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# Wrong Couch, Wrong Time – Eighth Circuit

By **Daigle Law Group**

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**DAIGLE LAW GROUP**

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United States v. Simmermaker, out of the Eighth Circuit, brings new meaning to guilty by association. You may think that going over to a friend's house and keeping your items locked up in security lockbox makes them private, but if your friend happens to be a known drug dealer, you would be wrong. Before we get to the rundown of this case, some notes on warrants:

There are three key components to a search warrant:

1. particularity of the descriptions of what is to be searched and what is to be seized;
2. probable cause to believe that the items sought are:
  - (a) connected with criminality, and
  - (b) presently in the space to be searched.
3. A deficiency in any area will render the warrant unconstitutional and invalid.

You may also search anyone arrested during the execution of a warrant as incident to lawful custodial arrest and they may search anyone whom they reasonably believe is concealing an item described in the warrant. In this case our suspect happened to be asleep on the couch during the execution of the warrant and her lockbox, unknowingly to her, lined up with items listed in the warrant. Let's find out if she had a reasonable expectation of privacy here:

## **FACTS**

Police officers executed a search warrant of a home in Tipton, Iowa, that belonged to W.S., someone familiar to the officers through drug investigations. The warrant authorized a search of the house and of W.S. It also authorized the search of items related to drug trafficking and "locked containers, safes, hidden compartments or other items or areas capable of storing or concealing any of the other items listed herein."

During the search, officers found Michelle Simmermaker asleep on the couch in the living room of the house. Close by on the couch was a meth pipe and a Brink's security lockbox that belonged to Simmermaker. The keys to the Brink's box were near the box. Officers woke Simmermaker, handcuffed her, and removed her from the room. Simmermaker told officers she had been staying at the home for a week, but the officers later learned she had been there for two nights. The officers

unlocked the Brink's box and found 10.95 grams of methamphetamine and a digital scale inside. The government charged Simmermaker with possession of methamphetamine with intent to distribute.

Simmermaker filed a motion to suppress the evidence seized from the Brink's box, arguing that her lockbox was not within the scope of the search warrant for the house. The district court denied the motion and Simmermaker appealed.

## **EIGHTH CIRCUIT OPINION**

The Eighth Circuit Court of Appeals commented that “a visitor’s privacy interest is complicated when the visitor is connected to the illegal activity at the location” to be searched. In this case, the search warrant was for evidence of drug use and distribution. When the officers entered the house, they saw Simmermaker on the couch, asleep, with a meth pipe next to her. The court concluded that this gave the officers “particularized suspicion” that Simmermaker was connected to the illicit activity that provided the basis for the warrant. Consequently, the court held that Simmermaker’s personal belongings, including the Brink’s box, would be subject to the warrant, especially because the warrant included all “locked containers.”

The court added that while Simmermaker had a reasonable expectation of privacy in the Brink's box, officers had probable cause that she was involved in the criminal activity that formed the basis for the warrant. As a result, the court held that Simmermaker's Brink's box fell within the scope of the warrant and searching it was lawful.

## **TAKEAWAYS**

The bottom line here is that this was a well written warrant and therefore Simmermaker's lockbox fell within the scope of the warrant. This point reiterates the fact that a well prepared and well written warrant is always a must. While it may be time consuming and at times a roadblock in your arrest, obtaining a warrant and taking the time to think of anything and everything that may apply to the crime you are investigating is crucial when conducting a search. Because of good, well thought out police work, the officers in this case were able to arrest another suspect who picked the wrong time to crash on her friend's couch.

### **United States v. Simmermaker, 998 F.3d 1008 (8th Cir. 2021)**

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