works as a private security officer. She believes that openly carrying firearms in public brings attention to the right to bear arms under the Second Amendment. She had been previously reported to police as a disturbance to her neighbors.

One evening in April 2020, Lytge strapped a rifle with a spike bayonet (combined five foot long) to her back and a black semi-automatic handgun holstered to her right hip, along with a duty belt

containing pepper spray, a baton and two pairs of handcuffs. Lytge walked from her home to a public park near an elementary school that contained a playground and a baseball field. Due to COVID-19 restrictions on indoor public spaces, many children and families were reportedly at the park. Three reports were called in regarding an armed woman sitting near the baseball field with "lots of kids and families around." One witness told the first responding officer, Deputy Montrelle Hobbs, that for about ten minutes, Lytge had been sitting on the bleachers with a rifle and watching families walk by, which made the witness and her family uncomfortable.

Deputy Hobbs and another officer made contact with Lytge, informed her of the complaints. Lytge told officers she was exercising her Second Amendment rights, playing Pokémon Go, and that she had a concealed carry weapon license, but it was not on her person at the time. Sergeant Frederick Gladney arrived on scene and the officers learned from the West Allis Police Department the officers had interacted with Lytge multiple time under similar circumstances and that Lytge had previously resisted arrest and threatened officers. Additionally, the officers learned Lytge had been the subject of mental health detention proceedings on six prior occasions. The officers arrested Lytge for disorderly conduct, under Wis. Stat. § 947.01 and seized her rifle, bayonet, handgun, and duty belt. The district attorney declined to prosecute Lytge, and her property was returned.

Lytge sued the officers under 42 U.S.C. § 1983 for, among other things, arresting her without probable cause. The district court granted qualified immunity for the officers. Lytge appealed.

On appeal, a three-judge panel of the Seventh Circuit Court of Appeals recognized that probable cause to arrest exists when a reasonable officer would have believed that the suspect committed an offense defined by state law. In addition, the court found that the officer's subjective state of mind and beliefs are irrelevant, and the reviewing court should consider the totality of the circumstances rather than dissecting every fact in isolation.

Lytge argued that her actions were not illegal under the language of the disorderly conduct statute.

While the court declined to decide whether the disorderly conduct statute actually justified Lytge's arrest, it concluded that Lytge failed to refute the officer's qualified immunity defense. The court added that qualified immunity gives government officials breathing room to make reasonable, but mistaken, judgments about open legal questions. Finally, the court reiterated that qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.

In this case, the court focused on whether the law was clearly established in April 2020 that the officer lacked probable cause to arrest Lytge for disorderly conduct under Wis. Stat. § 947.01. First, the court held that Lytge failed to provide existing precedence clear enough that every reasonable official would interpret it to establish that her behavior precluded her from being arrested for disorderly conduct. Instead, Lytge cited a 2009 Advisory Memorandum from the Wisconsin Attorney General entitled "The Interplay Between … the Wisconsin Constitution, The Open Carry of Firearms and Wisconsin's Disorderly Conduct Statute…", which is not the sort of definitive statement of the law by the courts that would make a constitutional violation 'clearly established.' Because the disorderly conduct statute included conduct that has "a tendency to cause or provoke a disturbance," the court found that a reasonable officer could have believed Lytge's conduct to be disorderly considering all the officers knew at the time of the arrest.

To the extent the officers misjudged where probable cause existed to arrest Lytge, the court concluded it was a reasonable decision given the state of the Wisconsin disorderly conduct statute at the time; therefore, the officers were entitled to qualified immunity.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/22-1976/22-1976-2023-02-23.pdf?ts=1677193272

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Eighth Circuit

United States v. Williams, 36 F.4th 792 (8th Cir. 2022)

Detective James Bain arrested Williams on a warrant for an armed kidnapping. Detective Bain searched Williams and his car but failed to locate the gun that had been used in the alleged kidnapping. Suspecting that Williams might contact someone regarding the gun, Detective Bain monitored Williams's phone calls while he was being held in jail for the armed kidnapping charge. Law enforcement recorded a telephone call between Williams and his girlfriend, Wanda Wells. During the call, Wells asked Williams if he had left "the thing" at her residence. Williams confirmed and directed her to put it "inside of the closet and forget about it." Detective Bain suspected "the thing" to be a reference to a gun. Upon further investigation, Detective Bain learned that Wells was the sole lessee of a one-bedroom apartment.

The next day, Detective Bains and three other officers went to Wells's apartment. Wells told the officers that she lived in the apartment with Williams, whom she described as her boyfriend. Wells admitted that she owned a firearm that was registered in her name. Wells also admitted that she allowed Williams to use her gun. Wells agreed to show the officers where the gun was in the apartment, escorting them to the bedroom, where she pointed out a gun located in a black bag hanging from the handle of the open bedroom door.

Detective Bain approached the bag and saw a firearm in plain view in the partially unzipped bag. Wells then signed a Consent to Search form, which granted the officers general permission to search the apartment. Detective Bain opened the bag and found the .45 caliber handgun, a black plastic bag that he eventually determined contained about 14 grams of methamphetamine, and a letter addressed to Williams at a different address. Detective Bain seized the items found in the bag and the government charged Williams with drug and firearm-related offenses.

Williams filed a motion to suppress the evidence obtained from the warrantless search of the bag, arguing that Wells lacked authority to consent to the search. The district court granted the motion as to the narcotics found in the black bag, concluding that search of the bag exceeded the scope of Williams's consent to search the apartment. The district court supported this conclusion by finding that the bag was a "man bag," the term Detective Bain used to describe the bag in his report. Consequently, the court held that Detective Bain could not have reasonably believed that Wells had authority to authorize a search of the bag. The government appealed.

Consent is an exception to the Fourth Amendment's warrant requirement, which may be given by a third party with common authority or apparent authority over the premises or property to be searched. Common authority is determined by analyzing joint access, mutual use, and control of the area or property by the third party. For apparent authority, the court examines whether "the facts available to the officer at the time" of consent would lead a person of "reasonable caution" to believe the consenter had authority over the area or property to be searched.

The Eighth Circuit Court of Appeals found that while Detective Bain described the item in question as a "man bag" in his report, he also testified at the suppression hearing that it was the type of bag commonly used by both men and women and that he did not know who owned the bag. In addition, nowhere in his report did Detective Bain opine that the bag belonged to Williams. Finally, photographic evidence showed that the bag was gender neutral. As a result, the court held that the district court clearly erred in finding that the bag was a "man bag" and that law enforcement could not have reasonably believed Wells had common authority over the bag.

Next, the court held that Wells had apparent authority over the bag, At the time of consent, the officers knew: (1) Williams had directed Wells to move the gun owned by and registered to her to a specific place within the apartment; (2) Wells voluntarily led the officers to the location of the gun; and (3) Wells had access to the bag and never indicated it was Williams's bag or that her ability to use or access the bag was limited. Consequently, as the sole lessee, Wells had actual and common authority over the apartment and consented to the search of the entire apartment. In addition, where the gun was located, partially visible in the unzipped bag hanging on the door handle of their shared bedroom, was in a common area. The court concluded this evidence provided the officers a reasonable basis to believe that Wells had authority over the bag and therefore could consent to it's search.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/21-2066/21-2066-2022-06-09.pdf?ts=1654788649

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United States v. Bragg, 44 F.4th 1067 (8th Cir. 2022)

On October 25, 2019, Davenport, Iowa police officers received information that Darvill Bragg had shot at another person from a black Chevrolet Impala. Officers located the vehicle and conducted a traffic stop. Tontianna Hill was driving, and Bragg was in the passenger seat. After officers recovered a handgun from the map pocket directly in front of Bragg, they arrested him and seized four iPhones. Hill identified one as belonging to Bragg. At the time, Bragg was also the primary suspect in a separate shooting incident that occurred on October 17, 2019.

Detective Bryan Butt was assigned to investigate both shootings, as well as other shooting incidents in Davenport that occurred in late October and early November 2019. Based on the October 25 shooting incident, Detective Butt applied for and obtained a warrant to search Bragg's residence on October 31. On November 18, 2019, Detective Butt applied for and obtained a warrant to search Bragg's iPhone. Data extracted from Bragg's iPhone included videos showing Bragg in possession of a firearm. The government charged Bragg with being a felon in possession of a firearm.

Bragg filed a motion to suppress the evidence recovered in the search of his iPhone, arguing that Detective Butt's twenty-four-day delay in applying for the warrant violated the Fourth Amendment.

At the suppression hearing, Detective Butt described his overlapping investigations of two shooting incidents in which Bragg was the primary suspect, which involved multiple crime scenes, witnesses, and warrants, and his participation in investigating other firearm and shooting incidents in late October and early November 2019. Detective Butt explained that evidence destruction concerns made it more imperative to get a warrant to search Bragg's residence than his iPhone.

Crediting Detective Butt's testimony, the district court held that the twenty-four-day delay in applying for the warrant was not unreasonable. Bragg appealed.

The Eighth Circuit Court of Appeals recognized that the seizure of a person's cell phone raises significant Fourth Amendment concerns. Specifically, in the quality and quantity of private personal data cell phones contain and because the lengthy seizure of such a device, which is of vital importance in daily life, is likely to significantly interfere with a person's possessory interest.

In this case, the court reasoned that because smartphones "retain data for long periods of time," delay between the time a cell phone is seized and when it is searched is not likely to cause stored personal data to be lost, or data of potential evidentiary relevance to become stale. In addition, the court added that Bragg was in police custody for the entire twenty-four-day period, and there was no evidence that either Bragg or anyone acting on his behalf made a request or demand for the cell phone's return, or even inquired about it. The court concluded that when defendants do not seek the return of seized property, they cannot establish that the delay affected legitimate interests protected by the Fourth Amendment.

By contrast, the court held that the government had a strong legitimate interest in seizing the iPhone incident to Bragg's lawful arrest. First, Detective Butt had probable cause to believe Bragg was guilty of a federal firearm offense and/or a state felony shooting offense. Second, the relevant circumstances, including Hill's statement that it was Bragg's iPhone, gave officers reason to hold the iPhone to apply for a warrant to search for evidence of any offense that may be charged, and as potential evidence itself that Bragg was the person in possession of the firearm found in the vehicle map pocket near where he was sitting. Consequently, the court held that Detective Butt's twenty-four-day delay in applying for the warrant was reasonable and did not violate the Fourth Amendment.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/21-2096/21-2096-2022-08-15.pdf?ts=1660577422

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United States v. Garges, 46 F.4th 682 (8th Cir. 2022)

After police officers received a tip that Jason Byers was staying in a hotel room with Angela Garges, they went to the hotel to arrest Byers on an outstanding warrant.

When a police officer knocked on the door, Garges answered. The officer asked whether Byers was present. When Garges answered affirmatively, the officer told her to exit the room and escorted her down the hall and around a corner. Other officers then commanded Byers to come out of the room. Byers complied with the request and was handcuffed in the doorway. It was undisputed that at least one officer was positioned in the doorway to effect the arrest and had lawfully crossed the threshold of the room under the authority of the warrant.

After Byers was secured, the officers asked Garges whether there were other people in the room. She replied that there was a baby inside the room. Officers decided to enter the room to conduct a "protective sweep." Two officers briefly entered the room, saw the ten-month-old baby, but found no other occupants. The officers arrested Garges for drug possession and child endangerment.

Officers questioned Garges further, and she admitted that methamphetamine was located in a black bag in the hotel room. Officers obtained a search warrant for the room and for Garges's

cellular telephone. Officers seized incriminating evidence from the hotel room and the phone.

The government charged Garges with drug trafficking offenses, and she filed a motion to suppress evidence seized from the hotel room and cellular phone. Garges argued that there was no legal justification for the protective sweep of the hotel room, and that all evidence seized thereafter should have been suppressed as a product of the unlawful search. The district court denied the motion.

On appeal, Garges argued that the district court erred in denying her motion to suppress because the officers lacked specific and articulable facts suggesting that a person posing a danger to the officers was located inside the hotel room.

In Maryland v. Buie, 494 U.S. 325 (1990), the Supreme Court held that police officers armed with an arrest warrant may enter a home where the named suspect is located and search anywhere in the home that the suspect might be found. Once police officers have found the suspect, the warrant no longer provides authority to enter rooms that have not yet been searched. However, Buie held that it is still reasonable for officers to conduct "a cursory inspection" of certain spaces within the home to ensure their safety.

First, officers may "as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched." Second, officers may "sweep" other areas in the home if there are "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene."

In this case, the Tenth Circuit Court of Appeals held that the protective sweep of the hotel room was justified as an inspection of "spaces immediately adjoining the place of arrest from which an attack could be immediately launched." First, the court found that at least one officer lawfully entered the room under the authority of the warrant, as he was positioned at least partially inside the room while holding the door open to assist with the arrest.

Next, the court held that the entire hotel room constituted an adjoining space that was subject to a cursory inspection under Buie. Here, the bathroom, with door open, was immediately to the left as officers moved forward in the room. The remaining space consisted of a single bedroom that was connected directly to the entry area. The court found that each of these spaces was a place from which an attack on arresting officers could be immediately launched; therefore, it was reasonable for officers to briefly inspect those areas to ensure that no person posing a threat was located there. The court held that, because the officers saw evidence of unlawful drug activity in plain view while conducting the protective sweep, they did not violate Garges's rights under the Fourth Amendment.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/20-3687/20-3687-2022-08-15.pdf?ts=1660577422

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Tenth Circuit

United States v. Batara-Molina, 60 F.4th 1251 (10th Cir. 2023)

Wyoming Deputy Eric Coxbill stopped a vehicle being driven by Ian Batara-Molina for going 49 mph in a 45-mph zone. As Deputy Coxbill approached the vehicle on the passenger side, he smelled an overwhelming odor described as fruity, perfumy or like a new car smell emanating from the interior of the vehicle. Molina provided the deputy with his license, but explained the vehicle was a rental and looked for the rental agreement on his phone. During the time Molina was looking for the rental agreement, Deputy Coxbill asked where Molina and his female passenger were headed. Molina stated they were headed to "See Ox Fall," Deputy Coxbill asked if he meant "Sioux Falls," to which Molina confirmed they were headed to Sioux Falls. As Deputy Coxbill examined the located rental agreement, noting the vehicle was to be returned to California in two days, the deputy asked how long the couple planned to stay in South Dakota. Molina responded with a date one day after the car was to be returned.

As Deputy Coxbill went to write a warning, he informed the backup officer, Deputy Rhoades, about some of his observations from the stop, including that he smelled a cover odor in the car, there seemed to be fast travel plans, and there was a vape pen in the vehicle. Deputy Coxbill had Deputy Rhoades take and complete the warning with Molina as Deputy Coxbill retrieved his drug-sniffing/apprehension K-9 officer from his patrol unit. Deputy Rhoades asked Molina to roll up his windows, exit the car and join the deputy back by Deputy Coxbill's patrol unit, which was on the shoulder of the road. Deputy Coxbill then approached Molina's vehicle with his K-9 officer and circled the vehicle. Just before Deputy Rhoades finished writing the warning, the K-9 alerted to contraband in the vehicle. Deputy Coxbill searched the vehicle and found 14 pounds of methamphetamine in the trunk.

Molina was charged with one count of possession with intent to distribute methamphetamine. Molina filed a motion to suppress the drugs found on grounds that the deputies prolonged the traffic stop for the dog sniff without reasonable suspicion in violation of the Fourth Amendment. The district court denied Molina's motion, based on eight facts leading to reasonable suspicion: (1) the cover odor, (2) the mispronunciation of Sioux Falls, (3) the third-party rental agreement, (4) the imminent expiration of the rental agreement, (5) the night spent at the gas station, (6) the vape pen, (7) the lack of luggage in the backseat, and (8) the fact that Molina was traveling from California. Molina appealed.

On appeal, a three-judge panel of the Tenth Circuit Court of Appeals affirmed finding error of the district court in relying on certain facts and stating the "case falls very close to the line, but we nonetheless conclude that reasonable suspicion is narrowly supported by the totality of the circumstances.

The court expounded on its finding that it agreed with the lower court's usage of the cover odor, the third-party agreement, and the imminent expiration of the rental agreement (due to the long trip coupled with such a short stay) in finding reasonable suspicion. The court did not agree with using the mispronunciation of Sioux Falls by a person not from the area. The night at the gas station was discussed as a cost-saving measure and should not be held as suspicious due to describing a very large category of presumably innocent travelers. Due to the legalization of marijuana in multiple states, including California, the fact that Molina was coming from California did not sway the court. The court found the presence of a vape pen to add no weight due to the likelihood of one being possessed by an innocent traveler. Finally, the court gave the

fact that there was no luggage in the backseat as being worth little or no weight due to many travelers using the trunk area to store luggage and Molina not having been questioned about the absence of luggage.

Ultimately, the court looked to the totality of the circumstances. The court further stated that deference would be given to an officer to distinguish between innocent and suspicious actions and therefore Deputy Coxbill's suspicion to prolong Molina's traffic stop for a dog sniff was just barely supported by the totality of the circumstances.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca10/21-8079/21-8079-2023-02-22.pdf?ts=1677085445

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United States v. Braxton, 61 F.4th 830 (10th Cir. 2023)

A Denver police officer monitoring a camera installed in a "high-crime area" saw Tyrell Braxton exchange drugs for cash. Officers arrived and arrested Braxton. Body-camera footage showed that at the time of the arrest, Braxton was wearing a backpack, which was removed by officers and placed on the sidewalk. During the search incident to arrest of Braxton's person, officers located suspected crack cocaine and $183 in cash.

During the pat down, Braxton called out to Tanyrah Gay, who approached within 30 seconds. Braxton told Gay "Get the money so you can bond me out." Gay asked officers "Can I get his bag?" and was told no. As officers walked away with Braxton and the backpack, Gay asked "I can't take by backpack?" Officers immediately told her "nope." Gay continued to follow saying "I'm in a hotel. Please give me the money at least. I'm in a hotel." Before she could finish, officers again told her "nope." The backpack was placed on the hood of the patrol car and searched. Officers located a loaded gun with a pink handle. Prior to the completion of the search of the backpack, Gay asked if she could retrieve her bus pass and identification from the backpack and was told they could "talk about that in a second." Bodycam footage ends shortly thereafter. Braxton was charged with possession of a weapon in furtherance of drug trafficking, possession of crack cocaine with intent to distribute, and felon in possession of a weapon.

Braxton moved to suppress the gun, arguing that the warrantless search of his backpack was not justified as a search incident to arrest under the court's recent precedent. See (United States v. Knapp, 917 F.3d 1161 (10th Cir. 2019)). In Knapp, the court held that the search of the arrestee's purse was not justified as search incident to arrest because the arrestee could not access weapons or destroy evidence with the purse at the time of arrest.

The government conceded the search of Braxton's backpack was not a valid search incident to arrest under Knapp. Instead, the government argued that the officers would have inevitably discovered the gun after they impounded the backpack and conducted an inventory search of its contents under a community caretaking rationale. The district court denied the motion to suppress. Braxton entered a conditional guilty plea and appealed the ruling on the motion to suppress.

On appeal, a three-judge panel of the Tenth Circuit Court of Appeals examined whether the officers would have validly impounded Braxton's backpack in the absence of the illegal search incident to arrest. The district court concluded the officers were entitled to take physical possession of the backpack on a community caretaker basis (to protect the community in case the backpack contained dangerous items) and dismissed the relevance of Gay's presence and repeated

requests to take possession of the backpack due to Braxton not asking officers to give the backpack to Gay and being unclear on the relationship between Braxton and Gay.

In reviewing the community caretaking rationale, the court looks at: (1) whether the property is on public or private property; (2) if on private property, whether the property owner has been consulted; (3) whether an alternative to impoundment exists (especially another person capable of taking control of the property); (4) whether the property is implicated in a crime; and (5) whether the property's owner consented to the impoundment. See United States v. Sanders, 796 F. 3rd 1241 (10th Cir. 2015).

In applying the facts, the court found four factors applied: (1) the arrest took place on public property so the backpack, itself, was on public property; (2) omitted due to being on public property; (3) Gay appeared less than 30 seconds after being called out to by Braxton and twice asked officers for the backpack; (4) & (5) the government conceded the backpack was not implicated in a crime and Braxton did not consent to the impoundment. The court found Braxton's failure to ask officers to give the backpack to Gay dispositive. The court was also not swayed by the government's argument that the relationship between Braxton and Gay was unknown due to the facts that Braxton referred to Gay as "his girl," she appeared within 30 seconds of being called over, Braxton asked Gay to bail him out, Braxton asked officers to give the cash located on his person to Gay, Gay's bus pass and identification were in the backpack, etc. These facts suggest that reasonable officers dealing with the backpack in a lawful manner would have inquired further about whether they should give the backpack to Gay.

The government produced a department policy that instructed "[a]ny officer coming into possession of personal… property will bring such property to the [e]vidence and [p]roperty [s]ection or an authorized remote evidence locker." The court looked at prior case law finding protection against unreasonable impoundments, even those conducted pursuant to standardized policy, is part and parcel of the Fourth Amendment's guarantee against unreasonable searches and seizures. Therefore, the department's policy was not persuasive to the court.

This examination led the court to rule the search of Braxton's backpack was not reasonable under community caretaking and therefore finding the firearm was not inevitable discovery. The district court's denying Braxton's motion to suppress was reversed and remanded for further proceedings.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca10/21-1149/21-1149-2023-03-07.pdf?ts=1678208475

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