



# 2023 Moot Court Problem

TEENPACT JUDICIAL



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*Note: the following case is fictitious and takes place in present day.*

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# Introduction

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The TeenPact Judicial Program has been designed to teach students about the judicial branch of American government. The judicial branch is ostensibly one of the three co-equal branches of our federal government, and it is powerful, and therefore a very important institution. American lawyers and citizens in general rely on courts to give a statute or law “meaning” by applying the statute or law to various factual situations. Thus, it is imperative that we as citizens understand how the judicial branch functions.

An appeal from a trial court to an appellate court—and to even higher appellate courts—normally involves two components: a written brief and oral argument. As TeenPact Attorneys, you will argue an appellate case before one or more judges during the TPJ moot court competition. You will participate in at least one oral argument on each side of the case. Once at the program, you will be coached by law professors, skilled lawyers, and a TPJ staffer at the class on how appellate arguments are conducted.

The “Fact Pattern” is the problem you are to address by oral argument during the program. This packet and the hypothetical factual situation herein contains all of the facts that are important to the legal issues presented. It also contains some facts that are not important. One of the first things you will need to do is decide which of these facts are truly relevant. You may not create any extra facts. However, you may make reasonable inferences from the facts presented.

All material that is included in this booklet has been assembled just to facilitate this exercise and might not represent truly authentic “conditions” in the real world. For example, many definitions are not complete, and the facts may have been drafted to allow alternative arguments, without regard for jurisdiction or technical accuracy.

We have attempted to create a “record on appeal” (the totality of the materials attorneys must rely on in arguing an appeal) as realistic as is feasible; however, we have made the following adaptations for the sake of brevity and practicality:

- (1) Discovery (i.e., the information attorneys exchange prior to trial) is not as extensive as it realistically would be.
- (2) Hearing transcripts would be much longer than the one included herein.
- (3) The record on appeal does not contain the memorandum of law (i.e. written argument)



that would have accompanied Defendant’s motion for suppression of evidence, or the State’s response, or any charging documents that would otherwise be produced during a criminal prosecution. The ruling from the Trial Judge that sparked this whole appeals process is also not included, though you are given the outcome of that court’s decision. It is the decision there that kicked off the string of appeals to higher courts. You are now participating in this process in the final stage of all these appeals.



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# The Fact Pattern

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*Based on a Moot Court Problem created by Liberty University School of Law. The following case is fictitious and takes place in present day. The TeenPact Judicial Moot Court Competition Problem is a post-trial argument to the Fourteenth Circuit Court of Appeals.*

*The cast of characters is as follows:*

<b>Accused/Convicted:</b>	Bill Stephens
<b>Stephens's Wife:</b>	Bonnie Stephens
<b>Informant to Police:</b>	Edmond Benz
<b>FBI Special Agent #1:</b>	Special Agent Kevin Kirby FBI
<b>Special Agent #2:</b>	Special Agent Johnny Tribbs
<b>Henry County Officer #3:</b>	Detective Tiffany Reagan
<b>Henry County Officer #4:</b>	Officer Sara Lee
<b>Henry County Officer #5:</b>	Officer Barbara Shelby
<b>Apprehender:</b>	Captain David Brinks, S.W.A.T.
<b>Federal Magistrate:</b>	Hon. Kay Jewel
<b>Bookie:</b>	Ray "Life" Stefano
<b>Mafia Godfather:</b>	R. "Funhouse" Gambini
<b>District Court Judge:</b>	Hon. Samantha Carlson
<b>U. S. Attorney:</b>	Sully Daniels
<b>Assistant U. S. Attorney:</b>	Raven Laurent
<b>Federal Public Defender:</b>	Wagner Michaels
<b>Asst. Federal Public Defender:</b>	Mila Kaelin



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## THE TIP TO THE F.B.I.

Federal Bureau of Investigation (FBI) Special Agent Kevin Kirby received a call on Thursday, July 5, 2022, from known informant Edmond Benz, who works with the accused in an office of the Department of Defense, located alongside the local military base. Benz informed Special Agent Kirby that he believed Bill Stephens was selling classified documents to raise money to cover gambling debts. Benz further informed Special Agent Kirby that he had answered calls on several occasions for Stephens from an individual that identified himself as “Funhouse” Gambini. Mr. Gambini, who didn’t realize he was talking to Benz, made various threats at Stephens. Mr. Gambini called Stephens a “deadbeat, ignorant gambler” and chastised Stephens for his large gambling tab down at the “87 Saloon.” In Benz’s accidental conversations with Gambini, it became clear that 87 Saloon is an underground gambling hall and that Bill Stephens was a regular there.

Edmonds informed Kirby that in a recent conversation, Gambini stated that Stephens had been able to raise large sums on short notice in the past to pay off debts and bring his account current; and that it was time for Stephens to do so again. Benz told Special Agent Kirby that Stephens did seem to keep an unusually high volume of classified documents in his office, including documents that did not seem to be relevant to his immediate needs. Benz told Special Agent Kirby that based on the calls from R. “Funhouse” Gambini and the high volume of classified documents accessed by Stephens in recent months; he thought Stephens may be selling classified documents to cover his gambling debts. Special Agent Kirby asked if there was anything else Benz wanted to share, and Benz responded that he had seen Stephens popping what appeared to be un-prescribed pills and chasing them with the expensive scotch Stephens kept in his desk. Benz did not know what the pills were or have any other information about them.

Special Agent Kirby asked Benz to come to the local FBI office the next morning, Friday July 6, 2022, for an appointment with his supervisor, Special Agent Tribbs, to give a signed and sworn statement along with a video-recorded interview. Special Agent Kirby informed the Henry County Police Department (HCPD) of the matter and requested their assistance in investigating the case. HCPD stated they would help the FBI in any way possible and assigned Detective Tiffany Reagan to assist.

## THE INITIAL INVESTIGATION

Edmond Benz did not appear for his Friday morning appointment with the FBI. Special Agent Tribbs attempted to contact Benz at his workplace that morning to ask why he did not appear for the interview, but Benz was not there. Benz did not show up to work that day, nor had he asked for any time off. With their informant seemingly missing, Tribbs and Kirby called



Detective Tiffany Reagan to help.

In an effort to gather additional information, Detective Reagan attempted to access Bill Stephens's Facebook page. The security settings on the Facebook page would not allow Detective Reagan to see anything other than the fact that Stephens had an account. Detective Reagan befriended Stephens by using a fake profile and requesting his help as a poker tutor. She indicated that she had seen him do very well in a poker game at the 87 Saloon. Detective Reagan was granted "friend status" by Stephens within an hour of her request. She then used that status to investigate Stephens's Facebook page. While exploring the Facebook page, Detective Reagan discovered posts made in the past by Stephens about large sports bets he had won and poker games where he had won big. Additionally, there were posts about tough bets and huge losses that he had incurred. There were also posts about the use of, and "amazing properties" of, the prescription drug Provigil. (pronounced pro-vi-gill)

Special Agent Tribbs determined that he should get authorization, a warrant, to search Stephens's office and residence from U. S. Magistrate Kay Jewel. Tribbs had two affidavits in support of his request. The first was from Special Agent Kirby regarding the information received via telephone from Edmond Benz. The second was from Detective Reagan regarding the information gathered from Stephens's Facebook page. By the time Special Agent Tribbs got the affidavits for the search warrant together it was Friday evening and Judge Jewel had already left the courthouse to fly to Washington D.C. for the weekend, where she was to attend a judges' conference. En route to seek the Deputy Magistrate's approval of the warrant instead, Special Agent Tribbs first stopped by Edmond Benz's house to follow up on the informant.

There was a light on inside Benz's house but no one answered the door. Special Agent Tribbs noticed the light bulb to the front porch lamp had been removed. Tribbs retrieved a flashlight and observed a small blood splatter on the front door. Then Tribbs peered through a first floor window inside the house. The house was in disarray.

Suspecting Stephens's involvement in Benz's apparent disappearance, Tribbs immediately placed a call to Special Agent Kirby directing him to proceed to Bill Stephens's residence without delay and wait there for further directions. Special Agent Kirby contacted Officers Sara Lee and Barbara Shelby to proceed to Bill Stephens's office in an effort to find him and possibly interview him in connection with the suspicious disappearance of Edmond Benz.

Detective Reagan and Special Agent Kirby arrived next door to Stephens's residence at 7:00 p.m. Friday evening. They approached the house, a single family residence with a small porch, and rang the doorbell. Bill Stephens answered the door. Special Agent Tribbs identified himself and informed Stephens that Henry County Police and the FBI were looking into the disappearance of Edmond



Benz. Stephens asked why the FBI was involved after a person's one-day absence from work. Special Agent Tribbs informed him that there were suspicious circumstances surrounding Benz's disappearance and that FBI and HCPD were taking it seriously. Special Agent Tribbs asked Stephens to come down to the Police Headquarters for an interview.

Stephens initially resisted. Special Agent Tribbs rephrased his request, making it clear that they were seeking his cooperation because one of his coworkers was missing. Stephens reconsidered and agreed to go to HCPD for a video-recorded interview. Stephens got in his car and drove from his house. Special Agent Tribbs followed in his vehicle.

### **OBTAINING CONSENT TO SEARCH THE RESIDENCE**

Detective Reagan and Special Agent Kirby, were on the scene near the Stephens's residence. They waited in an unmarked vehicle parked in front of the next door neighbor's house. Reagan and Kirby watched Stephens drive from the house with Tribbs following. Several minutes later, Detective Reagan received a phone call from Special Agent Tribbs. Special Agent Tribbs relayed that he had Stephens in an interview room at Police Headquarters and that Stephens had refused to give consent to search his house. Following the phone call Reagan and Kirby exited their vehicle and approached the Stephens residence.

Detective Reagan knocked on the door and Mrs. Bonnie Stephens answered. She was holding a half-empty martini glass, noticeably containing alcohol. The Officers identified themselves with their badges and confirmed she was married to Bill Stephens. The Officers then requested her permission to search the house for evidence. She asked them what they were looking for. The Officers informed her they had information that her husband was engaged in massive illegal gambling and drug use.

They explained that they had to follow up on the accusations so it would be easiest if she would let them look around so they can put the matter to rest. She laughed and said, "Hilarious! Big time gambler? No way." She refused to give them her consent. The Officers suggested that if she was uncomfortable she could call her husband, so they do not have to go all the way to the courthouse to get permission, and then come back and look around. She agreed to call him, saying, "Sure, I'm gonna call him...this is funny." She attempted to call her husband both on his cell and at his office, but could not get him on the phone. The Officers again requested consent to search. Again she refused.

The Officers pressed on by telling her they already had a warrant to search his office. They told her they could get a warrant to search the house as well. They told her that getting a warrant would make it a lengthy process and that they would have to keep everybody up all night. They told her that if she would let them look around now, they would be quick and "get this thing done." They further prompted her by stating, "We are not going to find anything anyway, right?" She relented,





laughing and said, “Big time gambling? Not a chance. We’re broke. If he were making big bucks gambling or dealing drugs, we wouldn’t be so broke! If you guys want to look around here let’s get it over with, no loose cash or drugs around here. You are only going to find unpaid bills and booze in this place . . . besides, I could use the company while you look around. Come on in.” She then signed the Consent to Search Form.

## THE SEARCH OF THE RESIDENCE

Detective Reagan and Special Agent Kirby conducted the search. The search was uneventful until the final room to be searched was the basement. As the group approached the basement door, Bonnie Stephens told them the room belonged to her husband, that it was his “man cave,” and said, “Even I don’t go down there.” She also told them she was not in charge of the room and said, “You can’t arrest me for his poor choices in decorating.”

The door to the basement was closed. While the door did have a lock, it was unlocked. The basement contained a poker table, a desk with a computer, a wet bar, a TV, a couple of chairs, and a closet. Special Agent Kirby went to the computer desk and began rummaging while Detective Reagan went to the closet and opened the door. Bonnie Stephens told Reagan that the closet was used by her husband to store his “gobs and gobs” of expensive fishing and hunting gear. The closet had several fishing poles lined up against the wall, a fishing lure tying station, and two gun cases. There was also a brown leather briefcase on the floor of the closet. Detective Reagan placed the briefcase upon the bar and began to examine it. The briefcase had brass hardware engraved with the initials “BS.” The briefcase was closed but unlocked. Detective Reagan opened the briefcase and discovered a large amount of U.S. currency, a cellular telephone, and an unlabeled pill bottle.

Detective Reagan removed the pill bottle and examined it and its contents, then placed it back inside the briefcase. She then removed the cell phone and turned it on. She accessed the call log to check for recent phone calls. No phone calls had been made from the phone. She then checked the text message history. There was only one exchange stored on the phone. It read:

***To Pre-programmed number 1: “Have docs u want but taking big risk – reward better match risk. Double last price.”***

***From Pre-Programmed number 1: “Deal – use same exchange arrangements.”***

Detective Reagan noticed the phone had a camera and opened the stored photographs



on the media card. There were photos of over 100 documents stored on the phone. The documents appeared to pertain to intelligence on Russian troop activity near the borders of Belarus and Ukraine. Detective Reagan showed his partner Special Agent Kirby what he had found, and they immediately called lead Special Agent Tribbs to report their findings.

### **THE INTERVIEW AT HCPD**

When Stephens arrived at HCPD he was escorted to an interview room along with Special Agent Tribbs. Tribbs took his time questioning Stephens. Special Agent Tribbs started off with a few preliminary questions and asked Stephens for consent to search his residence. Stephens never answered the request directly. Eventually, Special Agent Tribbs told Stephens he needed to grab a cup of coffee. He left the interview room and called Detective Reagan on her cell phone to give her an update and tell her to seek consent from the wife. Special Agent Tribbs returned to the interview room and began going into excruciating detail about Edmond Benz. After 90 minutes of answering questions, Stephens began to get frustrated and asked how much longer the interview was going to take. Special Agent Tribbs forcefully reminded Stephens that one of his coworkers had gone missing under suspicious circumstances, and the FBI and HCPD needed everyone's help to find out what happened. Stephens agreed to help them however he could.

Stephens continued answering questions for approximately 30 more minutes before he refused to answer any more questions and concluded the interview. He stormed out of HCPD mumbling about how they should not be wasting their time asking him questions, they should be out looking for Benz. Tribbs watched as Stephens hopped into his car and sped out of the parking lot. As Tribbs stood there thinking about his next step, the land line in the borrowed office rang. It was Special Agent Kirby at the Stephens residence. Kirby informed Special Agent Tribbs that after getting consent from Stephens's wife they had searched his house. They found a briefcase containing approximately \$200,000 in cash, a bottle of pills without a prescription label, and a cell phone containing pictures of classified documents and a very suspicious text message. While the documents had not been read, they appeared to pertain to Russian troop movements near Belarus and Ukraine. Special Agent Tribbs told them to exit the residence, but stay outside the house and apprehend Stephens on sight.

Special Agent Tribbs then called Officers Lee and Shelby, who had been waiting outside Stephens's Defense Department Office which was on the outskirts of the local Army base. Special Agent Tribbs informed them that evidence was found at the residence and instructed them to wait there and apprehend Stephens on sight. Officer Shelby informed Special Agent Tribbs that they had not seen Stephens or anything noteworthy.



## PURSUIT AND APPREHENSION

While Officer Shelby was standing in the office foyer speaking to Special Agent Tribbs, Stephens appeared in the entrance to the office building. Stephens saw the two Officers outside his office – Shelby talking on the phone by the window and Lee speaking with the night watchman. Officer Shelby saw Stephens in the doorway, dropped the phone and drew her weapon, yelling “Stop! Police! You are under arrest!” Stephens turned and ran.

Officers Shelby and Lee chased after Stephens. Lead Special Agent Tribbs overheard the “Stop! Police! You are under arrest” and immediately called dispatch to send all cars to Stephens’s office building for support.

Fleeing from his office with two Officers on his tail, Stephens ran into the parking lot towards his car. Both Officers had their guns drawn and Officer Lee shouted, “Stop! HCPD! You are under arrest...I said STOP!” Stephens disregarded the command and kept running towards his car, a convertible with the top down. The sirens of base security vehicles could be heard in the background approaching the building.

Meanwhile, Officer David Brinks, an off-duty S.W.A.T. Captain and martial arts specialist, happened to be out for an evening jog that Friday night. Brinks was just approaching the Defense Department parking lot as he heard Officer Lee shouting, “Freeze, HCPD, you are under arrest....” Brinks could also hear sirens in the distance and saw Stephens running toward a car, the only one within the vicinity of the parking lot. The Officers were about 100 feet behind Stephens in pursuit, though out of Brinks’s sight. As Stephens reached his convertible with key in hand and preparing to leap into the convertible, Brinks, on a full sprint, took him down to the ground in a full tackle, knocking Stephens out of one of his shoes. Stephens, who was 5 feet 7 and of slight build was quickly subdued.

Brinks demanded to know what Stephens was running from. Stephens at first did not respond, and Brinks held Stephens down with his hand on his chest. Again Brinks demanded, “What in the world is going on here!?” Stephens responded, “I did some very bad stuff, and it just caught up with me... but I LOVE MY COUNTRY, I REALLY DO!” Officers Lee and Shelby soon arrived on the scene of the downed Stephens.

Officer Shelby stood over Stephens and provided cover while Officer Lee frisked him for weapons. Upon finding none, Officer Lee helped Stephens to his feet. Lee then escorted Stephens from the scene to the squad car. As Officer Lee and Brinks were removing



Stephens from the scene, Officer Shelby conducted a search incident to arrest of Stephens's convertible. The search turned up nothing of any significance.

**THE CUSTODIAL HCPD INTERVIEW**

The HCPD Officers took Stephens to Police Headquarters for a video-recorded interview. Officer Lee took Stephens into the HCPD interview room. Detective Reagan arrived at the HCPD building with the briefcase that was seized from the residence. After meeting briefly with Lead Special Agent Tribbs and developing a plan for the interrogation, Detective Reagan walked into the room without saying anything and placed the briefcase on the table. Special Agent Tribbs then entered the interview room and informed Stephens that they were video-recording the interview and advised him of his Miranda rights against compulsory self-incrimination. The conversation went as follows:

Tribbs: You are suspected of the following offenses: homicide; illegal gambling; and evading arrest. You have the right to remain silent. Any statements you make can and will be used against you in a court of law. You have the right to consult with an attorney before this interview. If you do not have an attorney or cannot afford one, the Court will appoint you an attorney. You have the right to have that lawyer present during this interview. If you decided to answer questions now without a lawyer present, you have the right to stop this interview at any time. You have the right to stop answering questions at any time to obtain a lawyer. Do you understand?

Stephens: Yes, I understand.

Tribbs: Do you understand the offenses you are suspected of?

Stephens: Yes.

Tribbs: Do you understand that you can remain silent?

Stephens: Yes.

Tribbs: Do you understand that you have a right to an attorney, either before you answer questions, or with you while you are answering questions?

Stephens: Yes

Tribbs: Do you want a lawyer?

Stephens: What would be the point? You just took my money. I cannot afford to hire one.



Tribbs: Do you understand that you have the right to have a court appointed attorney at no cost?

Stephens: I understand and I waive my right to a lawyer's presence.

Tribbs: Do you want to answer questions and make a statement?

Stephens: Yes.

Tribbs: While you were at HCPD, a team of Officers was searching your house. They found the briefcase. This briefcase. We have been inside the briefcase; we both know what was inside the briefcase. Let's start with a simple question, is this your briefcase?

Stephens: Yes.

Tribbs: And the contents are yours as well?

Stephens: Kind of. The cell phone in there is not really mine. There is a guy who provided the phones. I would take pictures with the phones, then give the phones back to him.

Tribbs: So the phone is not actually yours, but it was in your custody and control, and you used it.

Stephens: Yes.

Tribbs: What about the rest of the stuff in the brief case? Stephens: The rest of the stuff in the briefcase is mine.

Tribbs: The pills as well?

Stephens: Yes, the pills are mine.

Tribbs: The money?

Stephens: The money is mine but not from what you think. I won that money gambling. It is not money from selling documents...

After completing the interview Stephens was booked and taken to the Henry County Jail.

## **HCPD HANDING OVER INVESTIGATION TO THE U. S. ATTORNEY**

Lead Special Agent Tribbs completed and submitted a report of his investigation to the U. S. Attorney's Office. Special Agent Tribbs had a meeting the next day with the U. S. Attorney to brief him as to the status of the investigation. The U. S. Attorney, Sully Daniels, assigned Assistant U. S. Attorney Raven Laurent to assist in prosecuting the case. A Grand Jury heard the evidence presented to it by the U. S. Attorney's office, and entered a true bill of indictment against Stephens. See attachment 1.



Unfortunately, Special Agent Tribbs was never able to develop enough evidence to charge Stephens with the murder of Edmond Benz.

A Public Defender, Wagner Michaels, was appointed to defend Stephens.

Assistant Public Defender Mila Kaelin also assisted in Stephens's defense. Judge Carlson, the trial judge in the case, scheduled a preliminary hearing to hear and rule on pretrial motions.

### **PRELIMINARY MOTION HEARING**

The Defense submitted two motions. The first was a motion to suppress the following items of evidence seized by the agents during the search of the Stephens's residence:

- 1. The pill bottle and 37 pills contained therein;***
- 2. The cell phone, the text message exchange found on the phone, the 100 images stored in the phone's memory card, and the currency—all of which were located in the recovered briefcase.***

The second motion was to suppress the statements made by Stephens to Officer David Brinks.

The Government opposed both motions.

### **HEARING ON DEFENSE MOTION TO SUPPRESS EVIDENCE SEIZED DURING SEARCH OF RESIDENCE.**

On October 3, 2022, evidentiary hearings were conducted on the Defense's motions. Judge Carlson indicated the defense motion was sufficient to raise the issue of the validity of the consent given by Mrs. Bonnie Stephens to search the residence and the lawfulness of Stephens's incriminating statements to David Brinks. The Government called Detective Reagan to the stand. USA Sully Daniels laid a foundation that Detective Reagan was involved in the investigation; that she was on the scene when Stephens volunteered to drive from his house to HCPD Headquarters for an interview; and that she was one of the two agents that went to the front door of the house after Stephens had left. The following testimony was elicited: (Note: all rights of privilege were waived by defendant).

Q: After you knocked on the door to the residence of the accused, who answered?



- A: Bonnie Stephens, the wife of the accused.
- Q: How did you know she was Stephens's wife?
- A: I asked if she was married to Stephens and she said yes. Q: Did you know anything else about Mrs. Stephens?
- A: Yes, I knew she was 29 years old and college educated.
- Q: How did you know these things?
- A: That information was in Stephens's employment record at the Department of Defense.
- Q: Turning back to the night of Friday, July 6, 2022, was there anyone other than Mrs. Stephens in the doorway?
- A: No.
- Q: What happened next?
- A: I identified myself and my partner, Special Agent Kirby, and then asked for her consent to search the residence.
- Q: Did she give consent?
- A: Not at first. We had a conversation for a few minutes at the doorway, and she ultimately decided to let us search the house.
- Q: When she gave you consent to search the house, was there anyone else in the doorway?
- A: No.
- Q: Was the consent verbal?
- A: Yes, but I had her sign a Consent to Search and Seizure Form. It's the form we use to create a written record when a person gives us consent to search.

*Sully Daniels handed the witness the Consent to Search and Seizure Form and the witness authenticated the document as the one signed by Mrs. Stephens on the evening in question. Daniels then offered the document into evidence. Defense counsel made no objection and the document was received into evidence.*

- Q: Did you think she understood what she was signing?
- A: Yes. We spoke for several minutes in the doorway and she understood that we wanted to look around inside her house for evidence of crime.
- Q: Did she understand that she could refuse consent? A: Yes, she understood.
- Q: How do you know she understood she could refuse?
- A: Because she did initially refuse. But after we talked at the door for a bit she changed her mind and decided to give us consent.
- Q: Did you construe any limitations on her consent to search?



- A: No, she consented to a search of her residence.
- Q: Did you execute the search of the residence of Mr. Stephens?
- A: Yes, Special Agent Kirby and I did.
- Q: At any time after Mrs. Stephens gave you consent did she revoke the consent?
- A: No.
- Q: At any time during the search did anyone attempt to stop you from searching further?
- A: No.
- Q: In executing that search, did you seize anything?
- A: Yes, I seized a briefcase and its contents.
- Q: What were the contents of the briefcase you seized from the residence of the accused?
- A: A bottle of pills, a cell phone, and \$200,000 cash.
- Q: Was that \$200,000 in U.S. Currency?
- A: Yes.
- Q: You mentioned a bottle of pills, please describe it?
- A: A standard kind of pill bottle you get from a pharmacy.
- Q: Was the bottle empty?
- A: No, there were a number of pills inside the bottle, 37 pills to be exact.
- Q: Can you tell us anything else about the bottle?
- A: There was no prescription label on the bottle.
- Q: What, if anything, did you infer from that?
- A: People keep prescription meds in the bottles they are prescribed in, in order not to confuse the meds and to have the instructions for how to take the meds in the bottle. This bottle did not have a prescription label. That suggested to me that there was no prescription for pills.
- Q: Anything else?
- A: Yes, based on information we had developed as part of the investigation we believed Stephens to be abusing prescription medications, specifically Provigil.
- Q: Please explain how your investigation uncovered such information?
- A: There were repeated references to Provigil on the Facespace page belonging to Stephens.
- DC: Objection, hearsay.
- USA: Your honor, the statements from the Facespace page of Stephens fall within the hearsay exception for statements by a party opponent.
- DC: Your honor, the hearsay exception only applies if the Government can prove the statements were actually typed by the accused. The govern-





ment has not offered any evidence to that point.

Court:

Objection sustained.

Q:

Detective Reagan, as part of your investigation did you examine the online activities of the accused?

A:

Yes

Q:

Please elaborate.

A:

We got a look at his Facespace account.

Q:

Is there any security on Facespace accounts?

A:

Yes, they are password protected.

Q:

How did you know it was his Facespace account?

A:

It was registered under his name, it had personal information about him and his family posted, and there were pictures of him and his wife.

Q:

Was there anything else of note on the Facespace page?

DC:

Objection, Hearsay.

USA:

Your honor, the Government has laid foundation demonstrating the Facespace account belonged to Stephens, it was password protected, Stephens made the entries on the account, they are his statements and therefore fall within the hearsay exception for statements by party opponent.

Court:

Objection overruled. Please answer the question, Officer.

A:

Yes, Stephens bragged about his gambling prowess. He really laid it on thick, like he was Doyle Brunson himself.

Q:

Please explain.

A:

He bragged about his exploits in Texas Hold Em, in both online tournaments and live games.

Q:

Did he explain where these live games took place? A: Yes, the 87 Saloon.

Q:

Any other references to gambling?

A:

Yes, he bragged about wagering hundreds of thousands of dollars on sports. Both on line, with companies based out of the Bahamas, and through local bookies.

Q:

Did he mention any other hobbies of his on Facespace?

A:

He spoke very highly of the drug Provigil.

Q:

Have the mystery pills from the brief case been identified?

DC:

Objection, hearsay and lack of foundation. Detective Reagan cannot testify as to what the pills are, nor can he rely on testimonial affidavits from the crime lab. If the Government wants the identification of these pills to be a part of evidence against Mr. Stephens, it must call the crime lab analyst who compiled the report.



- Court: That objection is better suited for trial, counselor; objection overruled. You may answer the question.
- A: Yes, they were sent to the drug lab and identified as Modafinil, otherwise known as Provigil.
- Q: You mentioned that aside from the \$200,000 and the bottle of prescription medication that there was also a cell phone in the briefcase?
- A: Yes, I seized a cell phone.
- Q: Why did you seize the cell phone?
- A: Two reasons: There was a text message of interest and there were photographs taken with the phone that were stored on the phone.

*Assistant Public Defender Mila Kaelin handled the cross examination of Detective Reagan and the relevant portions of her testimony.*

- Q: Detective Reagan, you were at the residence for several minutes before you approached the front door, correct?
- A: Yes.
- Q: Over fifteen minutes in fact?
- A: Yes.
- Q: Just waiting there for over fifteen minutes before you approached the door to ask for consent to search?
- A: Kind of.
- Q: So, that's a yes?
- A: Yes...
- Q: Now, while you were sitting there outside Mr. Stephens's house, you saw Special Agent Tribbs pull up and begin walking to the front door?
- A: Yes.
- Q: Yet, you and Special Agent Kirby did not go to the door with Special Agent Tribbs?
- A: Correct.
- Q: You just waited in your car?
- A: That's right.
- Q: And the two of you waited in the car in front of Stephens's neighbor's house, correct?
- A: Yes.
- Q: Then you observed Stephens leave his residence?
- A: Yes.
- Q: Along with Tribbs following behind?



A: That's right.

Q: You didn't follow Special Agent Tribbs and the suspect, did you?

A: No.

Q: In fact you sat there and waited for fifteen more minutes?

A: I'm not sure how long it was.

Q: And that's because you were waiting on a call from Special Agent Tribbs?

A: Not sure what you mean?

Q: All right, I'll explain it. You were part of an elaborate plan to gain consent to search Mr. Stephens's house. Part of that plan was to have Special Agent Tribbs get Stephens out of the house, so then you could get consent from Stephens's wife?

A: Well, I wouldn't characterize it that way, we were just following orders.

Q: Well, regardless of how you would characterize it, you were supposed to wait for a call from Tribbs before you approached the house, correct?

A: Yes

Q: And you got that call?

A: I did, yes from Special Agent Tribbs.

Q: And he told you to approach the house and attempt to gain consent from Mrs. Stephens?

A: Yes

Q: Did Tribbs mention to you that Mr. Stephens had not given his consent when asked?

A: He mentioned something like that, but we knew that the wife could give consent because she lived there, so we didn't think much of it.

Q: Now at this point you approached the front door of the house? Both you and your partner, Special Agent Kirby?

A: Yes that is correct.

Q: You knocked on the door and Mrs. Stephens answered, right?

A: Yes.

Q: And just for the record, both you and Special Agent Kirby were armed?

A: Yes, we were carrying our firearms.

Q: Now, when Mrs. Stephens answered the door and when you identified yourselves to her, she had a martini glass in her hand, correct?

A: Yes.

Q: And the martini glass was nearly empty?

A: I do not recall.

Q: Well, Mrs. Stephens told you she had been drinking that evening, didn't she?



- A: Yes, she did.
- Q: During that conversation at the doorway, she was slurring her words wasn't she?
- A: A bit.
- Q: And she was stumbling some, too, right?
- A: Yes, she stumbled once or twice.
- Q: She was unsteady on her feet?
- A: A bit unsteady but not falling down.
- Q: She actually spilled her near-empty martini while she was there in the doorway?
- A: Yes.
- Q: In fact she spilled it on your shoes?
- A: Yes.
- Q: Alright. Let's turn now to how intoxicated Mrs. Stephens was that evening. You have business cards right?
- A: Yes.
- Q: And those cards have your office phone number on them?
- A: Of course.
- Q: You have a cell phone as well?
- A: I do.
- Q: Who is your service provider?
- A: AT&T.
- Q: Ah yes, AT&T. Now HCPD Headquarters is where your office is, correct?
- A: Yup.
- Q: And you work there at least part of the time?
- A: Yes.
- Q: The cell phone coverage in that building is not very good, is it?
- A: No, it's not.
- Q: Especially for AT&T, your service provider.
- A: I would have to agree with that.
- Q: In fact, you do not get any signal in your office for your cell phone?
- A: None – it stinks.
- Q: You actually have to exit the headquarters building and walk about 10 feet into the parking lot to get a signal, isn't that true?
- A: Yes, as a matter of fact it is.
- Q: During your conversation with Mrs. Stephens in her doorway she initially refused your request for consent to search?
- A: That is correct.
- Q: But despite the fact she refused, and rightfully so, you continued to ask



her for consent to search?

A: I did.

Q: And she again refused?

A: Yes.

Q: And after she had refused to give consent twice, you pressed her again?

A: Yeah, I guess I did.

Q: No guessing Detective Reagan, either you did or you did not?

A: I did.

Q: In your continued pursuit of consent that had already been refused twice, you informed her that you were looking for evidence of massive gambling?

A: That's right.

Q: You did not expressly mention anything else you were looking for?

A: No, I did not.

Q: Again, she refused the search?

A: She eventually changed her mind.

Q: Detective Reagan, she again refused, correct?

A: Yes.

Q: Next you told her that she could just call her husband and run it by him, get his okay, so she would feel better and it could just get done – after all you all weren't going to find anything right?

A: Yes, that's about how the conversation went.

Q: You suggested she call her husband on his cell phone? And she tried to call him?

A: Yes.

Q: Even though you knew he was in HCPD Headquarters – a building you stated never got service from AT&T?

A: True.

Q: And isn't it also true that you knew before you told her to call him that Bill Stephens's cellular service provider was AT&T?

A: I think I did.

Q: And then she called her husband's office phone? A: Yes.

Q: Also a place you knew her husband was not present because he was at the HCPD Headquarters?

A: Yes.

Q: Now, again you knew Stephens was at HCPD Headquarters, not at his office?

A: Yes.

Q: So when you told Mrs. Stephens to just call her husband, you offered her



your business card with the direct line to the Headquarters?

A: No, I didn't.

Q: That's right, you didn't. Now, after she was unable to get a hold of her husband, you kept asking her questions?

A: We continued our conversation.

Q: You told her that you already had all the paperwork ready for a warrant to search her residence and her husband's office?

A: Yes.

Q: You told her that her refusal to consent was just delaying an inevitable process and going to keep everyone up later that night because YOU had to get the search done, didn't you?

A: I don't think I used those exact words.

Q: She eventually relented to your interrogation and signed the Consent to Search and Seizure Form, correct?

A: It wasn't an interrogation, but yes she signed the form.

Q: Let's turn now to the search itself. Did you talk to Mrs. Stephens as you were conducting the search?

A: Some, yes.

Q: Now, you seized a briefcase, correct?

A: Right.

Q: The briefcase was brown leather?

A: Yes.

Q: It is not illegal to own a brown leather brief case, is it?

A: No, it's not.

Q: But you thought it was suspicious enough to warrant you searching it?

A: I was just looking for evidence.

Q: You picked up the briefcase and saw that it had the initials "BS" on it.

A: I did.

Q: You seized this briefcase from a closet, correct?

A: Yes, from the floor of a closet.

Q: The only things in the closet besides the briefcase was fishing and hunting gear?

A: That's right.

Q: It's not a crime to fish and hunt is it?

A: No, not in the proper seasons and with proper licensing it isn't.

Q: Now, you knew where this closet was?

A: Yes, in the basement.

Q: Right. A basement that Mrs. Stephens told you was her husband's game room?



- A: Yes.
- Q: You did not ask her any clarifying questions, such as, “Do you have authority to consent to us searching this room?”
- A: No, I did not do that.

*Then, lead defense attorney, Wagner Michaels, called Mrs. Bonnie Stephens to the stand and after being sworn in by the bailiff, Mrs. Stephens testified in pertinent part as follows:*

- Q: What sort of experience have you had with law enforcement?
- A: Not much. A speeding ticket once. And police broke up a party I was at once.
- Q: Have you ever been arrested?
- A: No.
- Q: Has an immediate family member ever been arrested?
- A: Not before this, no.
- Q: Tell us what happened when you answered the door and the HCPD Officers were there?
- A: There were two of them at the door, crowding me. They both had badges and guns. They kind of demanded I allow them to search the house.
- Q: What happened next?
- A: I tried to tell them I did not want them to.
- Q: What happened after you told them no?
- A: I told them I had been drinking and I wasn't sure about having them in the house. I told them I wanted to talk to my husband.
- Q: Then what happened?
- A: I tried to call him on his cell phone several times but never got through – straight to voice mail. I then tried to call his office, but there was no answer.
- Q: And after you could not get in touch with your husband, what happened?
- A: They told me they already had a warrant for my husband's office and if I made them get one for the house everybody would be up all night.
- Q: Had you consumed any alcohol that evening?
- A: I had been drinking much of the day. I had been drinking and I told them that. I am not a big woman and had already had quite a few martinis when I came to the door. I was pretty intoxicated while they were talking to me. I couldn't think straight.
- Q: Did they tell you what they suspected your husband of?
- A: They told me they were looking for evidence of massive gambling.



Which is funny, because we are broke. He isn't doing any gambling. They also said they were looking for evidence of drug dealing. Again, ridiculous, we are broke.

Q: Why did you allow the Officers to search your house?

A: I did not feel like I had a choice. They just kept leaning on me. Not physically, but pressuring me – you know. I was drunk and not thinking straight, and I'm pretty sure they could see that.

Q: Before you signed the Consent to Search and Seizure Form, did you read it? A: No, I couldn't see straight, much less read anything.

Q: Did you give them unlimited consent to search?

A: No. They were talking about gambling and drugs. I thought they were looking for drugs and money. I thought that was all they were looking for.

*The questions eventually turned to focus on the search of the basement.*

Q: Were you with the officers when they entered the basement?

A: Not with them exactly, more behind them. I was curious as to what they were doing.

Q: Did you tell them anything about the room?

A: I told them it was my husband's game room/hang out. I told them that I did not ever go in there. I told them they should not hold the state of disarray of the room or his decorating choices against me.

Q: Did they ask you to clarify what you meant by that?

A: No.

Q: What did you mean by that?

A: I do not go into that basement, because it is my husband's room.

Q: What about the closet?

A: I do not go into the room. The closet is in the room. He keeps his fishing and hunting stuff in there.

Q: When the officers were in the basement did they look at anything closely?

A: Yes, one of them went through the computer desk and the other went through the closet.

Q: What happened in the closet?

A: The officer took a briefcase from the closet and opened it up.

Q: Did the officers ever ask you any questions about the basement itself?

A: No, they were not really talking to me.

Q: Did the officers ask you any questions about the closet?





A: No.

Q: Did the officers ask you any questions about the briefcase?

A: No.

*Hearing on defense motion to suppress the incriminating statement made to Captain David Brinks.*

*In response to the defense's motion to suppress the evidence, the Government called Captain David Brinks to the stand. U.S. Attorney Sully Daniels conducted a direct examination. Relevant portions are as follows:*

Q: Where were you on the evening of Friday July 6, 2022?

A: I was out for a run around the area that evening.

Q: What were you wearing?

A: Black t-shirt, black shorts, and running shoes.

Q: Anything unusual happen on that run?

A: Yes. I was approaching a building near the offices by the base, by the parking lot actually. I heard police sirens in the distance, then I saw a guy running in the parking lot. It was pretty late at night, well after working hours anyway, so the parking lot was empty except for the convertible this guy was running towards, and a couple of government vehicles.

Q: You said the guy was running towards a convertible. How did you know it was a convertible?

A: The top was down.

Q: What happened after you saw the guy running towards the vehicle?

A: I heard someone yell, "STOP!!" – but he just kept running towards his car.

Q: What, if anything, did you do?

A: I detained him.

Q: Please explain what you mean by that.

A: I tackled him and subdued him without intent to cause injury. So the pursuers could catch up and the situation could get sorted out.

Q: Did you tie him up or restrain him in any manner?

A: Not really. I put my hand on his chest.

Q: Did he resist you?

A: Briefly. I kept him on his back and he realized resistance was futile.

Q: Did you identify yourself to Stephens?

A: I did not.



- Q: Did you speak with him?  
A: I asked him what was going on.  
Q: Did he respond?  
A: Yes.  
Q: How did he respond?  
A: He said that he had done some bad stuff and that it was catching up with him, and that he loved his country.  
Q: After he told you he had done some bad stuff and that it was catching up with him and that he loved his country, what happened next?  
A: The HCPD officers that were chasing him arrived. One of them frisked Stephens for weapons while the other read him his rights.  
Q: What direction did the Officers come from? A: The Officers approached from the West.  
Q: After the officers frisked Stephens and read him his rights, what happened? A: The Officer stood him up, and walked him back towards a squad car.  
Q: Was he handcuffed?  
A: Not until they got him over to the squad car. They put him in cuffs there. Then they put him in the back of the squad car.  
Q: Who escorted Stephens from where you brought him down to the squad car where he was cuffed?  
A: Officer Lee and I.

*D.A. Sully Daniels tendered the witness to the defense. Mila Kaelin, the Assistant Public Defender, handled the cross-examination. Relevant portions follow below:*

- Q: You hold the rank of Captain with the local S.W.A.T. unit, correct?  
A: Why yes, I do.  
Q: You tackled Stephens when he was just a couple of feet from his vehicle, isn't that also true?  
A: Yes.  
Q: And then you forcibly held him down?  
A: I made sure he wasn't going to get up, yes.  
Q: After tackling him, and restraining him, you then started to interrogate him, didn't you?  
A: I asked what was going on.  
Q: Captain, isn't it true that you demanded to know, and I quote, "What in the world is going on?"  
A: I do not remember my exact words.



- Q: Of course you don't. Now, you testified that you are an experienced officer?
- A: Yes.
- Q: With the S.W.A.T. unit?
- A: Yes.
- Q: You've received special training as a part of that unit, have you not?
- A: Yes, I am well-versed in both armed and unarmed, offensive and defensive tactics.
- Q: You have received specialized training in gathering intelligence too, haven't you?
- A: Yes.
- Q: Before you interrogated Stephens, whom you had just tackled and restrained flat on his back— you did not warn him that he was suspected of a crime, did you?
- A: I did not know what was going on.
- Q: You did not warn him he was suspected of a crime?
- A: No.
- Q: You did not give Stephens his Miranda warnings or notify him he was suspected of any crime before you questioned him?
- A: No.

*The Government also called Officer Shelby to the stand. After some introductory questions they moved into the apprehension of Stephens.*

- Q: What did you do after coming upon the scene?
- A: I approached the suspect with my weapon drawn.
- Q: Then what?
- A: Officer Lee instructed Brinks to step back and frisked Stephens while I read him his rights.

## **RULINGS ON THE DEFENSE'S MOTION TO SUPPRESS**

The trial court Judge denied the motions to suppress and issued findings of fact and conclusions of law. These denials were later appealed—see below.

## **THE TRIAL**

The trial began on October 10, 2022 and concluded on October 15, 2022. The Government called all of the HCPD Officers and FBI agents that had been involved in the investigation to the stand. The Government also called Captain David Brinks to the stand to testify about the apprehension and admission made by Stephens. The



seized physical evidence was offered and received into evidence. Testimony was provided that the classified material on the phone was outside the scope of Stephens's official duties. Documents from the drug lab were admitted into evidence to confirm the pills found in the residence were in fact the prescription drug Provigil (a.k.a. Modafinil), that the quantity possessed was in excess of what would likely be used by one person, and that Bill Stephens did not have a lawful prescription for the drugs. There were additional witnesses and documents that traced the seized cell phones back to their point of purchase where the purchaser was identified as an Russian national.

The defense argued the \$200,000 were winnings from Stephens's various gambling activities. They offered testimony from Ray "Life" Stefano, a local bookie, who they used to establish amounts of Stephens' gambling wins. No defense was offered as to the pills and the defense claimed the classified documents were actually work brought home. Stephens was convicted of the following charges and specifications:

**Charge I:** Violation of 18 U.S.C. § 793: Gathering, transmitting, or losing defense documents/attempted espionage:

**Specification:** Stephens did, at or near the local office of the Department of Defense, on or near July 6, 2022, with intent or reason to believe it would be used to the injury of the United States or to the advantage of Russia, a foreign nation, attempt to communicate information relating to the national defense, which directly relates to Major Defense Strategy, to an agent of a foreign government.

**Charge II:** Violation of 21 U.S.C. § 841(a): Unlawful possession of controlled substances with intent to sell or distribute:

**Specification:** Stephens did, at his residence within this jurisdiction, on or about July 6, 2022, wrongfully possess 37 tablets of Modafinil, a scheduled IV controlled substance, with the intent to distribute the said controlled substance.



### **The Sentence**

Stephens was sentenced to 53 years of confinement in Federal Prison.

### **The Appeal**

The evidentiary rulings made by the Trial Judge were appealed to the Fourteenth Circuit Court of Appeals. (See Attachment 3 below.) The questions presented were:

- 1. Did the Trial Judge err by refusing to suppress the physical evidence seized from Stephens's residence without a warrant?***
- 2. Did the Trial Judge err by refusing to suppress the statements made by Stephens to Captain Brinks and to Special Agent Tribbs.***



# Attachments

## ATTACHMENT 1 – CONSENT TO SEARCH AND SEIZURE FORM

### CONSENT TO SEARCH AND SEIZURE

July 6 th , 2022

I, Mrs. Bonnie Stephens, have been informed by HCPD Detective Tiffany Reagan, that the HCPD is conducting an investigation into my husband, Bill Stephens, and have requested permission to search my residence.

I have been informed of my constitutional right to refuse to permit this search in the absence of a search warrant. In full understanding of this right, I have nevertheless decided to permit this search to made by my own volition.

This search may be conducted on July 6, 2022, by HCPD Officers Tiffany Reagan and Kevin Kirby, and I hereby give my permission to remove and retain any property or papers found during the search which are desired for investigative purposes.

I make this decision freely and voluntarily, and it is made with no threats having been made or promises extended to me.

Signed: Bonnie Stephens

Tiffany Reagan  
Representative, HCPD

Kevin Kirby  
Representative, FBI

\_\_\_\_\_  
Command Representative

### TIMES OF SEARCH

Start: 7:31pm

End: 8:30pm



ATTACHMENT 2: DEFENDANT’S MOTION TO SUPPRESS EVIDENCE

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF MCDONOUGH  
CRIMINAL DIVISION

UNITED STATES OF AMERICA, )  
 )  
V. ) Case No. 09-1234  
 )  
Bill Stephens, )  
 )  
 *Defendant.* )  
 )

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DEFENDANT’S MOTION TO SUPPRESS EVIDENCE

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COMES NOW, the Defendant BILL STEPHENS, by and through counsel, and moves this Court to Suppress from evidence at trial all evidence seized from residence of the Defendant BILL STEPHENS, and states the following:

On July 6, 2022, agents of the Henry County Police Department and the Federal Bureau of Investigation conducted a search of Defendant’s residence after consent was purportedly obtained from Defendant’s wife, Bonnie Stephens. From this search Henry County Police found what was believed to be evidence of Defendant’s criminal activity. Based on the evidence unlawfully seized from the Defendant’s residence, the Officers then notified their superior officers, which resulted in an order to arrest defendant Stephens “on sight.”

Henry County Police Officers found Defendant STEPHENS outside his office, and pursuit ensued. As Defendant STEPHENS was nearing his vehicle, Captain David Brinks apprehended the Defendant, and elicited incriminating statements without first informing Defendant BILL STEPHENS of his Miranda Rights. Defendant STEPHENS was then removed from the scene.

Agents of the Henry County Police Department and the Federal Bureau of Investigation violated Defendant STEPHENS’S rights under the Fourth, Fifth, and Sixth Amendments to the Constitution of the United States. Specifically, the search of Defendant STEPHENS’S residence and the eliciting of incriminating statements were all conducted unconstitutionally. To that end, Defendant moves this Court to suppress from evidence at trial the following:



1. The briefcase found at Defendant STEPHENS'S residence and all items contained therein; and,
2. Statements made by Defendant STEPHENS following his unlawful detention pursuant to evidence which was unlawfully seized from Defendant's residence; and,
3. Stephens's statement in response to Captain Brinks's unmirandized question.
4. Statements made by Defendant STEPHENS following his unlawful arrest pursuant to statements made in response to interrogation from Cpt. Brinks.

Oral argument is requested. A memorandum of law in support of this motion is attached.

Respectfully Submitted this 3rd day of September, 2022.

*Mila Kaelin*

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Attorney for Defendant

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#### CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion entitled "Defendant's Motion to Suppress Evidence" was served on Government counsel on the 3rd day of September, 2022.

*Mila Kaelin*

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Attorney for Defendant





ATTACHMENT 3: ORDER GRANTING APPEAL TO THE 14TH CIRCUIT

UNITED STATES COURT OF APPEALS  
FOR THE FOURTEENTH CIRCUIT

BILL STEPHENS,	:	
	:	
Appellant,	:	
	:	
v.	:	ORDER GRANTING APPEAL
	:	
UNITED STATES OF AMERICA,	:	
	:	
Appellee.	:	

An application for appeal having been made from the judgment of the United States District Court for the Southern District of McDonough entered October 3, 2022, and upon consideration thereof, it is hereby:

ORDERED, that said appeal be GRANTED and that the appeal be set down for argument. Said appeal shall be limited to the following questions:

--Whether the District Court erred in admitting, over the defendant/petitioner’s objection, evidence seized from Stephens’s residence without a warrant.

--Whether the District Court erred in admitting, over the defendant/petitioners’s objection, evidence of statements made by Stephens to an off-duty officer without Miranda warnings.

*/s/ Hon. J. Armga*

Circuit Court Chief Judge

U. S. Court of Appeals for the Fourteenth Circuit

Dated: November 5, 2022



**ATTACHMENT 4: OPINION OF THE FOURTEENTH CIRCUIT  
COURT OF APPEALS**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTEENTH CIRCUIT**

BILL STEPHENS,

Appellant,

v.

OPINION OF THE COURT

UNITED STATES OF AMERICA,

Appellee.

***Opinion by Judge Armga, joined by Judge Rozier:***

This case comes to this court from the Southern District of McDonough, challenging that court’s ruling for The United States of America which found that certain statements and evidence were admissible against Defendant/Petitioner Stephens and that admitting these statements and evidence was not a violation of the Defendant/Petitioner’s rights under the Fourth, Fifth, and Sixth Amendments. Stephens filed a timely appeal. For the following reasons, we find no error in the ruling of the District Court, and affirm.

***Factual Summary***

We will offer only a brief summary here of the facts and they are as follows. A government informant by the name of Benz had provided federal agents with information suggesting Petitioner Stephens was involved in a scheme by which he used his government security clearance to obtain classified documents and then sell them to allegedly fund a gambling and drug habit. When Benz failed to show up to give a statement to federal agents about Petitioner’s alleged activity, the agents suspected foul play and went to Benz’s house where they found signs of forced entry and injury. They immediately enlisted the help of local law enforcement to locate Benz and sought out Petitioner Stephens for questioning. After Stephens agreed to leave his house to go to the local police stationing for questioning about Benz’s disappearance, he was asked for consent to search his house. He never responded affirmatively or negatively. A federal agent telephoned local law enforcement stationed outside Petitioner Stephens’s house to enlist them to speak to Stephens’s wife at the residence and ask her for consent to search. The officers saw that Ms. Stephens had been drinking. She eventually consented to the search of their residence, being told that law enforcement was looking for evidence of gambling and drug use. She mentioned that a certain area of her house was her husband’s “man cave.” In this area, police searched a closet, finding a briefcase containing a cellphone and a pill bottle containing a controlled substance. The cellphone was opened on-site and found to contain incriminating information suggesting the sale of classified documents.

After Petitioner Stephens was released from police custody, he was later pursued by federal agents who had only then received word about the incriminating evidence found at his house. When they gave chase on foot, Stephens evaded and tried to run to his car. The police shouted for him to stop and announced they were



law enforcement. An off-duty S.W.A.T. officer by the name of David Brinks witnessed the chase and was close enough to tackle Stephens and pin him to the ground. Brinks asked Stephens, “What did you do?” whereupon Stephens responded, “I did some very bad stuff, and it just caught up with me...but I love my country. I really do!”

### ***Procedural Posture***

Prior to trial, Petitioner Stephens filed a timely motion objecting to the admission of the documents found on the phone recovered from his house, the pill bottle also located in the recovered briefcase, as well as to the admission of certain incriminating statements he made to officer Brinks. The federal district trial judge denied all of Petitioner’s motions after an extensive evidentiary hearing. Petitioner then filed this appeal seeking to exclude all tangible evidence recovered from his home and the statements he made after being apprehended by officer Brinks.

### ***Warrantless Search***

A citizen is protected from the unreasonable search and seizure of his person, papers, and effects by the Fourth and Fourteenth Amendments, respectively and in concert. There is no question here that state actors—the local police agents assisting federal agents—searched Stephens’s residence. Here, the Respondent, United States of America, contends that the search was legal as a result of a lawful consent by Petitioner Stephens’s co-tenant spouse. We agree.

Law enforcement may not remove an interested person from his dwelling in order to remove his ability to deny consent and to seek consent from another. *Georgia v. Randolph* Thus, the question arises as to whether law enforcement’s removal of Stephens to the police department was for the purpose of searching his house. It clearly was not. Agents were investigating with necessary urgency the disappearance of their key informant. It was only reasonable for them to first question Benz’s co-worker and the person was informing on. It was reasonable for law enforcement to first believe that Stephens might have learned of Benz informing on him and effected, in some way, his disappearance. There was no evidence of deliberate removal as we see, for example in *U.S. v. Wilburn* out of our sister circuit.

As to Petitioner Stephens’s wife’s consent, we find the consent was valid and lawfully obtained. The dissent casts doubt on her capacity to consent, but the protest rings hollow. Ms. Stephens had already refused consent and then offered presumptive rationale for changing her mind, stating that she had doubts her husband was a big-time gambler or involved with drugs. Changing one’s mind and offering rationale for doing so seems to this court to be a hallmark of self-reflection and, thus, capacity for decision making. Even if we assume that her capacity was questionable, there is good authority to excuse officers’ conduct anyway.

Furthermore, she was clearly within her right to give the scope of consent that she gave and within which the search was conducted. The basement was not locked. Whether she did or not, law enforcement on scene had ample reason to believe she could consent as a co-tenant of the house and as the Petitioner’s wife. See, Rodriguez. Finally, the scope of the search was general enough to include this area and these effects.

### ***Miranda requirement and custodial interrogation***

Where law enforcement has effected a custodial detainment of a person, that person must be informed of his right to remain silent, and all other attendant rights, by what is commonly known as a Miranda warning. *Miranda v. Arizona*. Thus, the principal question before us on this issue is whether Petitioner Stephens was custodially detained by police at the time he was questioned by off-duty officer, Brinks. If he were,



and if Brinks subjected him to interrogation without a Miranda warning, then his statements to Brinks were improperly admitted at trial. For the following reasons, we find that Stephens was not custodially detained or subject to interrogation.

At the time Petitioner Stephens was tackled by Brinks, there were some law enforcement officers in pursuit. Brinks, however, was not one of them. Officer Brinks was dressed in plain clothes and was off duty at the time he observed Stephens being chased. As a result, Brinks would have appeared to an objective observer as an ordinary citizen. Thus, it is, first, questionable whether he was a state actor for purposes of a 5th and 6th Amendment analysis and, second, whether tackling and pinning Stephens was a custodial detention with interrogation.

Because Brinks was off-duty and in plain clothes, we find this case to be most factually similar to *Illinois v. Perkins*, where the Supreme Court held that statements made by an incarcerated defendant to an undercover jailhouse informant were properly admitted against him in a subsequent trial. We find, as did the Court in *Perkins*, that Brinks's decidedly bland question "What did you do?" lacked the compulsion required to make its admission offensive to Constitutional safeguards. We are hard pressed to find that a single question is an "interrogation" at all.

It is for the foregoing reasons that we find that the evidence obtained via the briefcase and cellphone in Petitioner Stephens's house and the statements made to Brinks were properly admitted against Stephens and find no error in the judgment of the district trial court.

***Judge Rost, dissenting.***

Proper legal analysis on any issue has to give credence to the entire landscape of the law as well as honor the precedent that informs that analysis. Today, the majority errs because it has neglected a thorough approach to both.

***Unlawful Search***

First, Petitioner Stephens had a subjective expectation of privacy in his briefcase and, I would argue that Stephens had done more to secure the privacy of his papers and effects than defendant Katz did in our Supreme Court's seminal decision on his behalf. Where Katz had closed the door to his phone booth to exclude the listening ear of the government, Stephens's papers and effects were in a cellphone, which was in a briefcase, which was in a closet, which was in a basement of a house where the only co-tenant living there "never" entered. The majority apparently considers these privacy facts too insignificant for its consideration on the question of privacy. However, we are instructed by our Supreme Court to consider the totality of the circumstances before ruling on the propriety of any given search. *Schneekloth v. Bustamonte*. Thus, focusing on facts in isolation, as the majority does, is not the proper method of analysis here.

Given the fullness of Stephens's right to privacy here, I must next answer whether his wife was within her proper mind and rights to permit the government its intrusion into his dwelling and personal property. Here, the facts condemn the government's actions on both accounts. There exists an even worse problem here in that both federal and state actors worked together to gain consent from a third party who had no vested interest in Petitioner's privacy.

In *Georgia v. Randolph* our Supreme Court said that the government could not remove a self-interested party from a residence to deprive him a chance to refuse consent. Undoubtedly, law enforcement would



protest that they had other business to conduct with Stephens relating to the disappearance of Benz. This I find, however, to be irrelevant if they nevertheless intended to use his absence from the house to their own advantage in getting consent. This seems only logical. If the officers' intent was to ply disinterested parties into giving away the rights of others, then any pretense offered to excuse detour around the requirement for a warrant is meaningless. Yet, this is what law enforcement did here. Why even have law enforcement posted outside Stephens's residence when no other suspects are present and no other observations are necessary? They were there for one reason: to move in once Petitioner was moved out.

This fact is made worse in the totality of the circumstances by the simple truth that Detective Reagan waited until she could reasonably believe Petitioner was in the bowels of a building impenetrable to AT&T cellphone signals—whereupon she offered Petitioner's wife the chance to call him on his AT&T cellphone. The majority senses no impropriety with this empty offer, nor does it find any fault with Reagan's apparent unwillingness to call the station's landline.

Once law enforcement had plied her with murmurs of clearing her husband's name they then ignored the fact that, at the basement door, she ultimately revealed that she did not have the power to consent to this area of the house. She told the officers the basement was her husband's "man cave" which, employing some simple exclusionary logic, should have told the officers it was not her cave to go in. She told them she "never" went in there, which was yet another clue that the basement wasn't within the scope of her ability to consent. To make matters worse, police then opened a container in this man cave's closet. This container—a briefcase—bore the initials of the Petitioner: "B.S." They then opened, arguably, another container—the cellphone. There seems to be no set of Russian nesting dolls of privacy large enough or deep enough that would concern these officers when it came to scope of their search. And if they told her they were looking for evidence of gambling, were they even within the proper scope of any consent if they looked for some other kind of evidence?

It is for these reasons that this case is most similar to the Second Circuit's decision in *Moore v. Andreno*, and the majority would have been wise to pay heed to that case even though it is not binding authority upon us.

### ***Miranda warning and custodial detention***

On this issue, the most curious part of the majority's analysis is that relies on *Illinois v. Perkins* while completely omitting that authority's discussion of "police-dominated atmospheres" as a context for custody and questioning. The omission is glaring as "police-dominated" is perhaps the best way to describe the geography and circumstances surrounding Stephens's capture by Officer Brinks. I fail to see how the majority can ignore or dismiss the chase in which law enforcement were shouting "Stop! Police!" as, apparently, an atmosphere not dominated by police. If during a run from the police you're tackled by the police—off-duty or not—the environment is decidedly "police-dominated."

Though a major piece of this question is about custody, the majority gives only a perfunctory nod to *Miranda v. Arizona* but doesn't seem willing to apply *Miranda's* instruction on what "custody" is. Per *Miranda*, the majority should have asked if Petitioner Stephens was denied his "freedom of action." Had it done so, it might have concluded—based on the fact that Brinks had Stephens pinned to the ground with his knee before he questioned him—that when an officer with skill, training, and strength has you pinned to the ground, you've lost your "freedom of action." And why else would Brinks even try to secure Stephens in that manner,



if not to deny him freedom of action until his colleagues arrived? It is only logical to conclude that the custody begins right there and, consequently, the Miranda warning should begin with it.

The majority relies heavily on the fact that Brinks was off-duty and this is enough to invoke Perkins—a case easily distinguished on the facts. First, the entire purpose of using an undercover agent as a jailhouse informant is to preserve secrecy in his identity. That secrecy is the crux of maintaining the appearance of an atmosphere devoid of police presence. However, where the government acts openly, it is supposed to instill in its citizens a sense that they are fully in possession of their rights. I can see no other way of reconciling the *Miranda* and *Perkins* cases. When the police are dominating you, you're entitled to be reminded of your rights.

Presumably, the majority would object here that a private citizen (as they would say Brinks is, so long as he is off-duty) can neither commit a Constitutional detention or an interrogation. To me, that protest rings hollow. Brinks clearly used his training and his skill in apprehending, tackling, and securing Stephens, and he did so, as noted above, for the purpose of detention. Brinks, therefore, is only off-duty for the majority's convenience.

While I readily admit that the contents of the cellphone are suggestive of Petitioner's guilt in the accusation of trading top-secret documents for money, that suggestion cannot act as an encouragement for this court, or any other court, to find ways to make that evidence admissible. Through its spotty analysis, I worry that the majority is concerned more with the ends of its decision than the means by which it arrives there. Therefore, I dissent.



**ATTACHMENT 5: ORDER GRANTING APPEAL TO THE UNITED STATES SUPREME COURT**

SUPREME COURT OF THE UNITED STATES OF AMERICA

BILL STEPHENS, :

Petitioner, :

v. : ORDER GRANTING APPEAL

UNITED STATES OF AMERICA, :

Respondent. :

An application for appeal having been made from the judgment of the United States Court of Appeals for the Fourteenth Circuit, entered January 15th, 2023, and upon consideration thereof, it is hereby:

ORDERED, that said appeal be GRANTED and that the appeal be set down for argument in June of 2023. Said appeal shall be limited to the following questions:

1. Whether the Circuit Court erred in admitting, over the defendant/petitioner’s objection, evidence seized from Stephens’s residence without a warrant.
2. Whether the Circuit Court erred in admitting, over the defendant/petitioner’s objection, evidence of statements made by Stephens to an off-duty officer without Miranda warnings.

*/s/ Hon. Morse Tan*

Chief Justice

U. S. Court of Appeals for the Fourteenth Circuit

Dated: February 28, 2023



# The Law

## UNITED STATES CONSTITUTION

**Amendment IV:** 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.

## CASE LAW - PREVIOUS CASES APPLICABLE TO THE PROBLEM

*As you're arguing in front of the United States Supreme Court, the follow group of cases is "binding" or "mandatory" authority. The Court must follow its previous decisions—it's precedent—or it has to distinguish the case as being inapplicable on the facts or legal circumstances.*

**Blackburn v. State of Alabama, 361 U.S. 199 (1960).** Defendant was convicted of robbery after a confession was admitted into evidence against him. The Supreme Court held that the confession was involuntary as there was evidence that the defendant was mentally incompetent and that the confession was obtained under coercive circumstances by the police. The confession was obtained after an eight to nine hour interrogation in a small room, there were numerous police officers present, and the written confession was composed by a police officer. A confession obtained under these circumstances could not be admitted into evidence against the defendant without violating the Fourteenth Amendment.

**Brigham City v. Stuart, 547 U.S. 398 (2006).** Officers responding to a loud party call observed an altercation between 4 adults and a juvenile through the screen door. The juvenile punched an adult in the face which caused him to spit blood in the sink. Officers made warrantless entry into the home and arrested the defendants for contributing to the delinquency of minors. The United States Supreme Court held that police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. The Court reaffirmed that the ultimate test in Fourth Amendment cases is reasonableness, and that the warrant requirement is subject to several exceptions including exigency.

**Chimel v. California, 395 U.S. 752 (1969).** Police arrested defendant at his home pursuant to an arrest warrant for burglary. When the officers entered the home they asked for consent to "look around." The defendant refused, but was told that "on the basis of a lawful arrest" the officers would do so anyway. The officers then looked through the entire three-bedroom house, including the attic, the garage, and a small workshop, finding evidence of the burglary in the bedroom. The United States Supreme Court held that the scope of the search violated the Fourth Amendment. The Court ruled that a search incident to arrest





was limited to the area within an arrestee's immediate control construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

**Coolidge v. New Hampshire, 403 U.S. 443 (1971).** Police went to the defendant's home to question him about a murder. He agreed to go with them to the police station to take a polygraph. During the polygraph the defendant admitted to a theft. While the defendant was still at the police station other officers went back to the defendant's home to talk with the defendant's wife. The wife showed them four guns and offered to let the police take them. Two weeks later the defendant was arrested for murder at his home. The defendant's car, which had been parked next to his home, was towed to the police station where it was searched pursuant to a search warrant. Evidence from the car was used against the defendant along with one of the guns that the wife had given to the police. The United States Supreme Court held that the search warrant violated the fourth amendment because it was not issued by a neutral magistrate, and that there was no justification for a warrantless search of the automobile under either the search incident to arrest exception, exigency, or plain view. However, the Fourth Amendment was not implicated by the wife giving the police officers the guns as she was not acting as their agent or instrument of the police when she did so.

**Florida v. Jimeno, 500 U.S. 248 (1991).** The defendant moved to suppress cocaine recovered from a brown paper bag located inside his vehicle that was discovered during a consent search. The defendant contended that his consent did not extend into the closed brown paper bag after he had given consent to search the vehicle. The United States Supreme Court held that the appropriate Fourth Amendment standard is objective reasonableness and that while a suspect may limit the scope of a search, if his consent is general in nature and would reasonably be understood to include closed containers, the Fourth Amendment does not require more explicit authorization.

**Georgia v. Randolph, 547 U.S. 103 (2006).** Defendant was charged with possession of cocaine and moved to suppress the evidence that was discovered in search of his marital residence based on his wife's consent. The Supreme Court held that if a potential defendant with a self-interest in objecting to a search is present and objects to a search, then a co-tenant's permission does not suffice for a reasonable search. The Court also indicated that if the police remove one party from the scene with the intent of denying that party the opportunity to object to a search, then obtaining consent from the other party would still be unreasonable.

**Herring v. United States, 129 S.Ct. 695 (2009).** Defendant was convicted on drugs and weapons charges after he was arrested on the basis of a warrant that showed in a dispatcher's computer records,



but which had actually been recalled. The trial court refused to suppress the evidence. The United States Supreme Court held that when police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search, rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply.

**Horton v. California, 496 U.S. 128 (1990).** Officers searched defendant’s home pursuant to a search warrant during a robbery investigation. The warrant specified only the proceeds from the robbery and not the weapons used during the robbery. During the search of the home, the officers did not find any of the proceeds from the robbery, but located the weapons used in the robbery in plain view. The officer admitted during testimony that while he was searching for the proceeds of the robbery, he also was interested in finding other evidence connecting petitioner to the robbery. Thus, the seized evidence was not discovered “inadvertently.” The Supreme Court of the United States held that that Fourth Amendment does not prohibit warrantless seizure of evidence of crime in plain view, even if discovery of evidence was not inadvertent.

**Illinois v. Perkins, 496 U.S. 292 (1990).** The police placed an undercover officer in a cellblock with the defendant to obtain information related to a murder. The defendant was imprisoned on charges unrelated to the murder investigation. The defendant made statements in response to the officer’s questioning that implicated himself in the murder. At trial, the defendant contended that the statements should be suppressed because they were obtained without Miranda warnings. The Supreme Court held that an undercover law enforcement officer posing as a fellow inmate need not give Miranda warnings to an incarcerated suspect before asking questions that may elicit an incriminating response. The Miranda doctrine must be enforced strictly, but only in situations where the concerns underlying that decision are present. Those concerns are not implicated when the essential ingredients of a “police-dominated atmosphere” and compulsion are lacking.

**Illinois v. Rodriguez, 497 U.S. 177 (1990).** Police responded to a woman who had been beaten. The woman indicated that she had been assaulted by the defendant earlier in the day at a different apartment. She told the police that she would take them to the apartment and let them in with her key. Several times on the way to the apartment, the woman referred to the apartment as “our” apartment and indicated that she had furniture and clothing there. Once there, the woman unlocked the door and told the police to enter. The police entered the residence and located drugs and paraphernalia in plain view. The defendant was arrested for narcotics violations. The Supreme Court held that a warrantless entry is valid when based upon the consent of a third party whom the police, at the time of the entry, reasonably believe to possess common authority over the premises, but who in fact does not.



**Katz v. United States, 389 U.S. 347 (1967).** The defendant was charged with transmitting gambling information over the telephone in violation of federal law. The FBI overheard the conversation via electronic monitoring that they attached to the pay phone where the defendant placed the calls. The United States Supreme Court held that the electronic surveillance violated the privacy upon which the defendant justifiably relied while using the telephone booth and thus constituted a ‘search and seizure’ within the meaning of the Fourth Amendment. The Court held that when the defendant closed the door to the public telephone booth he used to make his phone call he had created a subjective expectation of privacy that an objective person would regard as reasonable. The government’s tapping of the phone line violated the defendant’s reasonable expectation of privacy.

**Miranda v. Arizona, 384 U.S. 436 (1966).** Defendant sought to have statements made during an interrogation suppressed. The United States Supreme Court held that a person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in the court of law; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him. The Court defined custody as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. A statement made without the required warning in such a circumstance is inadmissible whether inculpatory or exculpatory.

**Nix v. Williams, 467 U.S. 431 (1984).** Defendant was convicted of the murder of a 10 year old girl. Prior to the discovery of the girl’s body, defendant had been taken into custody and was being transported in a patrol car by two detectives. One of the detectives initiated a conversation that led to the defendant making incriminating statements and revealing the location of the girl’s body. The defendant’s first trial had been brought to the United States Supreme Court, where a divided Court ruled that the statements had been taken in violation of the 6th Amendment. A second trial was conducted in which none of the statements were admitted against the defendant, but the location of girl’s body as well as evidence obtained with the body was admitted against the defendant. The defendant moved to suppress the evidence. The trial court denied the defendant’s motion holding that the body would have been inevitably discovered by the 200 person search team that was looking for her, and the defendant was convicted. The United States Supreme Court held that the evidence pertaining to the discovery and condition of the victim’s body was properly admitted at respondent’s second trial on the ground that it would ultimately or inevitably have been discovered even if no violation of any constitutional provision had taken place. The Court emphasized that there was no requirement to show absence of bad faith on the part of the police.



**Schneckloth v. Bustamonte, 412 U.S. 218 (1973).** Defendant brought a petition for habeas corpus after being convicted for possession of stolen checks. The Supreme Court reversed the Ninth Circuit, holding that the voluntariness of consent is based on a totality of the circumstances test, and while a subject’s knowledge of his right to refuse consent is a factor in the totality of the circumstances test, it is not necessary to show that the defendant was informed of such a right or that he had knowledge of such a right in order to establish voluntary consent.

**United States v. Matlock, 415 U.S. 164 (1974).** Defendant was arrested in the yard of his home by officers who were investigating a bank robbery. The officers obtained consent to search the suspect’s home from his wife, including a bedroom that the wife indicated she jointly shared with the defendant. The officers located evidence of the bank robbery in the bedroom. The Supreme Court held that valid consent to search can be obtained from a third party who shares common authority over the premises to be searched.

**U. S. v. Ross, 456 U.S. 798 (1982).** Responding to an informant’s tip that the defendant was selling narcotics out of the trunk of his vehicle, officers searched the suspect and his vehicle, locating narcotics in a brown paper bag and money in a leather pouch. The defendant moved to suppress the items located in the closed containers in the trunk. The United States Supreme Court held that the warrantless search of an automobile is not defined by the nature of the container in which the contraband is hidden, but rather, it is defined by the object of the search and places in which there is probable cause to believe that it may be found.

### **CIRCUIT COURT CASES**

(The Supreme Court of the United States—who you’re arguing in front of—MAY choose to be persuaded by a Circuit Court’s decisions, but it is NOT required to follow its logic or conclusions. Lawyers call these kinds of cases “persuasive authority.”)

**Moore v. Andreno, 505 F.3d 203 (2nd Cir. 2007).** Plaintiff brought a civil suit against two Sheriff’s deputies alleging an illegal search of his home. The defendant was arrested on drug charges, after deputies, responding to a domestic call at his home, searched a study on the defendant’s girlfriend’s consent, despite the fact that the study was locked and the girlfriend indicated that she was not allowed in the study without the defendant’s presence. The Court of Appeals held that the deputies misapplied the Fourth Amendment, because the girlfriend did not have physical control over the study, and thus could not consent to a search of it.



**U.S. v. Kelley, 594 F.3d 1010 (8th Cir. 2009).** Defendant appealed his conviction for possession of a firearm by a felon, alleging that the trial court erred in refusing to suppress evidence obtained as the result of a search based on consent. The defendant alleged both that the consent was involuntary because it was obtained through coercion and threats and that the search exceeded the scope of the consent. The Court of Appeals affirmed the conviction holding that the totality of the circumstances showed that the statements made by the officers did not cause the sister to give consent, nor did the presence of several police cars and four officers implicate the voluntariness of the search. Further, the court held that the search did not exceed the scope of the consent even though the written consent form was limited to the house, as the defendant had led the officers to an outside shed, opened the door, and pointed to the guns.

**U.S. v. Munoz, 590 F.3d 916 (8th Cir. 2009).** Defendant appealed his conviction for being a felon in possession of a firearm. The defendant was pulled over for a traffic violation by a State Trooper. The trooper discovered that the defendant had a suspended driver's license. After handing back the defendant's license and information and issuing a citation, the Trooper told a female passenger that she would have to take over driving. The Trooper then obtained consent to search the vehicle from the female. The Trooper searched a backpack in the vehicle that was on the floorboard without knowing who it belonged to. The trooper discovered a firearm in the backpack, and arrested the defendant after determining that the bag belonged to him. The trial court denied the defendant's motion to suppress, holding that although the trooper violated the Fourth Amendment by searching the bag based on the consent of the female, the inevitable discovery doctrine permitted the admission of the evidence. The Court of Appeals affirmed, holding that although the female could not have given consent to search the backpack because she did not have common control over the backpack, the inevitable discovery doctrine permitted the admission of the evidence, because the Trooper located crack pipes within the vehicle after searching the backpack and thus would have obtained probable cause to search the entire vehicle including the backpack.

**U.S. v. Scroggins, 599 F.3d 433 (5th Cir. 2010).** Defendant appealed his conviction for possession of a firearm by a felon alleging that the trial court erred in failing to suppress evidence obtained from his residence. Officers went to the residence to arrest the defendant's fiancée. After arresting her outside the residence, she asked to go back into the house to get some clothing. Officers told her that she could not go back in the residence unless she was accompanied by officers. When officers re-entered the house with the female, they encountered the defendant and handcuffed him. After frisking him, the officers located a magazine to a semi-automatic pistol. The officers performed a protective sweep of the home



and found firearms in plain view. The Court of Appeals affirmed the conviction. The Court reasoned that re-entry into the home to get clothing for the defendant’s fiancée was based on the fiancée’s consent and was permissible. The Court rejected a contention that this was a “manufactured” exigency on the part of the officers. The Court also upheld the initial detention of the defendant and the protective sweep of the house, as well as the seizure of the firearms in plain view.

**U.S. v. Wilburn, 473 F.3d 742 (7th Cir. 2007).** Defendant was convicted of being a felon in possession of a firearm. He appealed his conviction based on the trial court’s denial of his motion to suppress the evidence obtained from his residence during a search based on the consent of his live in girlfriend. Defendant had been arrested for an unrelated traffic charge and was placed inside a patrol car away from the residence while officers obtained consent to search from his girlfriend. The Court of Appeals affirmed the defendant’s conviction, holding that the search was permissible because the defendant was not “physically present” when his girlfriend consented, and the police did not deliberately remove the defendant from the area to avoid hearing him invoke an objection to the search.

**You must confine your argument to the facts, law, and cases presented in this packet. You may not utilize other sources of information beyond this packet except, at the competitor’s discretion, an English language dictionary or a legal dictionary.**