Writing sample

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Wendy D. Adams Writing Sample This writing sample represents one of two arguments constructed for the final paper in my Spring 2011 Legal Research & Writing class. University of Idaho ---------- ISSUE ON APPEAL I. Should a court’s application of the single-purpose container exception to the Fourth Amendment’s warrant requirement be based on the knowledge of a layperson because it satisfies the fundamental principles established by the U.

S. Supreme Court for Fourth Amendment standards by being workable, objective, and limiting the risk of intrusion? STATEMENT OF THE CASE The Voorhees family operated the St. Maries Printing Co. for nearly 125 years until the government succeeded in a seven-month campaign to induce Richard Voorhees to counterfeit documents. (R. 9, 10). As a result of this investigation, Mr. Voorhees was charged with counterfeiting and on October 1, 2010, investigators entered his shop with a warrant to seize printing equipment. (R. 24).

During the search, an officer noticed a locked rectangular black opaque case lying on a counter marked with the word “ Taurus. ” Based on his professional “ training and fieldwork,” he recognized the case as one in which a Taurus handgun could be stored, though he acknowledged “ the average person” would not have recognized the case (R. 25). Mr. Voorhees did not consent to a search of the case; however, officers pried it open with a screwdriver and seized a Taurus handgun. Mr. Voorhees was sentenced to 240 months in prison for possession of a tolen firearm and selling counterfeit birth certificates and social security cards. (R. 4). He now appeals to the

Fourteenth Circuit Court of Appeals stating that the district court erred in ruling he was not entitled to a jury instruction on entrapment and in ruling that the single-purpose container exception applied to the FBI's warrantless search of a locked container on his property. (R. 2). STANDARD OF REVIEW The court reviews questions of probable cause to make warrantless searches de novo. Ornelas v. U. S. , 517 U. S. 690, 691 (1996). ARGUMENT I. he single-purpose container exception to the Fourth Amendment's warrant requirement should be based on the knowledge of a layperson because it is The only STANDARD THAT IS WORKABLE, OBJECTIVE, AND LIMITS THE RISK OF INTRUSION ON PRIVACY INTERESTS. In using their own varied experiences to evaluate the case found in Mr. Voorhees's print shop, the officers violated Mr. Voorhees's Fourth Amendment right to be secure against an unreasonable search. Because the case was not recognizable to a layperson, an officer with less experience may not have recognized the case and thus would not have pried it open with a screwdriver.

Mr. Voorhees's rights in this instance were not determined by the Constitution or by the courts as intended by the founding fathers, but by a police officer who happened to recognize a case laying on Mr. Voorhees's counter. The Fourth Amendment states that "[t]he 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. U. S. Const. amend. IV. The Supreme Court continues to uphold the colonists' original view that a warrant is the preferred method because it prevents

broad-sweep searches without the impartial judicial oversight of a Magistrate to evaluate probable cause. Johnson v. U. S. , 333 U. S. 10, 14 (1948); Aguilar v. Texas, 378 U. S. 108, 110 (1964). Indeed, courts have consistently sustained the " cardinal principle that ' searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable. " Minn. v. Dickerson, 508 U. S. 366, 372 (1993).

Over time, however, public interest has required " some flexibility in the application of the general rule that a valid warrant is a prerequisite for a search. " Ark. v. Sanders, 442 U. S. 753, 759 (1979). These " jealously and carefully drawn" exceptions address situations where the potential cost to society of obtaining a warrant is disproportionately high, such as where there is a danger to law enforcement or evidence is at risk of loss, and are limited as necessary to " accommodate the needs of society. " Id. at 759-760; Jones v. U. S. , 357 U. S. 493, 499 (1958).

Even so, officers must obtain a warrant so long as 1) a person has " exhibited an actual (subjective) expectation of privacy," and 2) that subjective expectation is objectively reasonable. Katz v. U. S. , 389 U. S. 347, 361 (1967). One exception, the " plain view" doctrine, is founded on the notion that the Fourth Amendment does not protect objectively unreasonable expectations of privacy and, specifically, that an expectation of privacy in belongings in plain view is objectively unreasonable. Coolidge v. N. H. , 403 U. S. 443 (1971); U. S. v. Williams, 41 F. 3d 192, 197 (4th Cir. 1994).

Within the construct of the plain view doctrine fall those containers that cannot support a reasonable expectation of privacy against search because they may be “ inferred by their outward appearance” to have a single purpose that effectively places the contents in “ plain view. ” Sanders, 442 U. S. at 765. A warrantless search is justified under this exception on three conditions: “(1) the seizing officer must be lawfully present in the place from which he can plainly view the evidence; 2) the officer has a lawful right of access to the object itself; and (3) it is immediately apparent that the item seized is incriminating on its face. U. S. v. Williams, 41 F. 3d. 191, 196 (1994) and Horton v. Cal. , 496 U. S. 128, 136 (1990). In this case, the searching officer had a warrant to remove specific printing equipment from Mr. Voorhees’s print shop, which gave the officer lawful right of access to the case on Mr. Voorhees’s counter. Therefore, the substance of this appeal lies in the third element of the plain view doctrine. That is, what standard should a seizing police officer use to evaluate a container’s purpose to determine whether its incriminating nature is immediately apparent?

Evaluating containers based on a layperson’s knowledge is the standard most consistent with the Fourth Amendment. Any evaluative Fourth Amendment standard, such as that used by officers to gauge whether an item is “ incriminating on its face,” must uphold three fundamental principles. Ill. v. Andreas, 463 U. S. 765, 772 (1983). The standard should (1) be workable, (2) remain objective, and (3) limit the risk of intrusion on privacy interests. Id.

First, a workable standard is one that is practical “ for application by rank and file, trained police officers. ” Id. Because the Fourth Amendment is

intended to “ regulate the police in their day-to-day activities,” the evaluative standard must be one that officers can easily apply before a search occurs. N. Y. v. Belton, 453 U. S. 454, 458 (1981). A “ single, familiar standard is essential” because officers cannot be expected to balance the complex nuances of public interest and private Constitutional rights. Dunaway v.

N. Y. , 442 U. S. 200, 213 (1979). Indeed, relying on the “ caution and sagacity” of officers who are excited about capturing a suspect creates an unavoidable conflict of interest. U. S. v. Lefkowitz, 285 U. S. 452, 463 (1932). Further, “ good faith on the part of the arresting officer is not enough…If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be ‘ secure in their persons, houses, papers and effects,’ only in the discretion of the police. Terry v. St. of Ohio, 392 U. S. 1, 22 (1968). In addition to being practical, however, a workable standard must also meet the needs of society to preserve evidence without undue burden on officers. Sanders, 442 U. S. at 766. The plain view doctrine recognizes the need to preserve evidence by encouraging officers to “ rely on…training and experience” to evaluate the incriminating nature of containers in plain view. Texas v. Brown, 460 U. S. 730, 746 (1983).

In that case, officers properly seized a balloon in plain view based on their specialized knowledge in narcotics that led them to believe it was likely to contain illegal drugs. Id. Referencing Brown, courts have further clarified that when the distinctive character of a particular container in plain view suggests its contents to “ the trained eye” of an officer, even though its

purpose is not absolutely certain, it “ may be seized, at least temporarily, without a warrant. ” U. S. v. Jacobsen, 466 U. S. 109, (1984) and Williams, 41 F. 3d at 197.

Thus, seizure of a container believed by officers, based on their subjective knowledge, to conceal contraband, “ does not compromise the interest in preserving the privacy of its contents” whereas a search of the container does. Id. Once a suspect container is seized, officers can apply for a warrant, which allows an impartial Magistrate to evaluate probable cause. U. S. v. Ross, 456 U. S. 798, 828 (1982). The additional time required to obtain a warrant should not be considered an “ inconvenience to be somehow ‘ weighed’ against” efficiency in evaluating the workability of this standard.

Sanders, 442 U. S. at 758. Indeed, a workable standard recognizes that no inconvenience is “ constitutionally cognizable in a legal system that regards warrantless searches as ‘ per se unreasonable’. ” Horton v. Cal. , 496 U. S. at 138. Thus, evidence preservation is achieved within the construct of a workable standard. Second, to remain objective, the standard must rely on “ general social norms,” or layperson’s knowledge, rather than be “ dependent on the belief of individual police officers,” Robbins v. Cal. , 453 U. S. 420, 428 (1981); Ill. v. Andreas, 463 U. S. t 772. In other words, because the expectation of privacy recognized by the Fourth Amendment was established by general social norms, any standard used to evaluate whether an expectation of privacy exists under the Fourth Amendment must also contemplate general social norms. Robbins v. Cal. , 453 U. S. at 428. This requires that, “ to fall within the single-purpose container rule, a container must so clearly announce its contents, whether by its distinctive

configuration, its transparency, or otherwise, that its contents are obvious to [a layperson] observer. Id. Conversely, because every officer has a unique level of expertise based on individual experience, allowing officers to exercise their subjective judgment can ONLY result in an inconsistent application of the rule. Indeed, as the split in court circuit interpretations would indicate, “ no court, no constable, no citizen, can sensibly be asked to distinguish the relative ‘ privacy interests’ in a closed suitcase, briefcase, portfolio, duffel bag, or box” under such a subjective standard. Id. at 427.

Consider a hypothetical rectangular gun case labeled in Arabic found during a search conducted by an officer who happens to read the language. The case will be instantly recognizable to the searching officer whereas a layperson would be unaware of its contents. Indeed, the gun owner, as a layperson, may not even know that the symbols on the case mean “ gun” and thus may have a complete expectation of privacy. To allow officers to exercise their subjective knowledge in evaluating containers is akin to granting the hypothetical owner of this case an inferior right of protection nder the Fourth Amendment simply because, by sheer coincidence, the particular officer conducting the search could read Arabic. Because inconsistent Constitutional treatment is intolerable, Fourth Amendment rights must be decided by the Constitution and by the courts; not by a police officer who happens to recognize a container. U. S. v. Gust, 405 F. 3d 797, 801-802 (9th Cir. 2005). A proper standard must evaluate a container “ without regard for the context in which it is found” or officers’ specialized knowledge.

Id. at 802. Any standard that operates otherwise would allow the exception to “ swallow the warrant requirement” or, in other words, abrogate fundamental rights under the Constitution. Id. Third, using a standard “ layperson’s knowledge” limits the risk of intrusion on privacy interests. The risk to society in requiring police officers to employ an impartial and objective standard to evaluate containers is virtually nonexistent.

In the worst case, officers will have to seize suspect containers and engage the process envisioned by our founding fathers; in other words, obtain a warrant. No evidence is lost. On the other hand, the risk to society in allowing police officers to evaluate containers based on a naturally inconsistent subjective standard is tremendous. Even acting in good faith, which the courts have held is not enough, it is impossible to consistently apply a standard that differs from person to person.

Allowing officers to exercise discretion in subjectively determining a constitutional standard on a case-by-case basis goes too far, “ obliterat[ing] one of the most fundamental distinctions between our form of government, where officers are under the law, and the police-state where they are the law. ” Id. at 370-371. Mr. Voorhees’s rights in this instance were not determined by the Constitution or by the courts as intended by the founding fathers, but by a police officer who happened to recognize a case; therefore, Mr. Voorhees’s Motion to Suppress Evidence should have been granted.