

APPENDIX

APPENDIX A:	<i>United States v. Langenberg</i> , 3:21-cr-00032-001 (S.D. Iowa) (criminal proceedings) excerpt from transcript of motion to suppress hearing held on August 19, 2021.....	1
APPENDIX B:	<i>United States v. Langenberg</i> , 3:21-cr-00032-001, (S.D. Iowa) (criminal proceedings) judgment entered December 23, 2021.....	4
APPENDIX C:	<i>United States v. Langenberg</i> , 22-1071, (8th Cir.) (direct criminal appeal), judgment and opinion entered November 4, 2022	12
APPENDIX D:	<i>United States v. Langenberg</i> , 22-1071, (8th Cir.) (direct criminal appeal), Order denying petition for rehearing en banc and rehearing by the panel entered December 9, 2022.....	17

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

- - - - - X
UNITED STATES OF AMERICA, :
 :
Plaintiff, :
 :
vs. : Case No. 3:21-cr-32
 :
MATTHEW PATRICK LANGENBERG, : TRANSCRIPT OF MOTION TO SUPPRESS
 :
Defendant. :
- - - - - X

Courtroom 120, First Floor
U.S. Courthouse
131 East Fourth Street
Davenport, Iowa
Thursday, August 19, 2021
1:08 p.m.

BEFORE: THE HONORABLE JOHN A. JARVEY, Chief Judge

APPEARANCES:

For the Plaintiff: TORRIE J. SCHNEIDER, ESQ.
United States Attorney's Office
131 East Fourth Street, Suite 310
Davenport, Iowa 52801

For the Defendant: TERENCE L. MCATEE, ESQ.
Federal Public Defender's Office
101 West Second Street, Suite 401
Davenport, Iowa 52801-1815

TONYA R. GERKE, CSR, RDR, CRR
United States Courthouse
123 East Walnut Street, Room 197
Des Moines, Iowa 50309

1 whatever search was previously done was perfectly fine.

2 The Government asks that you deny the motion. Thank
3 you.

4 THE COURT: The facts of this matter are not in
5 significant dispute. The phone at issue is a company phone.
6 The company paid for it. The company paid the bills for it.
7 The company was able to monitor it through its bills through
8 Verizon. Verizon sent them the wrong invoice when they -- or he
9 provided the wrong invoice to the police when requested, but, in
10 fact, the company has two plans, as he said. One is that the --
11 the two owners and two others get company phones, and the rest
12 get reimbursed for the use of their own phone and that the --
13 and Mr. Langenberg was one of the four that got company phones.

14 It was a private search by Mr. Storck on August 14th.
15 He's the owner of the phone. The defendant provided the
16 password for him to open it. There was no involvement
17 whatsoever by the police in searching the phone, and so it was
18 clearly a private search.

19 Then with respect to the police, the owner consented
20 to a search of the phone by the police, placed no limitations on
21 the search. The owner clearly communicated the reduced
22 expectation of privacy in the phones possessed by the employees
23 through the employee handbook. It's true that they can't come
24 up with a signed copy, but it's clear that Mr. Langenberg had it
25 as is reflected in the letter from his lawyer indicating that he

1 wanted the one that he kept at his ready in the office desk, and
2 so the expectation of privacy was clearly limited and clearly
3 stated in the employee handbook.

4 So between it being a private search initially and
5 consent by the owner, the motion to suppress is denied. I,
6 therefore, find moot the issue as to whether the defendant had
7 standing.

8 All right. Let me know very soon how this one's going
9 to go. We're ready for trial as scheduled.

10 (Proceedings concluded at 1:47 p.m.)

11
12 C E R T I F I C A T E

13 I, Tonya R. Gerke, a Certified Shorthand Reporter of
14 the State of Iowa and Federal Official Realtime Court Reporter
15 in and for the United States District Court for the Southern
16 District of Iowa, do hereby certify, pursuant to Title 28 U.S.C.
17 Section 753, that the foregoing is a true and correct transcript
of the stenographically reported proceedings held in the
above-entitled matter and that the transcript page format is in
conformance with the regulations of the Judicial Conference of
the United States.

18 Dated at Des Moines, Iowa, January 14, 2022.

19
20 /s/ Tonya R. Gerke
21 Tonya R. Gerke, CSR, RDR, CRR
22 Federal Official Court Reporter
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Matthew Patrick Langenberg

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:21-CR-00032-001

USM Number: 34204-509

Terence L. McAtee
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Superseding Indictment filed on April 6, 2021.☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2252(a)(2), 2252(b)(1)	Receiving Child Pornography	08/17/2020	One

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) Two ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 23, 2021

Date of Imposition of Judgment

Signature of Judge

John A. Jarvey, Chief U.S. District Judge

Name of Judge

Title of Judge

December 23, 2021

Date

sent to client 12/29/21

DEFENDANT: Matthew Patrick Langenberg
CASE NUMBER: 3:21-CR-00032-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

60 months as to Count One of the Superseding Indictment filed on April 6, 2021.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends placement at FCI Milan, Michigan; FCI Sandstone, Minnesota; or FCI Oxford, Wisconsin, to be near family and because of programming offered, if commensurate with his security classification and needs.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before _____ on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Matthew Patrick Langenberg
CASE NUMBER: 3:21-CR-00032-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
Five years as to Count One of the Superseding Indictment filed on April 6, 2021.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Matthew Patrick Langenberg
CASE NUMBER: 3:21-CR-00032-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Matthew Patrick Langenberg
CASE NUMBER: 3:21-CR-00032-001

SPECIAL CONDITIONS OF SUPERVISION

You must participate and follow the rules of a sex offense-specific treatment program, as directed by the U.S. Probation Officer. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You must contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. Sex offense-specific treatment shall be conducted by therapists approved by the U.S. Probation Office, who shall release all reports to the U.S. Probation Office.

You must submit to periodic polygraph testing, as directed by the U.S. Probation Office, to ensure that you are in compliance with the requirements of your supervision or treatment program. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. Polygraph testing will be conducted by polygraph examiners approved by the U.S. Probation Office, who will release all reports to the U.S. Probation Office. The results of polygraph examinations will not be used for the purpose of revocation of supervised release or probation. As used in this paragraph, "the results" that will not be used in a revocation hearing are the polygraph examiner's ultimate opinions or findings regarding whether deception or a significant response has been detected during the examination. Any statements made by you during the polygraph examination during pre-examination or post-examination interview(s) may be used in any manner, including to generate separate leads or investigations, at a revocation hearing. Failure to answer questions during the polygraph examination may be grounds for revocation, unless you choose not to answer any questions perceived or deemed incriminating, which may then be referred to the Court for resolution.

You must not go to, or remain at, any place for the primary purpose of observing children under the age of 18, or any place where you know children under the age of 18 are likely to be, including parks, schools, and playgrounds, without the prior approval of the U.S. Probation Officer.

You must not have any direct contact (personal, electronic, mail, or otherwise) with any child you know or reasonably should know to be under the age of 18, including in employment, without the prior approval of the U.S. Probation Officer. If contact is approved, you must comply with any conditions or limitations on this contact, as set forth by the U.S. Probation Officer. Any unapproved direct contact must be reported to the U.S. Probation Officer within 24 hours. Direct contact does not include incidental contact during ordinary daily activities in public places.

You must not contact the victim(s), nor the victim's family without prior permission from the U.S. Probation Officer.

You must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256), including any photograph, artwork, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" (as defined in 18 U.S.C. § 2256). You must not correspond with anyone in the business of providing such material, or enter adult entertainment venues where sexually explicit conduct is the primary product(s) for purchase or viewing.

You must not access the internet or possess and/or use computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications or data storage devices or media without the prior approval of the U.S. Probation Officer. If computer or internet use for employment is approved by the U.S. Probation Officer, you must permit third party disclosure to any employer or potential employer concerning any computer/internet related restrictions that are imposed upon you.

If approved by the U.S. Probation Officer to use or possess computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications or data storage devices or media, you must submit your devices to unannounced examinations/searches, and possible removal for a more thorough inspection. You must allow the installation of monitoring hardware and software on such equipment, abide by and cooperate in supplemental conditions of monitoring, and pay the costs associated with this service, as directed by the U.S. Probation Officer. You must notify third parties who use these devices that the devices are subject to monitoring and/or unannounced examinations.

DEFENDANT: Matthew Patrick Langenberg
CASE NUMBER: 3:21-CR-00032-001

ADDITIONAL SPECIAL CONDITIONS OF SUPERVISION

You may not possess any type of camera (to include cameras within cellular telephones) or video recording device without the prior approval of the U.S. Probation Officer.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

AO 245B (Rev. 09/19) Judgment in a Criminal Case
 v1 Sheet 5 — Criminal Monetary Penalties

Judgment Page: 7 of 8

DEFENDANT: Matthew Patrick Langenberg
 CASE NUMBER: 3:21-CR-00032-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
		\$0.00	
TOTALS	\$0.00	\$0.00	

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Matthew Patrick Langenberg
CASE NUMBER: 3:21-CR-00032-001**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
- While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
- An iPhone 6S plus, silver in color (SKU: CLNRAPL6SP64) and a (H/M/D: 355728070707556).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

SENT TO CLIENT
Nov 04 2022
by: kelly_jensen

No: 22-1071

United States of America

Plaintiff - Appellee

v.

Matthew Patrick Langenberg

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:21-cr-00032-JAJ-1)

JUDGMENT

Before COLLOTON, WOLLMAN and STRAS, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

November 04, 2022

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.

United States Court of Appeals
For the Eighth Circuit

No. 22-1071

United States of America

Plaintiff - Appellee

v.

Matthew Patrick Langenberg

Defendant - Appellant

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

Submitted: September 22, 2022

Filed: November 4, 2022

Before COLLOTON, WOLLMAN, and STRAS, Circuit Judges.

WOLLMAN, Circuit Judge.

Matthew Patrick Langenberg worked as a salesman at a retail flooring store. The company gave Langenberg a cell phone, which he was allowed to take home and use as a personal phone. After a co-worker alleged in 2020 that Langenberg had used the phone to record her, the company's co-owner Scott Storck asked Langenberg for the phone and its passcode. After Langenberg unlocked the phone and provided the passcode, Storck discovered images that he believed were child pornography. He

thereafter gave the phone and passcode to law enforcement officers, telling them that the company owned the phone.

Langenberg moved to suppress the evidence of child pornography which the officers had discovered on the phone. Following the district court's¹ denial of the motion, Langenberg pleaded guilty to receipt of child pornography in violation of 18 U.S.C. § 2252(a)(2), (b)(1), and was sentenced to 60 months' imprisonment.

Assuming without deciding that Langenberg has standing to challenge the officers' search of the cell phone, we conclude that Storck had apparent authority to consent to the search. "Apparent authority exists when the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had authority over the premises." United States v. Lindsey, 702 F.3d 1092, 1096 (8th Cir. 2013) (internal quotation marks and citations omitted). Authority exists when a "third party has either (1) mutual use of the property by virtue of joint access, or (2) control for most purposes." United States v. Chavez Loya, 528 F.3d 546, 554 (8th Cir. 2008) (citation omitted).

When the officers searched the phone, they knew that Storck had possession of the phone, had access to its contents, had claimed ownership over it, and had searched the phone himself. It thus appeared that Storck had either joint access to the phone or control over it. Langenberg argues that the officers should have investigated further because neither possession nor ownership alone would have been sufficient to establish actual authority. Storck seemed to have both possession and ownership, however, as well as access to and use of the phone's contents. Officers at the time of the search were not aware of the other facts that allegedly call Storck's authority into question—that Langenberg claimed ownership of the phone, that he

¹The Honorable John A. Jarvey, then Chief Judge, United States District Court for the Southern District of Iowa, now retired.

had requested its return, and that the receipt for the phone's alleged purchase did not match the phone that had been provided to police.

Quoting United States v. Basinski, Langenberg argues that because of the highly private nature of a cell phone, "it is less reasonable for a police officer to believe that a third party has full access" to it. 226 F.3d 829, 834 (7th Cir. 2000). Basinski involved a search of the defendant's locked briefcase, which a third party had in his possession. Officers knew that the defendant was the sole owner of the briefcase and its contents. The third party did not know the combination to the lock, but nonetheless had consented to the search. The Seventh Circuit held that the third party's mere possession of the briefcase, without a possessory interest in its contents or "access to, control over, or use of the interior of the case," was insufficient to create a reasonable belief that he had authority to consent. Basinski, 226 F.3d at 835. Unlike in Basinski, the officers here reasonably believed that Storck had authority to consent to the search of the phone that was in his possession, over which he had asserted ownership, and of which he had the passcode and access to its contents.

Because we find that Storck had apparent authority to consent to the search, we need not reach Langenberg's argument that the warrantless search constituted an unlawful trespass. Storck's apparent authority also defeats Langenberg's argument that the later search of his residence should be suppressed as fruit of the poisonous tree.

The judgment is affirmed.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-1071

United States of America

Appellee

v.

Matthew Patrick Langenberg

Appellant

SENT TO CLIENT
Dec 09 2022
by: kelly_jensen

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:21-cr-00032-JAJ-1)

ORDER

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

December 09, 2022

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

/s/ Michael E. Gans