No. 22-_____

IN THE

SUPREME COURT OF THE UNITED STATES

HEATHER NICOLE TROGDON, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

APPENDIX

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APPENDIX A

Opinion, *United States v. Trogdon*, No. 21-2089 (8th Cir. June 9, 2022)

United States Court of Appeals
For the Eighth Circuit

No. 21-2089

United States of America

Plaintiff - Appellee

v.

Heather Nicole Trogdon

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Central

Submitted: January 14, 2022
Filed: June 9, 2022
[Unpublished]

Before SMITH, Chief Judge, WOLLMAN and ERICKSON, Circuit Judges.

PER CURIAM.

Heather Nicole Trogdon conditionally pleaded guilty to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). We affirm the district court's[1] denial of her motion to suppress the firearm.

[1]The Honorable Stephanie M. Rose, United States District Judge for the Southern District of Iowa.

Appx. 2a

Police officers Steven Young and Jessamyn McVey responded to a report of shoplifting at Mills Fleet Farm in Ankeny, Iowa. Young called out to the suspect (later identified as Trogdon) when he saw her in the parking lot. Trogdon set down the backpack she had been carrying and approached him. McVey patted her down, while Young retrieved the backpack. The officers then escorted her to the store's loss prevention office.

Young set the backpack on the office floor, near his feet. Trogdon acknowledged that she had carried a jacket out of the store and claimed that she merely had forgotten to pay for it. She also was wearing a stolen belt. Trogdon told Young that her name was Stormy Breece. She said that there was nothing illegal in the backpack and did not consent to its search. Dispatch reported to Young that Stormy Breece was not a valid name.

Young picked up the backpack, placed it on the desk, and began searching it. He discovered a loaded handgun in the main compartment. Young then handcuffed Trogdon and disabled the firearm. He later found her driver's license, which identified her as Heather Trogdon, and learned that there was a warrant for her arrest. Trogdon's backpack was not transported to the jail. Her boyfriend retrieved it from the officers.

Trogdon pleaded guilty to being a felon in possession of a firearm after the district court denied her motion to suppress. On appeal, we review the district court's conclusions of law *de novo* and its factual findings for clear error. See United States v. Baez, 983 F.3d 1029, 1036 (8th Cir. 2020). "[W]e can affirm the district court's judgment on any ground that is supported by the record." Id. at 1041 (quoting Taylor v. United States, 204 F.3d 828, 829 (8th Cir. 2000)).

Trogdon argues that the firearm should have been suppressed because Young's warrantless search of her backpack violated her Fourth Amendment rights. Even if we were to assume that the search was not valid incident to arrest, see United States

v. Perdoma, 621 F.3d 745, 750–51 (8th Cir. 2010), we conclude that the evidence was nonetheless admissible under the inevitable discovery doctrine.

"With limited exceptions, evidence acquired during, or as a consequence of, a search that violates the Fourth Amendment is inadmissible." Baez, 983 F.3d at 1036. Evidence that "ultimately or inevitably would have been discovered by lawful means" need not be suppressed, however. Nix v. Williams, 467 U.S. 431, 444 (1984). For the inevitable-discovery doctrine to apply, the government must prove by a preponderance that the evidence would have been discovered by lawful means in the absence of police misconduct. Id. We have also required the government to show that law enforcement was "actively pursuing a substantial, alternative line of investigation at the time of the constitutional violation." See Baez, 983 F.3d at 1039 (quoting United States v. Conner, 127 F.3d 663, 667 (8th Cir. 1997)).

We conclude that the firearm inevitably would have been discovered during a lawful inventory search of the backpack. Trogdon admitted that she had not paid for the sweatshirt that she carried out of the store. Young testified that he thus would have arrested Trogdon for theft had he not searched her backpack. He also explained that he would have arrested Trogdon to identify her. Young testified that Trogdon's backpack would have been searched when she arrived at jail. Accordingly, the government has shown that the handgun inevitably would have been discovered during a lawful inventory search.

Young further testified that he could have obtained a warrant but did not do so because of the time involved and because he had probable cause to search the backpack incident to arrest. Under our case law, this is enough to constitute "actively pursuing a substantial, alternative line of investigation." See Baez, 983 F.3d at 1040 (requirement met when officer's testimony implied that he "was at least disposed to execute an alternative plan if [defendant's wife] refused to consent, even if he did not consciously have such a plan in mind"); United States v. Hammons, 152 F.3d 1025, 1030 (8th Cir. 1998) (requirement met when the officers had in mind "an alternative

plan" that they would have executed if the constitutional violation had not occurred); see also United States v. Durant, 730 F.2d 1180, 1185 (8th Cir. 1984) ("[The defendant's] connection to the blue Oldsmobile would have been inevitably discovered once the officers became aware of [his] alleged participation in the bank robbery.").

Trogdon argues that the handgun would not have been discovered because Young did not bring the backpack to the jail, but instead released it to her boyfriend. It strains credulity to suggest that Young would have released the backpack without searching it, when he did not know Trogdon's true identity or whether the backpack contained additional stolen items.

The judgment is affirmed.

APPENDIX B

Order denying rehearing and rehearing en banc,
United States v. Trogdon, No. 21-2089 (8th Cir. July 15, 2022)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 21-2089

United States of America

Appellee

v.

Heather Nicole Trogdon

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:20-cr-00093-SMR-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 15, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX C

Order on motion to suppress, *United States v. Trogdon,* 4:20-cr-00093-SMR-CFB-1 (S.D. Iowa Dec. 4, 2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. HEATHER NICOLE TROGDON, Defendant.	)	Case No. 4:20-cr-00093-SMR-CFB-1 ORDER ON MOTION TO SUPPRESS

Before the Court is Defendant Heather Nicole Trogdon's Motion to Suppress. [ECF No. 30]. Defendant seeks suppression of statements she made which she argues were the product of a custodial interrogation that was not preceded by a *Miranda* warning and suppression of evidence seized from a warrantless search of her backpack. For reasons stated below, the Motion to Suppress is GRANTED in part and DENIED in part.

I. BACKGROUND

On May 20, 2020, management at Mills Fleet Farm in Ankeny, Iowa contacted the Ankeny Police Department to report a shoplifting incident involving Defendant. Upon arrival, Officers encountered Defendant in the store parking lot. Officer Young instructed Defendant to come toward him, which she did after placing a black backpack on the ground next to a white SUV. Defendant told Officer Steven Young that she "didn't steal anything" and motioned toward the bag.[1] A second officer, Officer Jessamyn McVey, patted down Defendant for weapons while

[1] The parties dispute whether Defendant said "I didn't steal anything. You can check my bag." (Government) or "I didn't steal anything, that's my bag." (Defendant). Because the Government does not argue Defendant consented to a search of the bag, the Court need not resolve the dispute.

Officer Young retrieved the bag from the ground. The two officers escorted Defendant to the store's loss prevention office, accompanied by Mills Fleet Farm Loss Prevention Officer Aubrey Hastings.

Inside the loss prevention office, Officer Young and Defendant had the following exchange:

> OFFICER YOUNG: Is this your bag down here?
>
> DEFENDANT: What?
>
> OFFICER YOUNG: Is this your bag?
>
> DEFENDANT: I though it was mine, but clearly it's not. I grabbed the wrong one.
>
> OFFICER YOUNG: So this isn't your bag?
>
> DEFENDANT: No. I think it's my boyfriend's. I'm not sure. There are my tampons or nothing in there.
>
> OFFICER YOUNG: So where—how did you come across this bag then?
>
> DEFENDANT: No. Um, I have a boyfriend. He's out there somewhere, I don't know. But my, tampons are not in there. We share bags. We ride motorcycles you know.

Officer Young then asked Defendant for her name, to which she replied "Stormy Breece," spelling the last name. She provided a birth date with the year 1989. Officer McVey checked for warrants or information under the name "Stormy Breece," but found no record of this individual's existence.

Officer Young then questioned Defendant about the bag:

> OFFICER YOUNG: Is there anything illegal in the bag?
>
> DEFENDANT: No.
>
> OFFICER YOUNG: Okay, do you mind if I search it?

> DEFENDANT: I mean. What do you need to search the bag for? I don't think you should be able to search the bag. But, no.
>
> OFFICER YOUNG: Okay, I'm not going to find anything illegal in there?
>
> DEFENDANT: I honestly don't think so, but I don't think you should be able to search the bag, but you're going to search it anyway. If I tell you no, can you still search it?
>
> OFFICER YOUNG: Well, considering you just committed a theft I would say so.
>
> DEFENDANT: Yeah exactly. I don't have anything illegal so it's not a big deal. Like I said I didn't steal any [inaudible].

At this point, Officer Young began to search the bag, starting with the smaller outer pockets and working his way to the interior. In the largest compartment Officer Young discovered a loaded handgun. Without commenting on his discovery, Officer Young proceeded to handcuff Defendant. Defendant immediately asserted she did not know the handgun was in the bag and it belonged to her boyfriend, who had previously been with her at the store.[2] Officer Young continued to search the bag, locating a wallet with a driver's license under the name Heather Trogdon. Defendant confirmed that it was her identification. After a check for warrants under her real name, officers discovered Defendant had outstanding probation warrants. Officers proceeded to read Defendant her *Miranda* rights.

Defendant was indicted on June 27, 2020 on one count of possessing a firearm as a felon. [ECF No. 2]. Defendant filed this Motion to Suppress on September 28, 2020. [ECF No. 30]. The Government resisted. [ECF No. 35]. The Court held an evidentiary hearing on November 2, 2020 where Officer Young testified and the parties provided argument to the Court.

[2] The man who Defendant identified as her boyfriend was a man named John Grage, who was seen on store surveillance footage with Defendant during the shoplifting incident.

II. DISCUSSION

Defendant moves to suppress the gun found in the backpack and exclude statements she made in the loss prevention office. She argues the warrantless search of her backpack violated the protections of the Fourth Amendment against unreasonable searches and seizures. She also contends her statements made to law enforcement violated her privilege against self-incrimination because they were given during a custodial interrogation prior to receiving her *Miranda* warnings. *See generally Miranda v. Arizona*, 384 U.S. 436 (1966). The Government responds that the search of the backpack was constitutional because Defendant had abandoned the backpack when she set it down in the parking lot or, alternatively, that the search was a permissible search incident to arrest. The Government does not dispute that Defendant was in custody at the time of questioning but argues the statements given by Defendant prior to being *Mirandized* were spontaneous and not in response to interrogation intended to elicit incriminating statements. The Court will address these arguments in turn.

A. Abandonment

The Government first argues that Defendant cannot challenge the search of the backpack because when she left the bag on the ground in the parking lot, she had abandoned it and thus surrendered any reasonable expectation of privacy in its contents.

"It is well established that the warrantless search of abandoned property does not constitute an unreasonable search and does not violate the Fourth Amendment." *United States v. James*, 534 F.3d 868, 873 (8th Cir. 2008) (citing *United States v. Hoey*, 983 F.2d 890, 892 (8th Cir.1993)). This is so, because "any expectation of privacy in the item searched is forfeited upon its abandonment." *United States v. Tugwell*, 125 F.3d 600, 602 (8th Cir. 1997). The question of abandonment, for Fourth Amendment purposes, is "whether the defendant in leaving the property

has relinquished [his or her] reasonable expectation of privacy so that the search and seizure is valid." *Id*. (quoting *Hoey,* 983 F.2d at 892–93). The test for abandonment is from the perspective of law enforcement based on the objective facts available to them. *Id.* Abandonment is determined by the "totality of the circumstances" with physical relinquishment and denial of ownership constituting pertinent factors in the analysis. *United States v. Nowak*, 825 F.3d 946, 948 (8th Cir. 2016). The burden of proving abandonment is on the Government. *United States v. James*, 353 F.3d 606, 616 (8th Cir. 2003).

Here, upon initial contact with Officer Young in the parking lot, Defendant placed the backpack on the ground next to a white SUV and walked a few steps away after Officer Young instructed her to come to him. Defendant argues that she was in the process of placing the bag in the SUV when she was instructed by Officer Young to come over to him, so she placed the bag directly underneath the vehicle she was about to enter. Review of the video bears out this explanation. Defendant was never more than a few feet from her bag prior to Officer Young retrieving the bag and bringing it into the store with them.

The Government argues that Defendant disclaimed ownership in the bag pointing to her statement that it was not her bag and "she must have grabbed the wrong one." The Government relies on *Nowak* for the proposition that Defendant relinquished "her reasonable expectation of privacy in her backpack when she placed it in the Fleet Farm parking lot and walked away." [ECF No. 35-1 at 7]. In *Nowak,* the defendant was determined to have abandoned his backpack after he "ran from the scene, and left his belongings behind" after being directed by law enforcement to remain in the vehicle, which belonged to an acquaintance who was giving him a ride. *Nowak*, 825 F.3d at 948–49. *Nowak* is distinguishable. The defendant in *Nowak* actively fled police; Defendant in this case was simply following Officer Young's commands. The question of whether Defendant

owned the bag—to which she makes contradictory statements throughout the encounter—is not dispositive to the issue of abandonment and it is, at best, ambiguous whether Defendant truly disclaimed ownership.

Instead, the more pertinent question is whether Defendant relinquished control of the bag to the extent that she no longer expected to maintain any privacy in the contents therein. *See United States v. Hawkins*, 681 F.2d 1343, 1346 (11th Cir. 1982) (noting "repeated disclaimers of ownership" can be sufficient "to preclude any legitimate expectation of privacy"). Defendant appears to still have maintained an expectation of privacy in the bag when she refused consent to search the bag in the loss prevention office, an expectation that Officer Young recognized by asking for consent. The Court finds that Defendant leaving her bag beside her vehicle, in order to comply with commands from law enforcement, coupled with her unclear statements of ownership is not sufficient for the Government to bear the burden of proving abandonment. The search of the bag cannot be sustained under an abandonment argument.

B. Search Incident to Arrest

The Government next argues that the search was permissible as incident to Defendant's arrest for shoplifting. Law enforcement is permitted to conduct a search incident to an arrest, without running afoul of Fourth Amendment protections, on an area which extends to "the arrestee's person and the area 'within his [or her] immediate control.'" *Chimel v. California*, 395 U.S. 752, 763 (1969). This is defined as "the area from within which an arrestee might reach in order to grab a weapon or evidentiary items." *Id.* The purpose of the search incident to arrest exception is officer safety and to prevent destruction of evidence. *Arizona v. Gant*, 556 U.S. 332, 338 (2009). However, "[i]f there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest

exception are absent and the rule does not apply." *Id.* at 339 (citing *Preston v. United States*, 376 U.S. 364, 367–368 (1964)).

Defendant argues that this exception does not apply because at the time she was taken into custody by police there were two officers and a Mills Fleet Farm loss prevention employee present and the bag had been already been secured by Officer Young. Defendant was then taken to the loss prevention office where she was seated and surrounded by the two officers and two store employees. [ECF No. 37 at 7]. According to Defendant, these circumstances vitiated any justification regarding officer safety or evidence destruction and no additional exigency existed. *Id.*

In support of her position, Defendant points the Court to *United States v. Chadwick*, 433 U.S. 1 (1977), *abrogated by California v. Acevedo*, 500 U.S. 565 (1991). However, the Court finds *Chadwick* distinct from this case. In *Chadwick*, federal narcotics agents arrested three suspects at a train station following a tip that they were involved in drug trafficking. *Id.* at 3. After observing the suspects handle a footlocker, law enforcement surreptitiously ran a drug dog by it, which signaled for the presence of a controlled substance. *Id.* at 4. After the suspects loaded the footlocker into the trunk of a car, officers arrested all three suspects and took the keys from them. *Id.* The Supreme Court rejected the incident to a lawful arrest exception for a warrantless search that was then conducted 90 minutes later at law enforcement headquarters after the suspects were in custody in another location. *Id*. at 4–5, 14–16. Here, the backpack was searched minutes after it was picked up by Officer Young, and the search was conducted in the loss prevention office of the same store as the shoplifting incident and in Defendant's presence.

Furthermore, this Circuit's precedent does not support Defendant's argument that control of the item to be searched by law enforcement invalidates a search incident to arrest. In *United*

States v. Perdoma, the United States Court of Appeals for the Eighth Circuit held that where a bag was searched in the suspect's presence—even while the suspect is handcuffed—that it was not clear that the suspect was "not within reaching distance of his [bag] at the time of the search." 621 F.3d 745, 753 (8th Cir. 2010) (citing *Gant*, 556 U.S. at 344). The *Perdoma* Court said this was consistent with Eighth Circuit precedent which "reject[s] the notion that an officer's exclusive control of an item necessarily removes the item from the arrestee's area of immediate control." *Id*. at 750 (collecting cases).

Two final factors support the Court's conclusion that this was a permissible search incident to arrest. First, the United States Supreme Court has indicated that the justification for a search incident to a lawful arrest is stronger when there is a likelihood of finding evidence related to the arrest in the subject item of the search. *See Gant*, 556 U.S. at 343. Upon contact with Officer Young, Defendant seemed eager to conceal the bag (underneath her vehicle in the parking lot) or otherwise disclaim ownership of the bag. It was reasonable for the officers to believe there may be evidence of shoplifting in the bag, evidence police may want to preserve while the bag was still within Defendant's "immediate control," even within the loss prevention office.

Secondly, the item discovered by Officer Young in the bag, a loaded handgun, is illustrative of a main justification for the search incident to arrest exception—officer safety and, in this case, the safety of the loss prevention employees. Furthermore, Defendant was not forthcoming about the gun in the bag which demonstrates the propriety of searching the bag to ensure safety to all individuals in the loss prevention office, from accidental discharge or otherwise.[3]

[3] After discovering the gun, Officer Young immediately handcuffed Defendant. Defendant claimed she did not know the gun was in the bag but asked about the gun prior to being told by Officer Young why he was handcuffing her. Defendant then told Officer Young that the gun belonged to her boyfriend but the gun was not registered to Grage.

The search of the backpack was a permissible search incident to arrest. Defendant's request to exclude the handgun as an unconstitutional search is DENIED.

C. Miranda *Issue*

Finally, Defendant requests the Court exclude any statements she made in the presence of law enforcement prior to receiving her *Miranda* warning. The Government does not dispute that Defendant was in custody in the parking lot and in the loss prevention office. Instead, the Government seeks to admit several pre-*Miranda* statements given by Defendant as spontaneous statements unsolicited by any questioning from officers. *See United States v. Hawkins*, 102 F.3d 973, 975 (8th Cir.1996); *Butzin v. Wood*, 886 F.2d 1016, 1018 (8th Cir.1989) ("*Miranda* does not protect an accused from a spontaneous admission made under circumstances not induced by the investigating officers or during a conversation not initiated by the officers.").

Interrogation is not limited to express questioning but also includes words or conduct that the officer should know are "reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) (footnote omitted). Questions which "enhance the defendant's guilt" are interrogation for *Miranda* purposes. *Butzin*, 886 F.2d at 1018.

The Court agrees with Defendant that her exchange, reproduced by the Court in this Order, *supra*, regarding consent to search the backpack are inadmissible as they were clearly in response to interrogation by Officer Young before she was read her *Miranda* rights. However, the Court finds that her statements regarding the presence and ownership of the gun, while being handcuffed by Officer Young, are admissible. Officer Young did not relay to Defendant what he saw in the bag prior to handcuffing her, but she volunteered without prompting that the gun belonged to her boyfriend and she "didn't know it was in there." Defendant argues that her statements about the contents of the bag were induced by Officer Young's interrogation. But the fact that Officer Young

decided to handcuff her is not conduct sufficient to elicit an incriminating response, as she had already been detained for the shoplifting charge and could have been handcuffed earlier. However, after being handcuffed, Defendant and Officer Young had an additional exchange which was induced by questioning from Officer Young:

> OFFICER YOUNG: Do you? [Have a license to carry].
>
> DEFENDANT: No, but it's not my bag.
>
> OFFICER YOUNG: You think that's something you should tell an officer? That you have a loaded handgun in your possession?
>
> DEFENDANT: No, Sir, I didn't know it was in there.
>
> OFFICER YOUNG: Now you're being detained.
>
> DEFENDANT: You guys, I had no idea that was in there. It's not mine.
>
> OFFICER YOUNG: You don't even know why I'm detaining you and you said he has a permit to carry, right?
>
> DEFENDANT: No. I said if that's in there . . .
>
> OFFICER YOUNG: You think that's something you might want to tell somebody?
>
> DEFENDANT: I had no idea that was in there is what I'm saying. If you run his name you'll see he's licensed to carry.
>
> OFFICER YOUNG: Are you?
>
> DEFENDANT: No.

Officer Young discovered Defendant's wallet, containing her true identification documents, shortly after this exchange. At this point, Defendant was read her *Miranda* rights by Officer McVey.

During the interview in the loss prevention office, Defendant also gave numerous other statements which were spontaneous and unsolicited before she was read her *Miranda* rights. These

statements may be admitted by the Government as evidence. All the statements transcribed by the Court in this Order are excluded, as they were the product of custodial interrogation by Officer Young before Defendant was advised of her *Miranda* rights.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion to Suppress [ECF No. 30] is GRANTED in part and DENIED in part.

IT IS SO ORDERED.

Dated this 4th day of December, 2020.

STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT