NO. 20-_____

In the Supreme Court of the United States

BRIAN ANTHONY WILEY,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Tennessee

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Fourth Amendment of the United States Constitution permits police to enter a privately rented campsite without probable cause or invitation, question and detain the campsite's resident in a tent within the campsite, and conduct a warrantless search of the resident's car parked within the rented campsite?

PARTIES TO THE PROCEEDINGS

Petitioner

- Brian Anthony Wiley

Respondent

- State of Tennessee

LIST OF PROCEEDINGS

Supreme Court of Tennessee
No. M2018-01817-SC-R11-CD
State of Tennessee v. *Brian Anthony Wiley*
Date of Final Order: April 15, 2020

Court of Criminal Appeals of Tennessee
No. M2018-01817-CCA-R3-CD
State of Tennessee v. *Brian Anthony Wiley*
Date of Final Opinion: January 21, 2020

Circuit Court of Coffee County
Case No. 43,093
State of Tennessee v. *Brian Anthony Wiley*
Date of Orders: May 18, 2017, September 20, 2018

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Brian Anthony Wiley respectfully petitions for a writ of certiorari to review the judgment of the Tennessee Criminal Court of Appeals.

OPINIONS BELOW

The Tennessee Supreme Court denied Mr. Wiley's application for permission to appeal. A copy of that order is attached in the Appendix ("App.") 1a. The decision of the Tennessee Criminal Court of Appeals denying Mr. Wiley's appeal is attached at App.2a. This opinion is also available electronically at *State v. Wiley*, No. M2018-01817-CCA-R3-CD, 2020 WL 290841 (Tenn. Crim. Ct. App. Jan. 21, 2020). The decisions of the Criminal Court of Coffee County, Tennessee are attached at App.63a and App.66a.

JURISDICTION

The Tennessee Criminal Court of Appeals denied Mr. Wiley's appeal on January 21, 2020. App.2a. The Tennessee Supreme Court denied Mr. Wiley's application for permission to appeal on April 15, 2020. App.1a. Therefore, this Court has jurisdiction under 28 U.S.C. § 1257 as Mr. Wiley has filed this petition for writ of certiorari within 90 days of the Tennessee Supreme Court's judgment.

CONSTITUTIONAL PROVISION

U.S. Const. amend. IV.

> The 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.

STATEMENT OF THE CASE

I. Factual History

On Wednesday, June 8, 2016, Brian Wiley arrived by car at the Bonnaroo Music and Arts Festival ("Bonnaroo"), an annual event located on a 700-acre private farm in Coffee County, Tennessee. App.127a, 151a. Mr. Wiley's sister, Andrea Anthony, followed him in another car. App.133a.

Bonnaroo is a four-day music event, often with more than 90,000 people in attendance. In addition to purchasing a general admission ticket to attend concerts at Bonnaroo, attendees may opt to pay a separate car camping fee that allows for camping in designated car camping locations. These campsites become temporary living accommodations for the duration of the four-day event. These campsites are apart and separate from the music stages, but within the

700-acre venue that is Bonnaroo. There are separate general parking areas for concertgoers that do not pay for overnight camping. App.126a-127a, 136a-137a, 151a, 198a, 217a-220a.

A month prior to the event, on May 6, 2016, Mr. Wiley purchased a general admission ticket to attend Bonnaroo 2016 for $349.50. Mr. Wiley separately purchased a car camping pass for $59.75. App.150a, 217a-220a. The terms of admission printed on the ticket state, in pertinent part:

> This ticket is a revocable license for the time listed on the front hereof. Management reserves the right, without refund of any portion of the ticket purchase price, to refuse admission or eject any person who fails to comply with the rules of the venue, local, state, or federal law, or whose conduct is deemed illegal, disorderly, or offensive by management. Persons entering the facility are subject to search for contraband, alcohol, controlled substances, weapons, firearms, fireworks, cameras, video equipment or recording devices, which are expressly forbidden and subject to confiscation . . . .

App.218a.

To enforce its entry-search policy, Bonnaroo management operates controlled entry points to the festival in the form of "tollbooths" wherein vehicles and persons entering the facility are subject to search. App.125a, 133a-134a. Mr. Wiley's vehicle was searched upon entry at one such tollbooth and afterwards he proceeded to the car camping area as directed by Bonnaroo staff. App.135a, 151a-152a.

Once in the car camping area, in a location known as "Pod 9," Bonnaroo staff directed Mr. Wiley and his sister to park in a specific fashion, assigning each car a 20' x 20' campsite.[1] The cars were lined up bumper to bumper with Mr. Wiley parking behind another vehicle and his sister parking behind him (with her front bumper facing Mr. Wiley's back bumper). App. 126a-127a, 135a, 141a, 151a-153a, 198a, 202a. Near each pod were lanes of travel where people could walk. App.89a.

After Bonnaroo staff directed Mr. Wiley to his campsite, he erected an easy-up canopy tent equipped with tapestry walls on the sides.[2] This was adjacent to his car, which held his personal effects. He also set up another tent for sleeping. Together the tent, the easy-up canopy tent, and Mr. Wiley's vehicle served as his temporary home—where he slept, kept belongings, and generally lived for the duration of the festival. Mr. Wiley's sister set up a similar accommodation at

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[1] The court of appeals found that campers were given "squares," rather than 20' x 20' spaces. App.6a; *Wiley*, 2020 WL 290841 at *2, n.1. However, this fact was never disputed and the record below supports this specific dimension, which is, of course, square. Mr. Wiley testified that the spaces had the 20' x 20' square dimension, Officer Sherrill did not dispute the dimension, and Mr. Wiley's sister confirmed that the dimension was a square. Based on this evidence, the trial judge made a factual finding that Mr. Wiley was assigned a 20' x 20' campsite. App.67a, 112a, 143a-144a, 151a-153a.

[2] The court of appeals noted that Officer Sherrill did not recall tapestry sides hung on the easy-up tent. App.9a; *Wiley*, 2020 WL 290841 at *3. However, both Mr. Wiley and his sister described the tent as having tapestry walls at the motion to suppress hearing and the trial judge found that tapestries could be hung on such a tent. App.67a, 134a-137a, 153a-154a.

a campsite location adjacent to his. Mr. Wiley, his sister, and his girlfriend (who met him at the festival) spent their first night at the campsite and the next day at Bonnaroo without incident. App.110a, 134a-137a, 153a-154a.

The next evening, Thursday, June 9, 2016, six Coffee County Sheriff's Deputies: James Sherrill, Blake Simmons, Stephen Sharketti, Wendell Norton, Brandon Reed and reserve deputy Justin McIntosh were on routine patrol in Bonnaroo walking in the area known as Pod 9. These uniformed officers were working in the scope of their employment as Coffee County Sheriff's Department employees. They were not employees of Bonnaroo. App.98a-99a, 126a-127a, 198a.

During this patrol, Deputy Sherrill overheard a young man, identified as Trevor Watson, making claims about the quality of acid he was attempting to sell to other attendees of Bonnaroo. As Deputy Sherrill heard this statement, he "latched hold of [Watson's] backpack and introduced [him]self," sitting Mr. Watson down on the ground. App.105a. Deputy Sherrill proceeded to search Mr. Watson's backpack, in which he found plastic, multi-colored pouches containing narcotics. App.87a.

While on the ground in police custody, Mr. Watson allegedly told Deputy Sherrill, "if [we] just let him go he would help [us] get a bigger bust." App.106a. Mr. Watson then purportedly mentioned "a guy named Brian" from Chattanooga in another place in Pod 9. App.106a. Mr. Watson was then transferred to the custody of Investigator Jason Dendy and Deputy Toby Alonso. App.91a.

Based on what Mr. Watson told Deputy Sherrill, he and Deputies Reed, Sharketti, Simmons, Norton, and McIntosh left Mr. Watson and sought this "guy named Brian" elsewhere in Pod 9. Sometime later, the six deputies approached Mr. Wiley's campsite and entered uninvited. Mr. Wiley, his girlfriend, his sister, and two other young men were present. Mr. Wiley was standing by his car within his 20' x 20' campsite. No one was engaged in illegal activity. App.98a-99a, 104a-105a.

Deputy Sherrill approached and asked Mr. Wiley where he was from. Mr. Wiley said, "Chattanooga." Hearing that word, Deputy Sherrill grabbed Mr. Wiley by the back of his shirt, forcibly walked him into the canopy tent, and sat him down. App.108a-111a. Deputy Sherrill then asked Mr. Wiley for consent to search his vehicle and Mr. Wiley refused. App.109a. Mr. Wiley was stood up and patted down and searched. No weapons or contraband were found on him. Deputy Sherrill testified that Mr. Wiley was not free to leave and was under arrest at the campsite at that time. Mr. Wiley chose not to answer any further questions, exercising his constitutionally protected right to remain silent. App.113a, 130a, 154a-155a.

Approximately two minutes after he arrived on the campsite, Deputy Sherrill directed that Officer Dale Robertson with the Manchester Police Department be called and ordered to bring his K-9 unit to search Mr. Wiley's car. App.92a, 97a-98a, 130a.

Meanwhile, the other deputies instructed Mr. Wiley's girlfriend, sister, and two other young men to sit down under the canopy tent in the living area of the campsite. Deputies searched Mr. Wiley's girlfriend, his sister, and the two young men. No contraband

was found. No weapons were found. Mr. Wiley's sister was asked for consent to search her vehicle, which she gave. Her car was searched, and no contraband or weapons were found in her vehicle. App.112a-113a, 137a-138a.

Deputy Sherrill testified that, at some point, he looked into Mr. Wiley's vehicle using a flashlight and saw some empty plastic pouches.[3] Deputy Sherrill testified that he thought that the pouches were similar to the kind found in Mr. Watson's backpack. However, there was no actual contraband observed by Deputy Sherrill. App.93a, 98a, 100a, 118a-119a. Deputy Sherrill testified that he did not have probable cause to search Mr. Wiley's car at that time. App.119a-121a.

Sometime later, the K-9 unit arrived at Mr. Wiley's campsite and performed a sniff search, alerting on Mr. Wiley's vehicle. An officer took Mr. Wiley's keys, without Mr. Wiley's consent, and unlocked and searched Mr. Wiley's car. Officers found marijuana and a large amount of cash before driving the car to the command center for a further search. The following evidence, in pertinent part, was recovered from the search: THC oil, MDMA, marijuana, mushrooms, LSD, xanax, and approximately $29,000 in cash. App.94a-96a. No search warrant was ever sought or obtained in the search of Mr. Wiley's campsite or vehicle found therein.

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[3] In its description of events, the court of appeals assumed that Deputy Sherrill looked into the car prior to detaining Mr. Wiley in the easy-up tent. App.9a; *Wiley*, 2020 WL 290841 at *3 & n. 2. However, the evidence indicated otherwise—Deputy Sherrill ultimately admitted: "I honestly don't remember if I went to the passenger door first or not." App.100a.

II. Procedural History

In July of 2016, the Coffee County Grand Jury returned an Indictment charging Defendant Brian Wiley with seven counts of possessing controlled substances with intent to sell or deliver, in violation of Tennessee Code Annotated § 39-17-417, and one count of possessing drug paraphernalia, in violation of Tennessee Code Annotated § 39-17-425. App.73a.

Counsel for Mr. Wiley filed a Motion to Suppress on February 23, 2017, on grounds that evidence was recovered in violation of the Fourth Amendment. App.195a. On April 12, 2018, Judge Vanessa Jackson of the Coffee County Circuit Court held a hearing on the Motion to Suppress. App 84a. Following that hearing, the trial court denied the motion, finding that the search of Mr. Wiley's automobile fell within the "automobile exception" to the warrant requirement of the Fourth Amendment. App.66a.

On May 29, 2018, following this Court's decision in *Collins v. Virginia*, 138 S.Ct. 1663 (2018), counsel for Mr. Wiley filed a Motion to Reconsider the trial court's Order on the Motion to Suppress, again on Fourth Amendment grounds. App.221a. Counsel for Mr. Wiley also filed a Supplemental Memorandum, further citing the Fourth Amendment, on September 10, 2018. App.225a. On September 20, 2018, the trial court denied Mr. Wiley's Motion to Reconsider, finding that Fourth Amendment protections did not apply to Mr. Wiley's campsite/temporary accommodation. App.63a.

On September 26, 2018, Mr. Wiley pled guilty to five counts of possessing controlled substances with intent to sell or deliver. App.56a. Pursuant to the plea

agreement, Mr. Wiley reserved the following certified question of law:

> Whether the trial court erred in denying defendant's motion to suppress alleging Defendant's Fourth Amendment rights were violated by police who, without probable cause, entered a tent on Defendant's privately rented campsite (a temporary accommodation) at Bonnaroo without invitation, questioned him, detained him, and when he refused to consent to a vehicle search, conducted a warrantless search of his car parked within the 20' x 20' rented campsite, an area where the Defendant had a reasonable expectation of privacy?

App.60a.

On September 26, 2018, Mr. Wiley timely filed a Notice of Appeal to the Tennessee Court of Criminal Appeals. On January 21, 2020, and following oral argument, the Tennessee Court of Criminal Appeals affirmed the judgments of the trial court. App.2a.

In its opinion, the court of appeals recognized varying degrees of Fourth Amendment privacy protections within Mr. Wiley's 20' x 20' campsite. The court held that Mr. Wiley's "tent structure" where he slept was afforded Fourth Amendment protections. App.24a-25a; *Wiley*, 2020 WL 290841 at *10. However, the court held that the 20' x 20' campsite surrounding the sleeping tent was not protected by the Fourth Amendment as curtilage. App.29a-31a; *Wiley*, 2020 WL 290841 at *11. And, the court refused to determine whether the other tent structure (the easy-up canopy

tent) was protected by the Fourth Amendment at all. App.25a; *Wiley*, 2020 WL 290841 at *10-12 & n.10.

On March 18, 2020, Mr. Wiley timely filed a Rule 11 Application for permission to appeal to the Tennessee Supreme Court. On April 15, 2020, the Tennessee Supreme Court entered an order denying Mr. Wiley's Application for permission to appeal. App.1a.

REASONS FOR GRANTING THE PETITION

In this case, there are two basic legal issues: (I) whether a rented and designated campsite on private property is protected by the Fourth Amendment of the U.S. Constitution; and, (II) if so, whether any exceptions allow for an officer to enter said campsite, arrest a camper, and conduct a warrantless search of the campsite (and vehicle parked therein) without a warrant or probable cause.

Accordingly, the Fourth Amendment is central to this case. It was raised initially in Mr. Wiley's Motion to Suppress. App.195a. And, the lower courts all ruled on Fourth Amendment grounds. In its two orders, the trial court focused on the automobile exception and the scope of the Fourth Amendment, respectively. App.63a, 66a. The Court of Criminal Appeals also focused on the scope of the Fourth Amendment (in varying degrees). App.2a. The lower court decisions addressing these Fourth Amendment questions resulted in serious constitutional error.

The application of the Fourth Amendment in the context of camping has not been addressed by this

Court. It merits consideration given the large number of people that camp in the United States. According to a study commissioned by the National Park Service, there are approximately 13,900 privately operated campgrounds in the United States and 12,200 public sector campgrounds. *See* CHM GOVERNMENT SERVICES, CAMPGROUND INDUSTRY ANALYSIS 15, 56, http://nps.gov/subjects/policy/upload/Final-Campground-Trends-Analysis.pdf. (Jan. 10, 2020). And, 62% of U.S. households identify themselves as campers. *Id.* at 51.

Therefore, certiorari is warranted under Supreme Court Rule 10(c) as a state court has decided an important Fourth Amendment question that has not been, but should be, settled by the United States Supreme Court. Certiorari is also warranted under Supreme Court Rule 10(b) as the Tennessee Court of Criminal Appeals' decision conflicts with the relevant decision of the Supreme Court in *Collins v. Virginia*, 138 S.Ct. 1663 (2018). As set forth below, the vehicle parked within Mr. Wiley's rented campsite was, at the very least, within its curtilage, and should have been afforded constitutional protection like the motorcycle in *Collins*.

I. A RENTED AND DESIGNATED CAMPSITE ON PRIVATE PROPERTY IS PROTECTED BY THE FOURTH AMENDMENT OF THE U.S. CONSTITUTION.

It is well settled that "when the Government obtains information by physically intruding on persons, houses, papers or effects, a search, within the original meaning of the Fourth Amendment has undoubtedly occurred." *Florida v. Jardines*, 569 U.S. 1, 5 (2013) (internal quotation marks and citations omitted). And, "when it comes to the Fourth Amendment, the

home is first among equals. At the Amendment's very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Id.* Further, the home's curtilage or the area "immediately surrounding and associated with the home" is considered "part of the home itself for Fourth Amendment purposes." *Id.* at 6. In sum, when law enforcement intrudes into the home or its curtilage to gather evidence, a search within the Fourth Amendment has occurred and is presumptively unreasonable absent a warrant. *Id.* at 11.

This Court has long recognized that Fourth Amendment privacy protections surrounding one's home cover more than permanent dwellings (or places where individuals have a traditional property interest) and extend to temporary accommodations like hotel or motel rooms. *See Stoner v. California*, 376 U.S. 483, 490 (1964). Further, Fourth Amendment protection of tents and tent-like structures has consistently been recognized in many jurisdictions. *See United States v. Gooch*, 6 F.3d 673, 678 (9th Cir. 1993). Because temporary structures like tents are legitimate dwelling places afforded the protection of the Fourth Amendment, the curtilage surrounding such dwelling places is also an area in which individuals may have reasonable expectations of privacy. *Kelley v. State*, 245 S.E.2d 872, 875 (Ga. Ct. App.1978) (reversing trial court's denial of motion to suppress and finding a clearing and garden adjacent to two tents to be within the curtilage). *See also Rigsby v. United States*, 943 F.2d 631, 636 (noting that had there been evidence that the tent in question was being used as a home or a temporary accommodation, the defendant may have

had a reasonable expectation of privacy in said tent and its curtilage (a picnic area on private property)).

In light of the aforementioned legal principles, courts look to two inquiries in evaluating whether a particular defendant's Fourth Amendment rights have been violated: whether the individual, by his conduct, has exhibited an actual (subjective) expectation of privacy, and whether the individual's subjective expectation of privacy is one that society is prepared to recognize as reasonable. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring); *Bond v. United States* 529 U.S. 334, 338 (2000)) (internal quotation marks omitted). Here, both subjective and objective inquiries demonstrate that Mr. Wiley's Fourth Amendment rights were violated.

A. An Expectation of Privacy in a Privately Rented Campsite is One That Society Recognizes as Reasonable.

i. Privately Rented and Designated Campsites are Entitled to Constitutional Protection as Temporary Accommodations.

With regard to the types of homes protected, it is well settled that "the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion." *Collins*, 138 S.Ct. at 1675 (citations omitted). Accordingly, this Court has long recognized that Fourth Amendment privacy protections surrounding one's home cover more than permanent dwellings (or places where individuals have a traditional property interest) and extend to more temporary accommodations like hotel or motel rooms. *Stoner*, 376 U.S. at 490.

In the context of camping, Fourth Amendment protection of tents and tent-like structures has consistently been recognized in many jurisdictions. *See Gooch*, 6 F.3d at 678 (holding that a person can have an objectively reasonable expectation of privacy in a tent on private property); *State v. Pruss*, 181 P.3d 1231, 1235 (Idaho 2008) (holding that a person using a temporary shelter—a tent and a wooden structure on public lands as living quarters has a reasonable expectation of privacy in that shelter); *People v. Schafer*, 946 P.2d 938, 940 (Colo. 1997) (a person camping on unimproved and apparently unused land that is not fenced or posted against trespassing, and in the absence of personal notice against trespass, has a reasonable expectation of privacy in a tent used for habitation and personal effects therein); *People v. Hughston*, 85 Cal. Rptr. 3d 890, 896-98 (Cal. Ct. App. 2008) (holding a tent structure erected on land specifically set aside for camping during a music festival protected under the Fourth Amendment).

In this case, Mr. Wiley's entire 20' x 20' rented campsite was his temporary accommodation and possession and, as such, he was entitled to constitutional protection. Bonnaroo staff directed Mr. Wiley to a campsite that he contracted to rent on private land. Therein he erected an easy-up canopy tent equipped with tapestry walls on the sides. This was adjacent to his car, which held his personal effects. He also set up another tent for sleeping. Together the easy-up canopy tent, sleeping tent, and Mr. Wiley's vehicle served as his temporary home—where he slept, kept belongings, and lived for the duration of the festival. App.110a, 134a-137a, 152a-154a.

Rather than affording the campsite its constitutional protections, however, the Criminal Court of Appeals chose to parse the campsite, applying different levels of Fourth Amendment protection to different items. The court of appeals correctly held that the "tent structure itself, where [Mr. Wiley] slept, along with any personal belongings kept therein" was protected by the Fourth Amendment. App.24a; *Wiley*, 2020 WL 290841 at *10. However, the court found the remainder of the campsite was not curtilage and, therefore, not subject to Fourth Amendment protection. App.25a; *Wiley*, 2020 WL 290841 at *10. And, the court of appeals refused to determine whether the canopy tent structure was subject to constitutional protection at all. App.25a; *Wiley*, 2020 WL 290841 at *10-11 & n.10.

With regard to the canopy tent structure, the appellate court stated that addressing it was unnecessary because "none of the incriminating evidence came from therein." App.25a; *Wiley*, 2020 WL 290841 at *10, n.10. However, no incriminating evidence came from the sleeping tent either. Further, the status of the easy-up canopy tent is highly important not only because of its living-area function, but because so many events material to this case took place there. It was within the canopy tent where Mr. Wiley was immediately detained and arrested. App.108a, 110-111a. It was within the canopy tent that Mr. Wiley was interrogated, refused consent to search his vehicle, and was patted down and searched. App.109a, 113a, 130a, 154a-155a. It was also within this tent that an officer ultimately took Mr. Wiley's keys, without Mr.

Wiley's consent, and unlocked and searched Mr. Wiley's car. App.93a-94a.[4]

The appellate court's parsing of areas within a small 20' x 20' campsite is unworkable. In a car camping situation such as this one, with small, designated areas, persons use the entire site as their home. They sleep, eat, sit, talk, and store belongings in all areas. It can be difficult to ascertain where a person is sleeping (sometimes opting for the enclosed tent, sometimes open air, and sometimes inside a vehicle in bad weather). As such, the entire campsite (including both tent structures and the vehicle) is the temporary accommodation. It is, therefore, entitled to the protection of the Fourth Amendment.

ii. In the Alternative, Designated Campsites Surrounding Tents (Like the 20' X 20' Area in Mr. Wiley's Case) Are Entitled to Constitutional Protection as Curtilage.

Even if the Court refuses to find the entire 20' x 20' site to be protected as a temporary accommodation, the area surrounding Mr. Wiley's sleeping tent (to include the easy-up canopy tent and vehicle) should at least be protected as curtilage. The appellate court erred in finding otherwise. App.25a; *Wiley*, 2020 WL 290841 at *10-11 & n.10. Because temporary structures like tents are legitimate dwelling places afforded the protection of the Fourth Amendment, the curtilage surrounding such dwelling places is also an area in which individuals may have reasonable expectations of privacy. *Kelley*, 245 S.E.2d at 875 (reversing trial

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[4] Deputy Sherrill testified that these events took place inside the canopy tent, and not in an open field or an alley. App.111a.

court's denial of motion to suppress and finding a clearing and garden adjacent to two tents to be within the curtilage). *See also Rigsby*, 943 F.2d at 636 (noting that had there been evidence that the tent in question was being used as a home or a temporary accommodation, the defendant may have had a reasonable expectation of privacy in said tent and its curtilage (a picnic area on private property)).

In *United States v. Dunn*, this Court established four factors to consider in resolving questions of curtilage: (1) the proximity of the area claimed to be curtilage to the home; (2) whether the area is included in an enclosure surrounding the home; (3) the nature of the uses to which the area is put; and (4) the steps taken by the resident to protect the area from observation by people passing by. 480 U.S. 294, 301 (1987). This Court stressed that these factors cannot be "mechanically applied," but are merely "useful analytical tools" to determine whether an area is to be protected from constitutional searches and seizures—in other words, "whether the area in question is so intimately tied to the home itself that it should be placed under the home's umbrella of Fourth Amendment protection." *Id.* (internal citations omitted).

The recent case of *Collins v. Virginia*, 138 S.Ct. 1663 (2018), is also instructive. In *Collins*, this Court found that a motorcycle was entitled to constitutional protection as it was parked in an area properly considered curtilage—at the top portion of the defendant's driveway, abutting the house, reasoning that "just like the front porch, side garden, or area 'outside the front window', the driveway enclosure where [the officer] searched the motorcycle constitutes an area adjacent to the home and to which the activity of home

life extends, and so is property considered curtilage." *Id.* at 1671. With regard to observation and visibility, this Court further made clear that "[t]he ability to observe inside curtilage from a lawful vantage point is not the same as the right to enter curtilage without a warrant for the purpose of conducting a search to obtain information not otherwise accessible." *Id.* at 1675 (finding that "so long as it is curtilage, a parking patio or carport into which an officer can see from the street is no less entitled protection from trespass and warrantless search than a fully enclosed garage.").

In this case, the *Dunn* factors and the recent *Collins* case favor a finding of curtilage. First, the area including the canopy tent and vehicle were close in proximity to the sleeping tent-the entire campsite was small: a 20' x 20' plot. Second, though not attached to the sleeping tent, the canopy tent was itself enclosed and nearby (as was the vehicle). Third, Mr. Wiley used the entire 20' x 20' area to live for the duration of the festival: sleeping in a tent, eating under the enclosed canopy tent, getting in and out of his car to access belongings/food etc. Finally, Mr. Wiley made efforts to give himself additional privacy—he zipped his sleeping tent, covered his living area (and hung tapestries), and locked his car.

The court of appeals, however, held that the area surrounding Mr. Wiley's sleeping tent was not protected as curtilage but it was instead in an "open field," relying on a Ninth Circuit case: *United States v. Basher*, 629 F.3d 1161 (9th Cir. 2011). App.25a; *Wiley*, 2020 WL 290841 at *10-11 & n.10. However, the facts in *Basher* are easily distinguishable from the facts of this case. In *Basher*, the defendant was camping in

Washington State in a dispersed, undeveloped, wild and "ill-defined" area on public land (a National Forest). 629 F.3d at 1163, 1169. In refusing to extend the curtilage analysis to the facts of *Basher*, the Ninth Circuit reasoned that: "[p]arkland campsites often have layouts that are vague or dispersed, and individuals often camp in areas that are not predetermined campsites." *Id.* at 1169.[5]

In this case, however, Mr. Wiley was camping in a much different scenario. He contracted to camp on private property in a defined 20' x 20' foot plot as assigned and directed by a private entity—Bonnaroo. The layout was not wild, vague or undefined nor could it be. App.126a-127a, 135a-136a, 151a-152a, 198a, 202a. Accordingly, and at the very least, Mr. Wiley's campsite should be protected as curtilage.

iii. Concepts of Property Law Under *Byrd v. United States* Further Justify Reasonable Privacy Expectations in a Designated and Privately Rented Campsite.

In addition to the aforementioned case law, Mr. Wiley's reasonable privacy expectations are further justified by concepts of property law as outlined by this Court in the recent decision *Byrd v. United States*, 138 S.Ct. 1518 (2018). In *Byrd*, this Court made clear that "a person need not always have a recognized common-law property interest in the place

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[5] The court of appeals also references a case out of Idaho, *State v. Beck*, 336 P.3d 809 (Idaho 2014). App.27a. However, *Beck* is inapposite for the same reasons—the defendant was camping in Idaho on public land in an open, undefined camping area (on a path leading to a fishing area). *Beck,* 336 P.3d at 811, 814.

searched to be able to claim a reasonable expectation of privacy in it." *Id.* at 1527 (citations omitted).

In *Byrd*, this Court held that even though the driver of a rental car was not listed as an authorized driver on the rental agreement, he maintained a reasonable expectation of privacy in the rental car. *Id.* at 1528-29. This Court explained that a property interest in the area searched is not required, but instead there must just be some "source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." *Id.* at 1527. For example, "one of the main rights attaching to property is the right to exclude others" and "one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of the right to exclude." *Id.* (citing 2 W. Blackstone, Commentaries on the Laws of England, ch. 1). In applying this law to the facts in *Byrd*, this Court reasoned that, although the driver had no property interest in the vehicle, he was in control of the vehicle and would have been permitted to exclude an unwanted third party (like a carjacker) from the rental car. *Id.* at 1528-29.

In this case, Mr. Wiley entered into a legally binding contract—obtaining a license[6] to camp on the 20' x 20' piece of property for the duration of the festival in exchange for a fee. App.150a-151a, 217a-

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[6] A license is defined as "a personal privilege to do some particular act or series of acts on land without possessing any estate or interest therein." Black's Law Dictionary, 919-20 (6th ed. 1996). Contractual licenses are common with short-term accommodations like hotels and motels. James C. Smith, "Common Law Property Rights," Neighboring Property Owners § 7.2 (2018).

220a. Although such licenses do not confer any common law property interest, the Court in *Byrd* made clear that such interest is not required for Fourth Amendment protections to apply. *Byrd*, 138 S.Ct. at 1527. This is in line with the reasoning in the cases recognizing that privacy protections extend to temporary accommodations like hotel or motel rooms (which often involve licenses rather than actual property interests). *See Stoner,* 376 U.S. at 490. *See also* James C. Smith, "Common Law Property Rights," Neighboring Property Owners § 7.2 (2018).

Similar to the defendant in *Byrd*, Mr. Wiley clearly would have been permitted to exclude unwanted third parties from his campsite. Persons that go camping expect to be able to have such privacy—to set up temporary living quarters and be able to exclude unwanted individuals from intruding. Accordingly, Mr. Wiley's expectation of privacy was objectively reasonable.

B. Mr. Wiley Exhibited an Actual (Subjective) Expectation of Privacy in His Campsite by Exercising Control Over His Assigned Space and Setting Up Living Quarters to Reside There for Several Days.

In addition to his general admission concert ticket, Mr. Wiley purchased a car camping pass for $59.75. App.150a-151a, 217a-220a. In exchange for these funds, he was entitled to a specific and exclusive campsite as assigned by the Bonnaroo staff—much like a license for a room in a hotel or motel. App.135a.

Once Mr. Wiley was given his assigned 20' x 20' space, he set up and arranged his living quarters in order to reside there for several days—erecting an

easy-up canopy tent equipped with tapestry walls (a living area), a tent (a sleeping area), and his car (a storage area). Mr. Wiley made efforts to give himself additional privacy-he zipped his sleeping tent, covered his living area by erecting an easy up canopy tent (and hung tapestries), and locked his car or storage area. All of these components were in close proximity of each other within the assigned campsite and, as is typical with "car camping," Mr. Wiley used and accessed all components of his campsite regularly during his stay. App.110a, 134a-137a, 152a-154a. Mr. Wiley treated this area like his home and remained in control of it, per *Byrd*, to the exclusion of others.

It is undisputed that, on June 9, 2016, Mr. Wiley further exhibited his subjective expectation of privacy by refusing to consent to the search of his campsite or vehicle contained therein. App.109a. There is no evidence that Mr. Wiley somehow waived his Fourth Amendment rights upon entry to Bonnaroo. The State relied on vague statements by Officer Sherrill that patrons "know they're subject to search" and that he'd overheard Bonnaroo security tell patrons (at some unknown time and place) that they would be removed unless they consented to search. App.124a-125a. This is hardly enough evidence to suggest that Mr. Wiley knowingly waived his Fourth Amendment rights under the United States Constitution.

Furthermore, the terms of admission to Bonnaroo do not diminish or waive any of his Fourth Amendment protections. This Court has made clear that "[w]hen an official search is authorized—whether by consent or by the issuance of a valid warrant—the scope of the search is limited by the terms of its authorization." *Walter v. United States*, 447 U.S. 649, 656 (1980).

And, basic contract law requires that "[i]f the contractual language is clear and unambiguous, the literal meaning of the contract controls the dispute . . . and the language used in the contract is construed using its 'plain, ordinary, and popular sense.'" *West v. Shelby Cty. Healthcare Corp.*, 459 S.W.3d 33, 42 (Tenn. 2014).

Here, a plain reading of the contract language indicates that the terms of the contract are narrow—the terms notify patrons that "Persons entering the facility are subject to search." App.218a (emphasis added). Similar language is often posted in airports and at the borders of the United States. And, as the language clearly indicates, individuals are subject to search upon arrival/entry only. The terms do not extend any further. In other words, the posted language does not result in a waiver of Fourth Amendment rights after leaving the airport or crossing the border and returning home.

Of course, in this case, an entry search by Bonnaroo staff is much different from a broad warrantless search, without probable cause, by Coffee County deputies a day later at Mr. Wiley's campsite. Such narrow contractual language does not diminish Mr. Wiley's reasonable expectation of privacy in his campsite, nor does it amount to a waiver of Fourth Amendment protections for the entirety of the multi-day festival. To the degree that the State argues that this provision is somehow ambiguous, it is well established that ambiguous contract provisions are construed against the drafter. *West*, 459 S.W.3d at 42.

Finally, the ticket to Bonnaroo is a contract between Mr. Wiley (the purchaser of the ticket) and Bonnaroo (a private company). The State is not a

party to the contract. Bonnaroo has no authority to assign any of Mr. Wiley's privacy rights to the State. *See United States v. Howard*, 752 F.2d 220, 227 (6th Cir. 1985), *vacated on other grounds* (citing *Zap v. United States*, 328 U.S. 624, 629 (1946), *vacated on other grounds* (noting that a consent clause in contract does not insulate from Fourth Amendment a search by a Government agent). Moreover, because a concert-goer may feel compelled to agree to a consent provision to obtain a concert ticket, any consent to search was not necessarily voluntary. *See id.* (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973) ("[T]he Fourth and Fourteenth Amendments require that [the state] demonstrate that the consent [to search] was in fact voluntarily given, and not the result of duress or coercion, express or implied.").

Mr. Wiley's behavior demonstrates that he had an actual (subjective) expectation of privacy in his campsite. His expectation is one that society has recognized as reasonable. Accordingly, when Officer Sherrill entered Mr. Wiley's private campsite and sought to gather evidence, a search within the meaning of the Fourth Amendment occurred. Given the applicability of the Fourth Amendment here, this search is presumptively unreasonable without a warrant.

II. NO EXCEPTIONS TO THE FOURTH AMENDMENT'S WARRANT REQUIREMENT APPLY.

A. The Automobile Exception Does Not Apply Given the Location of the Vehicle, Parked Within the Constitutionally Protected Campsite.

Where a warrantless search is conducted, the government bears the burden of demonstrating that

the search was conducted pursuant to only a few specifically established and well delineated exceptions. *Coolidge v. New Hampshire*, 413 U.S. 443, 454-55 (1971); *Vale v. Louisiana,* 399 U.S. 30, 34 (1970). With regard to the automobile exception, this Court has recently made clear that "an officer must have lawful right of access to a vehicle in order to search it pursuant to the automobile exception." *Collins*, 138 S.Ct. at 1672. In *Collins*, the vehicle at issue was a motorcycle parked in the top portion of the defendant's driveway, abutting the house. *Id.* At 1671. Given its location, this Court found that the motorcycle was in an area properly considered curtilage. *Id.* This Court went on to explain that "[t]he automobile exception does not afford the necessary lawful right of access to search a vehicle parked within a home or its curtilage because it does not justify an intrusion on a person's separate and substantial Fourth Amendment interest in his home and curtilage." *Id.*

Like the home in *Collins*, Mr. Wiley's privately rented campsite is protected by the Fourth Amendment. *See Gooch*, 6 F.3d at 678*; Pruss*, 181 P.3d at 1235; *Schafer*, 946 P.2d at 940; *Hughston*, 85 Cal. Rptr. 3d at 897-98; *See also Rigsby,* 943 F.2d at 636. The components of Mr. Wiley's campsite included a tent for sleeping, an easy-up tent equipped with tapestry walls for general living, and the car for storage. It was here that Mr. Wiley slept, kept belongings, and generally lived for the duration of the festival. App.110a, 134a-137a, 152a-154a.

Even if Mr. Wiley's car is not considered part of the actual living quarters, it was clearly parked within the curtilage of such living quarters given its close proximity to the other components of the camp.

App.135a, 151a-153a, 202a. Like the motorcycle in *Collins*, Mr. Wiley's car was, at the very least, parked in "an area adjacent to the home and to which the activity of home life extends." *Collins*, 138 S.Ct. at 1671. As such, Officer Sherrill's intrusion into the campsite to search Mr. Wiley's car was unconstitutional and cannot be justified by the automobile exception.[7]

Finally, it is worth noting the automobile exception exists because it is often practically impossible to secure a warrant to stop a moving or readily movable automobile. *See id.* at 1669-70. In this case, however, Mr. Wiley's vehicle was being used for camping and was not in transit. Furthermore, Mr. Wiley's vehicle was encamped in a gridded area and neither Mr. Wiley nor his vehicle nor the contents therein could have gone anywhere easily. This was not a traffic stop.[8] This was Mr. Wiley's temporary accommodation—his home. There were at least six officers present on or near the campsite. Simply put, a warrant could have been obtained.

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[7] It is undisputed that police did not have probable cause to search Mr. Wiley's vehicle at the time of their intrusion into his campsite (prior to the K-9 alert). App.119a-121a.

[8] When asked if this was a traffic stop, Deputy Sherrill demurred, stating "patrons know they are subject to search once they come onto Bonnaroo grounds." App.124a. It appears that Deputy Sherrill was under the impression that Fourth Amendment rights are waived upon entry. If that is true, however, it is unclear why police bothered to call the K-9 unit or asked for consent to search at all.

B. A Drug-Sniffing Dog Cannot Justify the Warrantless Search of a Vehicle Parked Within a Constitutionally Protected Campsite.

Justice Scalia applied the law to a similar set of facts in *Florida v. Jardines,* 569 U.S. 1 (2013). In *Jardines*, police took a drug-sniffing dog to the defendant's front porch, where the dog gave a positive alert for narcotics. *Id.* at 3-4. Based on the alert, the officers obtained a warrant for a search, which revealed marijuana plants. Jardines was charged with trafficking in marijuana. *Id.* at 4-5. The Supreme Court overturned the conviction finding that the drug sniffing dog at the area immediately surrounding and associated with the home was a Fourth Amendment violation. As Justice Scalia reasoned, the curtilage or area around the home is "intimately linked to the home, both physically and psychologically," and is where "privacy expectations are most heightened." *Id.* at 6-7 (citing *California v. Ciraolo,* 476 U.S. 207, 213 (1986)).

Much like *Jardines*, the Coffee County deputies learned what they learned only by physically intruding on Mr. Wiley's campsite to gather evidence. As a temporary accommodation, Mr. Wiley's campsite and its curtilage are recognized and afforded Fourth Amendment protections. Coffee County Sheriff's deputies cannot defeat those protections without a warrant.[9] More specifically, the drug-sniffing dog cannot justify the warrantless search given that the vehicle was

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[9] In *Jardines*, police obtained a warrant based on the drug-sniffing dog and the Court held that the resulting search was impermissible. *Jardines*, 569 U.S. at 5, 11. In this case, this search is an even greater constitutional violation than *Jardines* because the police searched Mr. Wiley's car without a warrant once the drug-sniffing dog alerted.

parked within the rented campsite and/or its curtilage. These are the types of areas that the Fourth Amendment most highly protects—areas where, per *Jardines*, "privacy expectations are most heightened." 569 U.S. at 6-7.

C. No Other Commonly Recognized Exceptions to the Warrant Requirement Apply.

In addition to the automobile exception, commonly recognized exceptions to the warrant requirement include (1) a search incident to a lawful arrest; (2) the plain view doctrine; (3) a consent to the search; (4) a *Terry* stop and frisk; and (5) the existence of exigent circumstances. *See Coolidge*, 413 U.S. 455-73; *Katz*, 389 U.S. at 357-58; *Terry v. Ohio*, 392 U.S. 1, 28-30 (1968). None of these apply here.

Here, the search incident to lawful arrest exception cannot apply because Mr. Wiley was unlawfully arrested without probable cause—it is undisputed that Mr. Wiley was under arrest at the campsite prior to the search of his vehicle. App.113a. It is also undisputed that there was no probable cause at the time of his arrest, prior to the K-9 alert and subsequent search of his vehicle. App.119a-120a.

Second, it is undisputed that there was no illegal contraband in plain view. App.119a-120a. Third, it is undisputed that Mr. Wiley refused to consent to the search of his campsite/vehicle. App.97a-98a. Fourth, it is undisputed that the officer's actions went beyond a mere *Terry* stop and frisk once Deputy Sherrill physically moved the defendant into the canopy tent and arrested him. App.113a.

Finally, there was no evidence of any exigent circumstances that would justify failing to secure a warrant. There were at least six officers present. Mr. Wiley and his companions offered no resistance nor did anyone attempt to flee. The police observed no illegal activity or contraband. Mr. Wiley's companions were questioned, searched, and released. Their search revealed no contraband or weapons. As a practical matter, Mr. Wiley was encamped in a gridded area and neither he nor his vehicle nor the contents therein could have gone anywhere easily. With Mr. Wiley in custody, and at least six officers nearby, there was no risk of destruction of evidence.

In sum, Mr. Wiley's campsite was constitutionally protected and no exceptions to the warrant requirement allowed for police to enter said campsite, arrest Mr. Wiley and conduct a search of the campsite (and vehicle parked therein) without a warrant or probable cause.

CONCLUSION

Certiorari is warranted here as a state court has decided an important Fourth Amendment question that has not been, but should be, settled by the Supreme Court. The Tennessee Court of Criminal Appeals' decision also conflicts with the relevant decision of the Supreme Court in *Collins v. Virginia*, 138 S.Ct. 1663 (2018). For the reasons set forth herein, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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