

1 They didn't get a warrant. This exception of she gave
2 consent is not supported by the evidence, and thank goodness
3 that we did have a body cam. It shows the Court everything,
4 all the factors that the Court needs to consider in determining
5 if it was coercive are there and they're there on the body cam.

6 THE COURT: Does your motion attack the validity of
7 Mr. Morris' consent?

8 MS. BROWN: Does my motion?

9 THE COURT: Right.

10 MS. BROWN: It attacks that there's no exception to
11 the warrant -- there's no valid exception to the warrant
12 presented by the government. So, yes, but, actually, if the
13 Court finds that Ms. Morris did not give consent to go in that
14 house, then all of the evidence that was discovered after that
15 point in time was without a warrant.

16 THE COURT: Well, that's true, that's true, but --

17 MS. BROWN: And should be suppressed, yes.

18 THE COURT: But if you're not successful on that
19 issue, then do you, nevertheless, challenge the validity of his
20 consent to the search?

21 MS. BROWN: I don't -- we do. I don't think it's
22 necessary if the Court finds in our favor.

23 THE COURT: Certainly, I understand that.

24 MS. BROWN: Okay.

25 THE COURT: Thank you.

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1 It's been well-presented on both sides and, as I mentioned
2 yesterday, I hadn't had -- at least not in any case I recall
3 offhand, I hadn't had any substantial opportunity to evaluate a
4 police encounter with the benefit of body cameras, and I
5 certainly do concur with Ms. Brown's concurrence with me from
6 yesterday, that the body cameras are very, very helpful. They
7 make a big difference. We've got two issues of consent and, of
8 course, there are some sub issues under those two issues of
9 consent.

10 The first issue of consent is -- relates to Ms. Morris'
11 consent and the -- what's at stake there is whether or not she
12 validly consented to the officers' entry into the house to look
13 for Mr. Morris.

14 Ms. Brown is quite right, if the defendant is successful
15 on that issue, then the follow-on issue really goes away, and
16 that is the validity of his consent.

17 And in either case, whether we look at Ms. Morris'
18 interaction with the police or at Mr. Morris' subsequent
19 interaction with the police, we've got some fundamental rules
20 that are in place that are really not in controversy.

21 Number one, the -- if consent is to have been given, it
22 must have been given -- communicated expressly or by
23 implication and it must be freely and voluntarily given.

24 And the transcript that's in evidence is helpful.
25 Obviously, the -- the video itself is the best evidence, and I

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1 don't say that just in the sense that we learned that in law
2 school. The video itself really is the best evidence, even
3 though the transcript is at least generally, if not completely,
4 accurate.

5 Interestingly enough, at least to me, and this may just be
6 me, at least to me, and this is also a bit counterintuitive,
7 but at least to me the conversation looks noticeably more
8 coercive, oddly enough, in the transcript, than it was in real
9 life as recorded by the body camera. And, again, that does not
10 impugn the accuracy of the transcript. But obviously tone of
11 voice and things like that and timing are involved, and it
12 actually looks a bit more intimidating and, in my view,
13 significantly more coercive in the transcript than it does in
14 the real-life video.

15 And we can all go through the video of Officer Hobbs --
16 from Officer Clayton Hobbs' body camera second by second, I
17 don't propose to do that. I'm going to touch on some of the
18 highlights of Officer Hobbs' interaction with Ms. Morris.

19 And at 18:35 -- and when I say that, I'm referring to
20 essentially a -- counter numbers, 18:35, but I won't be
21 repeating it that way.

22 At 18:35, Officer Hobbs asked her, "What's your name?"

23 He was being noticeably courteous, very businesslike, but
24 noticeably courteous. And the impression I get at that point
25 from her responses as they flowed in the conversation is that

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1 she was responsive, she was mentally alert, she was reasonably
2 articulate. She was, to me, at least, discernibly intelligent.
3 I'll comment on that just a little more just a little later.

4 And I think, importantly, it's apparent from the dialogue
5 that is disclosed by the video she knows how to say what she
6 means, and that's in the mix. She really does know how to say
7 what she means.

8 And then over at 18:56, in that range, she says, "The dog
9 will not let you in that house." So if you will, the first
10 indication of lack of consent was she was saying the dog is not
11 going to consent to you entering the house. And the dog was a
12 significant concern for her.

13 At 19:07, she says, referring to the dog, "She is
14 extraordinarily protective of me and she's not going to let
15 anybody in that house."

16 That rings true, based on Ms. Morris' testimony yesterday.
17 And it also tells me she's -- she's not an unintelligent
18 person, she's fairly articulate.

19 They have more conversation about the dog, and then at
20 19:33, Officer Hobbs says, "Well, this is the deal, you're not
21 going to go back in that house, okay? As a matter, you're not
22 going back in the house until we talk to him and find out where
23 he's at and we're going to have to clear the house and make
24 sure he's not in there."

25 And then she comes back to the dog and she says, "You're

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1 not hurting my dog."

2 Officer Hobbs says, "Well, we don't want to hurt your
3 dog."

4 The dog remains the focal point of the conversation.

5 Officer Hobbs asks for a catch pole. And then at 20:25,
6 Ms. Morris says, "I can put her in my room but that's all I can
7 do."

8 Well, that's not consent to anything, but it does --
9 that's an idea she came up with and it shows me some -- at
10 least the beginnings of some inclination to be accommodating.
11 "I can put her in my room but that's all I can do." That's --
12 I don't want to give that more significance than it deserves,
13 but that is an indication of some inclination to be
14 accommodating.

15 Then over at 22:36, Officer Hobbs says, "I understand, um,
16 well, we're going to have to clear your house, are you giving
17 us consent to go in and clear your house?"

18 And she immediately responds with one word: "No."

19 And then here is a pretty -- in my view, a pretty
20 significant turn in the conversation. He says, "Okay, then,
21 we'll get a warrant."

22 I'm going to comment on this a little bit more a little
23 later, but it seems to me that that marked a turning of the
24 tide, when the conversation -- when the subject of the warrant
25 started coming up in the conversation. That, in my view, seems

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1 to have marked a turning of the tide in terms of how Ms. Morris
2 was sizing up to the situation and responding.

3 Then there's more give and take about consent to go into
4 the house. At 23:12, Officer Hobbs says, "All you got to do is
5 say yes or no."

6 That could be thought of as being a little bit preemptory
7 on his part. Actually, he was making himself clear. He was
8 making himself clear to a woman who was fairly -- who was fully
9 capable of understanding him, and I think, as I say, he was
10 giving her her choices.

11 Yesterday, when he was asked whether he told her --
12 whether he had, in fact, informed her that she could withhold
13 consent, he pointed out that he put that yes-or-no choice to
14 her. Well, "no" is just as much a choice that was given to her
15 as "yes" was.

16 Then at 23:27, Officer Hobbs says, "But now you're not
17 giving us consent to go in the house, so at this point we can
18 get a search warrant and then we'll" --

19 The subject of search warrant comes up again. And she
20 interrupted, and she said, "Okay, okay, okay, I just" --

21 It's really more clear from the recording than it is from
22 the transcript, and I will be the first to acknowledge that
23 there is room for interpretation, both on the basis of what the
24 transcript says and on the basis of what we see and hear on the
25 recording. I'm not -- I'm not willing to call that a clear

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1 indication of consent. But I do quite easily conclude that
2 this is an indication that she is leaning in the direction of
3 consenting. She says, "Okay, okay, okay, I just" --

4 And that inference drawn from the conversation is really
5 more readily apparent from the actual audio and video than it
6 is from the transcript. Again, not impugning the accuracy of
7 the transcript, because that's not the point here.

8 Okay. At 23:52, Officer Hobbs is kind of touching on all
9 the bases. He says, "Okay, so you occupy the house, right?"

10 And she says, "Yeah, I stay, I live at the house."

11 Officer Hobbs says, "So you pay the rent and all that
12 stuff?"

13 She says, "I help him out, yeah, cause" --

14 That's an important point from the standpoint of not only
15 the validity of whether she gave consent, but whether she had
16 authority to give consent.

17 And then over at 24:31, there's an exchange in which an
18 unidentified officer says, "You're telling us that you'll give
19 us consent to search that house for Michael?"

20 And she immediately says, "Yeah."

21 Well, on the video, that's definite. That marks a very
22 definite turning point and that's a definite expression on her
23 part.

24 And the officers, I think, wisely return to the question
25 of the voluntariness of her consent. At 24:42, an unidentified

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1 officer says, "Is that of your own free will?"

2 To which she responds, "Yeah."

3 And interestingly enough, that's the point -- given the
4 way the conversation flowed, especially as you might get it off
5 the video, that's the point at which I would have expected her
6 to push back, at least a little. But at that point, she did
7 not push back. She said, "yeah," in substance, to the question
8 is this of your own free will, she said yeah. That's at 24:43.

9 And the absence of any push-back by her at that point, I
10 think, is significant because she was still in a position to
11 push back, she was in a position to deny that this was of her
12 own free will. That would have pretty much been the end of any
13 conversation about consent, but she did not push back.

14 So this brings me to my evaluation of both her apparent
15 authority to consent and whether her consent was voluntary.

16 The burden certainly is on the government to establish
17 consent and the cases do tell us, starting with Supreme Court
18 cases, that the Court should not lightly infer consent.

19 I do look at the totality of the circumstances, as
20 Ms. Brown has pointed out, but I should not easily leap to the
21 conclusion that consent was freely and voluntarily given.

22 The question as to the issue of apparent authority is
23 whether the facts available to the officers at the moment that
24 they were there would justify a belief by a person of
25 reasonable caution that the consenting party had authority over

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1 the premises at 1217 South 12th Street in Chickasha.

2 On the issue of her authority or apparent authority, we
3 have the fact that Ms. Morris was the defendant's mother. The
4 cases pay some attention to that. She was intelligent and
5 reasonably articulate. She was the only one visibly there.
6 She responded to what she heard outside the house and she came
7 out of the house.

8 To all outward appearances, the officers could and did
9 reasonably perceive her to be in charge. It is not necessary
10 that she be the owner or even a co-owner or co-tenant of the
11 house. This was her abode, that's very clear. And if there
12 was any doubt about that, we look -- we really don't need to
13 look much further than the fact that she was there in the wee
14 hours as a fairly strong indication that this was her abode,
15 and that to the officers' perception, this was her abode.

16 All Ms. Morris had to have was a common or shared
17 authority to consent to a search of her residence and the
18 officers reasonably perceived that she had that authority.

19 Ms. Morris and her son were mutual users of the property.
20 That expression finds its way into the cases. They were mutual
21 users of the property. They had joint access to the property
22 and joint control of the property.

23 I conclude, also, that far and away the most likely reason
24 she told the officers that this was not her house was that she
25 wanted them to be on their way and not that she considered

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1 herself unauthorized to consent to their entry into the house
2 to look for her son.

3 After Ms. Morris told the officers that this was her son's
4 house which, as I have said, was basically for the purpose of
5 deflecting the conversation in another direction, she saw that
6 that did not work. That did not detract from her apparent
7 authority to consent to entry into the house for the purpose of
8 determining whether Mr. Morris was, in fact, in the house.

9 I find that her will was not overborne and her consent was
10 not given as a result of coercion or intimidation. And I'll
11 add on that issue that if you are, as she was and is, a long-
12 time and apparently successful shift manager at McDonald's,
13 you're certainly not likely to be a person who can easily be
14 flustered or intimidated.

15 I think one of the most influential factors in her giving
16 consent to the officers to entering the house was that she
17 concluded on the basis of what the officers told her, that they
18 would get a warrant to enter the house. There was nothing
19 inappropriate, misleading, or coercive in the officers telling
20 her that they would go get a warrant.

21 After she said "no" at the 22:42 mark, Officer Hobbs
22 simply said, "Okay, then, we'll get a warrant."

23 As I have said, in my view, that really began to turn the
24 tide in the direction of consent. From that point on, the
25 conversation moved in the direction of her consenting to the

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1 search. Ultimately, she clearly communicated her consent. She
2 confirmed that she was giving her consent of her own free will
3 in a context in which she certainly could have pushed back if
4 she had been so inclined.

5 The consent that she gave was not just consent to enter
6 the house, it was consent to enter the house and look for
7 Mr. Morris.

8 I find that -- I find from the totality of the
9 circumstances that the consent she gave to the officers to
10 enter her residence for the purpose of determining whether her
11 son, this defendant, was there, was freely and voluntarily
12 given.

13 Separate from that, we do have the issue of exigent
14 circumstances that came up yesterday. Officer Hobbs did
15 testify that he did not have the exigent circumstances
16 exception in mind when he entered the house. That is
17 undoubtedly true because he sought and got the consent of
18 Ms. Morris to enter the house, and that consent was all he
19 needed to go in and look for Mr. Morris.

20 But separate from the issue of consent, I also conclude
21 that entry into the house was permissible under the exigent
22 circumstances exception. And obviously this is a very fact-
23 intensive determination.

24 The officers had good reason to believe very firmly that a
25 serious threat to the safety of the community existed right

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1 then and that it was necessary in the interest of the safety of
2 the community to find out quickly whether Mr. Morris was in the
3 house, once they established a perimeter so that they could, in
4 essence, freeze the situation.

5 They also had good reason to believe that it could well
6 become a very hazardous situation for everyone there at this
7 location if they let Ms. Morris, who was certainly an unarmed
8 civilian, reenter the house before they found out whether or
9 not he was in the house.

10 Based on the information that the officers had in hand, as
11 they were there at that location, the situation that confronted
12 them when they got to 1217 South 12th Street was, in my view,
13 and I really believe this, I've given it a fair amount of
14 thought, this was really just one step, and in some ways, not a
15 very long step away from an active shooter situation. The
16 officers knew that the shooting incident had occurred within,
17 at most, the last two hours at that location, so they had good
18 reason to believe that public safety could be very much at risk
19 if they failed to locate Mr. Morris, wherever he might be,
20 because they had information indicating that a gun had been
21 fired from that location into a passing car and that that had
22 occurred not very long before they arrived at the Morris
23 residence.

24 When they arrived at the house, their actions were driven
25 by much more than mere suspicion and they also had good reason

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1 to regard the need to locate Mr. Morris as an urgent need and,
2 for exigent circumstances, that urgency is important. They had
3 good reason to regard that as an urgent need from the
4 standpoint of public safety.

5 So aside from consent, I do readily conclude that exigent
6 circumstances did exist to justify the warrantless entry into
7 the house to find out whether Mr. Morris was there.

8 Now, once in the house, as we all know, it turned out that
9 Mr. Morris was there and the question becomes the voluntariness
10 of his statements and the voluntariness of his consent to the
11 search. The same basic ground rules apply, his consent must be
12 communicated expressly or by implication and it must be freely
13 and voluntarily given.

14 And that's where the Andrew Peck video, I think, becomes
15 important. And, again, his video had a different counter on
16 it. Whereas the Hobbs body cam had a counter that was
17 basically four digits, such as 14:10 or 14:22, his was five
18 digits, as in 1:29:20, 1:32:52, so that's my frame of
19 reference. And that, by the way, as established, was not any
20 indication of the clock time.

21 So at 1:29:20, they enter the house, the dog is barking.
22 Shortly thereafter, at 1:32:52, the defendant is found. You
23 can hear him being told to get up. About two minutes later, at
24 1:34:46, the defendant is visible, he's sitting on the couch.
25 As far as you can tell from the video, the conversation with

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1 the defendant starts at 1:38:15. Four seconds later, he is
2 mirandized before he says anything of any note whatsoever. He
3 is mirandized at 1:38:19.

4 At 1:38:48, he confirms that he understands his rights.
5 And that's not at all surprising. He was not a stranger to the
6 police and he didn't have to be told his rights to know what
7 they were. But he was, in fact, told his rights at 1:38:19,
8 and he confirmed at 1:38:47 that he understood his rights.

9 At 1:39:05, an officer told the defendant about the
10 shooting report, and I think that's of some significance. They
11 were not playing games with him. That's probably the best way
12 to put it.

13 And by the way, I was very favorably impressed by both of
14 those officers. I don't care what city I might live in, if I
15 could have Officer Clayton Hobbs and Officer Andrew Peck
16 protecting my community, I would go for that in a minute, and I
17 was very favorably impressed by both of those officers.

18 So at 1:39:05, the officer tells the defendant about the
19 shooting report. At 1:39:50, he denies any weapons are in the
20 house. At 1:40:34, he refuses the gunshot residue test. At
21 1:41:35, he admits that he had been shooting a gun, as he put
22 it, yesterday. Well, of course, yesterday was not all that
23 long ago.

24 At 1:44:45, he denies having a .22. At 1:45:08, he denies
25 that any guns or silencers are in the house; that was soon

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1 found to be false.

2 Then at 1:45:45, he admits having a .22 long rifle in the
3 shop. And the shop is a bit enigmatic to me, apparently away
4 from the premises, but there's not a great deal of clarity on
5 that. But that really doesn't make a great deal of difference.

6 At 1:46:30, he again denies having any guns in the house.

7 At 1:47:07, he consents to search "the room," which quite
8 clearly was the room that is shown at great length on the video
9 while the officers are going through that room that had quite a
10 bit of personal effects stored in it.

11 At 1:47:09, he reiterates his consent. He says, "I don't
12 care, go in there." And they took him up on that.

13 At some point, the conversation goes in the direction of
14 silencers, and there is some give and take about silencers. At
15 1:54:40, he says, in substance, on the subject of silencers, in
16 substance, he says he gave up on trying to make a silencer a
17 week or so ago.

18 Then about six minutes later, at 2:00:40, they found what
19 was described as an Airsoft pistol. At 2:01:45, he admits that
20 there was a .12-gauge in the attic. That precipitates some
21 consideration of how to get into the attic and, as we all know,
22 that was delayed somewhat. But they did recover it.

23 At 2:12:37, they're in the laundry room, the handgun is
24 found. At 2:12:45, he admits that he put the gun in the
25 laundry room after he saw the police.

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1 And so, again, that all unfolded as I have described and
2 then some, as shown by the video.

3 On the issue of the validity of Mr. Morris' consent, I
4 conclude quite readily that he did validly give his consent.

5 Mr. Morris, like his mother, was no shrinking violet. The
6 video of the officers' interaction with him persuades me that
7 he was not the timid type who was susceptible to being overawed
8 or intimidated by the presence of the police or by the number
9 of officers who were there or by their very pointed curiosity
10 about what guns he might have in the house.

11 Mr. Morris was no stranger to the police. The mere
12 presence of these officers was not a situation that would rock
13 him back on his heels, and it clearly did not rock him back on
14 his heels.

15 It was not necessary that the defendant be on a completely
16 equal footing with the officers who requested consent or who
17 wants to get him talking.

18 What is necessary is that he have his wits about him and
19 have enough willpower and presence of mind to make his own
20 decision as to whether he is going to consent or stand firm.

21 Mr. Morris was clearly assertive and he was clearly
22 assertive enough to have invoked his right to refuse the search
23 or his right to remain silent if he had chosen to do so. He
24 made his own decision not to do so.

25 I find that Mr. Morris did have his wits about him and

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1 that he did have the willpower and the presence of mind to make
2 his own decision as to whether to consent to the search and as
3 to whether to make the statements that he did make to the
4 officers.

5 Accordingly, I do find quite readily that he did consent
6 to the search and that his consent was freely and voluntarily
7 given.

8 The issue is the admissibility of the guns and other items
9 that were seized and the admissibility of his statements. I
10 find that they are admissible and they will not be suppressed.
11 Accordingly, the motion to suppress is, in all respects,
12 denied.

13 That brings us to docket call. We're set for trial, what,
14 Tuesday at 9:30; is that right, Lori?

15 COURTROOM DEPUTY: Yes, sir.

16 THE COURT: Okay. Very well.

17 Do we have an estimate from the government as to length of
18 trial?

19 MR. ALTSCHULER: Expect no more than two days, Your
20 Honor.

21 THE COURT: Would the defendant concur in that
22 estimate? Or would you like a recess for a few minutes to
23 consider the situation?

24 MS. BROWN: Yes, Your Honor. I can tell the Court,
25 advise the Court, quite candidly, I do not anticipate, and I

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