

Tenth Circuit Unzips Inevitable Discovery Doctrine & Fourth Amendment Limits in Illegal Searches

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The Tenth Circuit Court of Appeals recently considered the scope of the Fourth Amendment protections in the context of a warrantless search not incident to arrest, and the applicability of the inevitable discovery exception to the Exclusionary Rule. In *United States v. Braxton*, the defendant was arrested on drug-related charges. Following the arrest, officers conducted a warrantless search of his backpack and discovered a firearm. Braxton contested the admissibility of the evidence obtained from the illegal search, raising significant questions about the boundaries of searches and property impoundments in law enforcement.

Upon hearing the case, the district court was persuaded by the government's invocation of the Inevitable Discovery Doctrine and denied Braxton's motion to suppress the evidence.

In *United States v. Braxton*, a police officer that was monitoring a camera installed in a high-crime area observed the appellant, Tyrell Braxton, participating in a drug transaction.¹ The officer watched Braxton hand over the drugs and receive cash in return. Officers arrived at the scene shortly after and arrested Braxton. The officer's body camera footage captured the arrest and showed Braxton wearing a black backpack that was removed by the officers and placed on the nearby sidewalk. An officer proceeded to conduct a pat-down search of Braxton which resulted in the officer discovering crack cocaine and \$183 in cash in Braxton's pockets. Footage from the body camera during the pat-down showed Braxton yelling out commands for the officer to "get his girl, get his girl, Tan, tell her to come here!" In the seconds following his request, an individual identified as Tanyrah Gay appeared on the scene. As soon as Gay approached the officers, Braxton directed her to obtain the money located in the backpack so she could pay for his bond. Gay asked the officers for permission to get the backpack, but they refused and continued to search Braxton. When the search was complete, an officer began to walk away with Braxton and another officer picked the bag up from the sidewalk and followed behind. When Gay saw the officers begin to walk away, she asked again, "I can't take my backpack?" The officer again refused the request by simply responding "Nope." Before getting into the patrol car, Braxton asserted to the officers, "She needs the money, man." Followed by Gay insisting, "I'm in a hotel. Please give me the money at least." Despite the continued pleas by both individuals, the officers quickly answered with "No," prompting Gay to request that the officers take down her phone number. Instead of following Gay's request, an officer began searching the backpack and recovered a loaded firearm with a pink

handle. While searching the bag, Gay asked the officer if he could retrieve her identification and bus pass from inside the backpack. The search continued for twenty seconds and concluded with the officer placing the gun inside an evidence bag and into the patrol vehicle.

Braxton faced multiple charges, including possession of a weapon in furtherance of drug trafficking, possession of crack cocaine with intent to distribute, and being a felon in possession of a weapon.

Braxton moved to suppress the gun, arguing that the warrantless search of his backpack was not justified as a search incident to arrest under the court's recent precedent in *United States v. Knapp*.² In *Knapp*, the court held that the search of an arrestee's purse was not justified as a search incident to arrest because the arrestee could not access weapons or destroy evidence with the purse at the time of the arrest.

Despite the government's concession to the argument regarding the *Knapp* precedent, the government argued that the gun should not be suppressed because law enforcement would have inevitably discovered it after impounding the backpack and conducting an investigatory search pursuant to policy protocols. **OR** The government argued that the inevitable discovery exception to the Exclusionary rule should apply because the officers would have eventually conducted a valid warrantless search of the backpack through two other exceptions to the warrant requirement: the community caretaking rationale and a policy-mandated inventory search.

Upon hearing the case, the district court was persuaded by the government's invocation of the Inevitable Discovery Doctrine and denied Braxton's motion to suppress the evidence. Braxton entered a conditional guilty plea and appealed the ruling on the motion to suppress.

On appeal to the Tenth Circuit, Braxton disputed the validity of the suppression ruling. Specifically, Braxton argues that the government failed to show that officers would have impounded the backpack as a matter of community caretaking rationale.

The Tenth Circuit Court of Appeals focused on whether the officers would have validly impounded Braxton's backpack in the absence of the illegal search incident to arrest.

Analysis & Implications

The Court emphasized that, based on the *Knapp* precedent, the principles established in vehicle impoundment caselaw have broader applicability when used to review a search of the defendant's personal property. Consequently, these vehicle impoundment principles must be extended to encompass personal property cases, making them relevant for the court's analysis in this instance.

To apply these principles to the case at hand, the court had to consider the precedent set forth in *United States v. Sanders*.³ *Sanders* held that impounding a vehicle from private property requires justification through both a standardized policy and a reasonable, non-pretextual community caretaking rationale. The court in *Sanders* set forth a list of several non-exclusive factors relevant to determining whether a reasonable and legitimate non-pretextual community-caretaking rationale exists. These factors include: (1) whether the property's location is public or private; (2) if private property, consultation with property owners; (3) the existence of impoundment alternatives; (4) the property's implication in a crime, and (5) the owner's consent to impoundment. These factors help guide the overall question for Fourth Amendment purposes: "whether, in the counterfactual world of the inevitable-discovery inquiry, the seizure of Braxton's backpack would have been reasonable." In light of this stated purpose, the Tenth Circuit considered these factors in its assessment of this case.

Here, the focal point of the parties' disagreement was the third *Sanders* factor; the existence of an alternative to impoundment. The court considered numerous facts to determine whether a reasonable alternative to the impoundment of the backpack may have existed.

The government argued that giving the backpack to Gay would not have been an alternative to impoundment for two reasons. First, Braxton did not explicitly ask the officers to do so, and second, nothing in the record suggested that Braxton and Gay had a relationship that warranted giving his backpack to her. Unpersuaded by this argument, the court focused its assessment on other substantial facts.

First, the court determined that Braxton's failure to ask officers to give the backpack to Gay was not dispositive here. The court emphasized the facts that weighed heavy against a finding that no reasonable alternative existed, stating that "Gay showed up at the scene in less than 30 seconds after Braxton called out for her, she referred to the backpack as hers, and that she asked two different times if she could take the backpack, but the officers rejected her request before even letting her finish."

Next, the court found that nothing in the record supported the government's argument that Braxton and Gay's relationship negated the plausibility of this alternative. The court pointed to the following facts to support their determination; Braxton referred to Gay as "his girl" and asked her to bail him out, he asked officers to give Gay the money they found on him, and Gay's indication that her bus pass and identification were in the backpack."

The court concluded that, in consideration of the facts above, at a minimum, reasonable officers dealing with the backpack in a lawful manner would have inquired further about whether they should give the backpack to Gay, either by asking Braxton if he wanted Gay to take it or by inquiring into their

relationship.

The court held that the search of Braxton's backpack was not reasonable under the community caretaking rationale and, therefore, the firearm's discovery was not the result of inevitable discovery. Consequently, the district court's denial of Braxton's motion to suppress was reversed and remanded for further proceedings.

The *United States v. Braxton* case demonstrates the importance of understanding and adhering to the limitations imposed by the Fourth Amendment. Law enforcement officers should be aware of the factors considered by the court when determining whether an exception to the Fourth Amendment is applicable. Law enforcement officers should be aware of the factors and precedents set forth in cases like *Knapp* and *Sanders* to ensure compliance with the Fourth Amendment when conducting searches and seizures.

¹*United States v. Braxton*, 61 F.4th 830 (10th Cir. 2023).

²*United States v. Knapp*, 917 F.3d 1161 (10th Cir. 2019).

³*United States v. Sanders*, 796 F. 3rd 1241 (10th Cir. 2015).

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