

## Vacant but Not Private: United States v. Lowe Defines Privacy Boundaries in Apartment Storage Unit Searches

### Description

A recent case considered by the Tenth Circuit examines the circumstances that determine whether a suspect lacks a reasonable expectation of privacy in a vacant storage unit located in the apartment building where they reside. *United States v. Lowe* challenges us to explore the boundaries and scope of individual privacy rights within shared residential spaces, particularly in the context of warrantless searches.

After serving 48 months in prison and beginning his three-year supervised release in September 2018, Mr. Lowe, a convicted felon, moved to an apartment in Denver in August 2019. Under the supervision of Officer Buescher during this three-year term, Lowe became the subject of an investigation after a confidential informant tipped off his probation officer, alleging that Lowe was using a storage unit in his apartment building to hide narcotics and firearms. Despite the informant's history of unreliability, officers acted on the tip and contacted the property manager, who confirmed that Lowe had not rented any storage units in the building. The manager explained that storage units in the complex were exclusively for tenants who had formally rented them and were paying fees for their use. The policy of the complex was clear: unauthorized use of storage units was not permitted, and any unclaimed items found in unrented units would be removed and discarded.

In December 2019, a warrantless search of both Mr. Lowe's apartment and cellphone revealed concerning items: messages suggesting narcotics trafficking, internet searches related to firearms, and a large bag of empty gelatin capsules in his kitchen. In February 2020, a second compliance check uncovered additional evidence, including a digital scale, plastic baggies, a pill press, concentrated marijuana, and Xanax pills. During this visit, Mr. Lowe's young son directed officers to a storage room on the seventh floor, stating, "Daddy goes in there all the time." Officers searched the indicated storage unit on the seventh floor but found no evidence.

Days later, the informant provided urgent information that Mr. Lowe had hidden evidence in one of the first two storage units on the eighth floor and that there was a plan in place to clear the unit. On the same day, while incarcerated on unrelated state charges, Mr. Lowe was recorded instructing a friend to "clean out" a location holding "extra tools." This heightened the urgency for the search.

Under Officer Buescher's direction, Denver Police Detectives Roybal and Diaz investigated. Assisted by the property manager, the officers accessed the eighth-floor sprinkler room, where they identified a suspicious storage unit secured with a padlock. The property manager, asserting that the unit should have been vacant, consented to its search. Upon cutting the padlock, the officers discovered incriminating evidence, including firearms, ammunition, suspected narcotics, scales, and items directly tied to Mr. Lowe, such as a prescription, written correspondence, and his Social Security card. Forensic analysis linked Mr. Lowe's DNA to key items, including a handgun, a ski mask, and a T-shirt with "Police" printed on it.

Following the discovery of this evidence, Mr. Lowe was arrested and charged with possession with intent to distribute MDMA, possession of a firearm in furtherance of a drug trafficking crime, and possession of a firearm as a felon. At the district court, Mr. Lowe moved to suppress the evidence, arguing that the warrantless search violated his Fourth Amendment rights. However, the court denied his motion, ruling that he lacked standing to challenge the search because he failed to demonstrate a reasonable expectation of privacy in the storage unit.

He was convicted of possession with intent to distribute MDMA, possession of a firearm in furtherance of drug trafficking, and possession of a firearm as a felon. He was sentenced to 123 months in prison, leading to this appeal. On appeal to the Tenth Circuit, the question before the Court was whether Lowe's Fourth Amendment rights were violated, given the circumstances of the warrantless search.

The Tenth Circuit upheld the district court's denial of the motion to suppress the evidence, finding that Lowe had no reasonable expectation of privacy in the storage unit. The Supreme Court has recognized that the unlicensed use of property by others is presumptively unjustified. In this case, Mr. Lowe failed to show that he had lawfully obtained possession of the storage unit. A defendant's failure to present evidence of lawful possession may indicate that they had no reasonable expectation of privacy in the property. The storage units were owned by the apartment complex and could only be lawfully used by tenants who rented them through formal agreements. Lowe presented no evidence that he had rented the unit, had any lawful right to use it, or shared a storage unit with someone who lawfully rented one.

The Court emphasized the property manager's testimony to Officer Diaz, stating that *the vacant storage units should be vacant and nobody should have access to them unless they were paying for them.* This confirmed that the unit was intended to remain vacant and that unauthorized use would result in the removal and disposal of any items stored there. Without evidence supporting Lowe's lawful use or control of the storage unit, his claim that he had a reasonable expectation of privacy was undermined.

Lowe countered by asserting that, as a tenant in the apartment building where the storage locker was located, he had *the right and ability to utilize the storage lockers.* He further argued that his situation was distinct because it involved *an apartment complex in which he legally resides* and *storage units that tenants have a right to use.* However, the Court was unpersuaded and rejected Lowe's argument that his status as a tenant in the building automatically created a legitimate expectation of privacy in all areas of the complex, including unrented storage units. The Circuit clarified that tenant status does not grant blanket privacy rights to areas governed by specific access policies, particularly when those policies explicitly prohibit unauthorized use.

While shared spaces in residential settings may sometimes give rise to privacy interests, the Court made it clear that such interests are context-specific and depend on lawful access and adherence to property rules and policies. In this case, the unauthorized use of a storage unit explicitly reserved for paying tenants did not support a reasonable expectation of privacy. The Court concluded that the search did not violate the Fourth Amendment, and the evidence was properly admitted.

## Date Created

03/04/2025