

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :  
 :  
v. : **Crim. No.21-cr-447-05(CJN)**  
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 :  
OLIVIA MICHELE POLLOCK :  
 :  
 :  
*(defendant)*

**Motion to Suppress Items Seized in Van and Flatbed Trailer**

Olivia Pollock moves to suppress all items seized from inside her van, a Ford E-350 as well as any of her items recovered from the flatbed trailer with Florida Tag 170 4UK.<sup>1</sup>

On June 30, 2021, law enforcement conducted a search of the physical property in Lakeland, Florida, in which Olivia Pollock resided. The search of the property was conducted based upon a search warrant signed off by a Magistrate of the United States District Court, Middle District, Tampa Division, Florida. The warrant identified six structures on the Lakeland property which could be searched. Ms. Pollock's van was not listed or included in the warrant nor was the flatbed trailer. Nevertheless, when law enforcement came to the property, they also searched Olivia Pollock's van and the flatbed trailer. Law enforcement did not have a separate warrant to search her van or the flatbed trailer.

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<sup>1</sup> Undersigned recognizes the due date for filing motions to suppress has long passed. It was upon reviewing additional discovery received this month, re-reviewing prior discovery and communications with Ms. Pollock that undersigned recognized the necessity of filing this motion. The Government recently confirmed that it is their intention to introduce evidence seized in the van as well as the flatbed trailer.

Law enforcement obtained a written “consent to search” the van as well as the trailer on the property from Ben Pollock, father to Olivia. The land the van was located on at the time of the search was owned by Ben Pollock. However, Mr. Ben Pollock did not own the van. The van was Olivia Pollock’s property. She purchased the van from her father in either the summer of 2018 or 2019. She outfitted the van with a small kitchen and a bed. There were no seats in the back of the van, it was completely turned into a living dwelling for Ms. Pollock. She slept in the van full time.<sup>2</sup>

From time to time, Ms. Pollock drove the van off her father’s property to use when she took trips out of the area. Ms. Pollock was the only one with keys to the van. When law enforcement came to the Lakeland property to conduct the search and to arrest Olivia Pollock and her brother Jonathan Pollock, Olivia was in her van sleeping, no one else was in the van. Although the van was not locked when police arrived because Ms. Pollock had been sleeping in the van, she usually locked the van when she left the property. The day law enforcement arrived, they ordered her out of the van. She exited the van once law enforcement displayed arrest warrant documents.

Law enforcement did not receive consent to search the van from Ms. Pollock, neither orally or in writing. Law enforcement may seek consent from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected. *United states v. Matlock*, 415 U.S. 164,

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<sup>2</sup> See attached photographs.

172, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974). Ms. Pollock's father did not have authority to grant law enforcement consent to search the van. Although the van was on his property, he did not own the van, use the van, have any of his own personal items in the van, nor ever enter the van.<sup>3</sup> The van was purely owned, and used by Ms. Pollock. Additionally, Ms. Pollock was present at the time law enforcement sought consent to search her property and could have easily spoken with her to seek to obtain consent.<sup>4</sup>

The dispositive question is whether Mr. Pollock along with his daughter, “mutually used, and generally had access or control of the van for most purposes.” *United States v. Joseph*, 897 F.2d 1168, (D.C. Cir. 1990). Although at the time law enforcement sought consent, Mr. Pollock would have had access to the van, as it was unlocked, had it been locked, then Mr. Pollock would not have had access. See *Moore v. Andreno*, 505 F.3d 203, 208-09 (2d Cir. 2007) (First part of the *Moore* test of consent requires that the consenting party have access to the premises searched). But Mr. Ben Pollock did not have “permission to gain access to the area,” (*Moore*'s second part test). *Id.* At no time did Mr. Pollock have permission to enter his daughter's van. Ms. Pollock was the only one with the key to enter the vehicle, and she kept the van locked when she was not at home. “The authority of which justifies the third-party consent does not rest upon the law of property, with its attendant historical and legal refinements, but rests rather on mutual use of the

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<sup>3</sup> Mr. Ben Pollock is a tall, large man and he would not have fit into the van as outfitted by Ms. Pollock.

<sup>4</sup> But see *United States v. Hendrix*, 595 F.2d 883 (D.C. Cir. 1979), finding that even though defendant was present and even objected to the search, a third-party who had the requisite authority to consent could grant such consent over the defendant's objection.

property by persons generally having joint access or control for most purposes.”

*Matlock*, supra at FN 7 (citations omitted). Mr. Ben Pollock did not have such use of the property.

### **Consent Given Under Duress**

Even if Mr. Pollock had authority to consent to search the van, which is not conceded here, he gave the consent under duress and confusion, it was not freely and voluntarily given. The morning of the search law enforcement stormed onto the Pollock property in a big way. This was not the usual knock and announce and possibly break a door down situation. This felt like an all-out ambush to the Pollocks. It spooked the whole family, including young children, grandchildren to Mr. Ben Pollock and his wife. Family members still have nightmares. Law enforcement used flashbombs in the Pollock residence and also under Ms. Pollock’s van. One of the flashbombs broke a window in a bathroom, another caused damage to the stairwell lamp, and another marked the kitchen floor. They used bullhorns to wake up the residents. Neighbors also began to come out to see the big commotion. Law enforcement drove several large vehicles onto the property as well, and drove through one of the fences in the back of the property. With law enforcement’s big show of force and commotion and the belief that the police would leave the property, Mr. Pollock signed the consent document. “If under all the circumstances it appeared that the consent was not given voluntarily-that it was coerced by threats or force, or granted only in submission to a claim of lawful authority-then ...the

consent is invalid and the search unreasonable.” *Donovan v. A.A. Beiro Const. C.,, Inc.*, 746 F.2d 894, 901 (D.C. C. 1984)(citations omitted). Here, Mr. Pollock’s will was overborne.

Ms. Pollock recognizes that the flatbed trailer belonged to her father and he had consent to authorize its search. However, the consent was given under duress and therefore all items found on the flatbed should be suppress.<sup>5</sup>

### The Written Consent Does Not Cover Items in Closed Containers

Further even if the consent was valid, again Ms. Pollock does not concede this point, it did not extend to closed containers in the van which obviously belonged only to Ms. Pollock. Just because a person has common authority over a space does not mean that the person can authorize the search of anything and everything in that area. *United States v. Peyton*, 745 F.d 546, 552 (D.C. Cir. 2014). Consent does not automatically extend to the interiors of every enclosed spaced within the area. *Id.* (citations omitted). When dealing with closed containers, one must consider “the presence or absence of a discrete expectation of privacy with respect to the particular object whether it is secured, whether it is commonly used for preserving privacy, etc.” *Id.* at 553. Hence, anything seized by law enforcement from closed containers in the van must be suppressed irrespective of Ben Pollock’s written consent.

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<sup>5</sup> The Government has identified one item law enforcement claimed to have seized from inside the flatbed they would seek to introduce at trial.

### Good Faith Not Applicable

Good faith of law enforcement does not save the search, it is still an illegal seizure. Here, it was not reasonable for officers to have believed that Mr. Ben Pollock had authority to consent to search the van. They knew that only Olivia Pollock was in the van when they arrived unannounced, and that it was her living space which was plain to see.<sup>6</sup> And if they had any questions about it, they could have easily confirmed it by asking her. Further, the moment they opened the van door they would have realized this van was used by Olivia.

It is the government's burden to establish that a third party had authority to consent to a search. *Illinois v. Rodriguez*, 497 U.S. 177, 110 S.Ct. 2793, 2979, 111 L.Ed.2d 148,. "The burden cannot be met if agents, faced with an ambiguous situation nevertheless proceed without making further inquiry." *United States v. Whitfield*, 939 F.2d 1071, 1075 (D.C. Cir. 1991) (Court of Appeals found the agents questioning of the mother of a 29 year old was insufficient, suppressing evidence found in his room in the mother's house). "If the agents do not learn enough, if the circumstances make it unclear whether the property about to be searched is subject to 'mutual use' by the person giving consent, 'then warrantless entry is unlawful without further inquiry.'" *Id.* (citations omitted). Like the *Whitfield* case, here we have a parent/adult child situation. In such situations, more is necessary to permit the parent to consent than just ownership and "joint access." A finding of mutual

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<sup>6</sup> See attached photographs.

use must be determined to make the consent constitutional. *Id.* Like in *Whitfield*, the good faith exception cannot protect the unconstitutional search.

### CONCLUSION

For the reasons stated in this motion, Ms. Olivia Pollock moves for suppression of the evidence recovered from the van and the flatbed trailer.

Respectfully submitted,

OFFICE OF ELITA C. AMATO

/s/

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### CERTIFICATE OF SERVICE

I hereby certify that this Response in Opposition is filed electronically through the ECF filing system on this 20<sup>th</sup> day of February 2023, thereby, providing service electronically upon all parties in this case including Government counsel.

/s/

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Elita C. Amato