Docket No. 03-240

In the

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Petitioner,

v.

WILLIAM LARSON,

Respondent.

On Writ of Certiorari to the Supreme Court of the Unties States

BRIEF FOR RESPONDENT

Team R14
Counsel for the Respondent

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I. ISSUES PRESENTED

1. Whether the law enforcement interest in preventing sex trafficking can justify dispensing entirely with Mr. Larson's Fourth Amendment rights by use of the special needs exception?

2. Whether it was reasonable for Officer Nelson to believe that W.M. possessed apparent authority to consent to a search of Mr. Larson's apartment and cellphone?

II. RELEVANT FACTS

On May 5, 2015, the Victoria City Board passed Local Ordinance 1923 ("L.O. 1923") which reads:

> 1. Any individual obtaining a room in a hotel, motel, or other public lodging facility shall be subject to search by an authorized law enforcement officer if that officer has reasonable suspicion to believe that the individual is:
>   a. A minor engaging in a commercial sex act as defined by federal law
>   b. An adult or a minor who is facilitating or attempting to facilitate the use of a minor for a commercial sex act as defined by federal law.
> 2. This ordinance shall be valid only from Monday July 11, 2015, through Sunday July 17, 2015.
> 3. A search conducted under the authority of this provision shall be limited in scope and duration to that which is reasonably necessary to ascertain whether the individual searched is engaging in the conduct described in subsection (1).
> 4. This ordinance shall be valid only in the Starwood Park neighborhood.
>   a. Starwood Park is defined to encompass the area within a three-mile radius of Cadbury Park Stadium.
>
> R. at 2.

Victoria City passed the ordinance in response to law enforcement's difficulty in catching perpetrators of human trafficking, and in hopes to limit human trafficking during the Professional Baseball Association 2015 All-Star Game hosted by Victoria City. R. at 2. The Victoria City Board accompanied the release of L.O. 1923 with a statement emphasizing the effects and risks associated with human trafficking, along with statistics about the crime. R. at 3.

On July 12, 2015, Mr. Larson and W.M. entered the Stripes Motel. R. at 3. Officer Richols and Officer Nelson noted that W.M. was dressed in slightly revealing clothing, and that Mr. Larson had tattoos they believed were consistent with the Starwood Homeboyz gang tattoos. R. at 3. Based on these observations alone, the officers "believed they were authorized to search Mr. Larson and his companion pursuant to L.O. 1923," but conceded there was no probable cause to search either Mr. Larson or W.M. at that time. R. at 3. The officers thoroughly searched Mr. Larson's person, and after reaching into the pockets of his jacket obtained some of the items

which are the subject of the motion to suppress in this case. R. at 3.

Officer Nelson believed that W.M. was a victim in this case. R. at 4. In an attempt to learn more about her, Officer Nelson questioned her. R. at 4. He asked her if she had a safe place to stay, and she told him that she lived in an apartment with Mr. Larson. R. at 4. During the questioning, Officer Nelson discovered that the lease for the apartment was in Mr. Larson's name. R. at 29. While W.M. alleged that she and Mr. Larson shared "everything" in the apartment, she later explained that she and Mr. Larson had separate closet space and they did not share food. R. at 29, 33. W.M. told Officer Nelson that she had run away from home and was homeless before meeting Mr. Larson. R. at 30. She also told Officer Nelson that Mr. Larson had slapped her on one occasion when she used her cellphone in a manner he did not approve of. R. at 30. Mr. Larson told her to use the phone he had given her so that he could check it. R. at 30. Officer Nelson then asked W.M. if he could search the apartment. R. at 31. W.M. consented and led him to the apartment. R at 31. She used a spare key hidden under a fake rock to open the apartment. R. at 31.

At the apartment, Officer Nelson saw a cellphone on a nightstand. R. at 31. The nightstand had men's glasses, a men's watch, and some condoms on it. R. at 35. On the second nightstand there was an issue of "Seventeen" magazine and a pink sleep eye cover. R. at 37. W.M. alleged that she shared the cellphone with Mr. Larson. R. at 31. She stated that the sticker on the back of the phone "was Mr. Larson's sticker." R. at 32. The sticker was the same design as Mr. Larson's tattoo. R. at 34. She explained that Mr. Larson paid the bill and regularly used the phone. R. at 34. The password to the phone was the same as the numbers tattooed on Mr. Larson's neck. R. at 34. W.M. gave consent for Officer Nelson to search the phone. R. at 34.

III. SUMMARY OF ARGUMENTS

There are few limited exceptions to the warrant requirements. One of those is special needs. In order to meet the special needs exception, the program must first be something beyond ordinary law enforcement. If this is met, then the court must weigh the government interest against the privacy intrusion on the individual. Here, L.O. 1923 does serve a broader social purpose in its secondary effects, but the primary purpose is to catch individuals engaged in crime. Therefore, it does not fall under the special needs exception because the primary purpose is ordinary law enforcement. Assuming arguendo the court were to find the threshold question met, then L.O. 1923 is still unconstitutional and the motion to suppress must be granted because the privacy intrusion on the individual is too great and outweighs the governmental interest. Although L.O. 1923 seems to be a short search limited in duration and scope, functionally it operates as a full-blown search. Thus, the privacy interest is too great for the governmental interest in preventing human trafficking to outweigh a citizen's Fourth Amendment rights.

A second exception to the warrant requirement is consent. Law enforcement may obtain consent to search property from either the owner or a third party who possesses common authority over the property. An officer may rely on consent given by a third party if it reasonably appears that the third party has authority to give actual consent. If, under the totality of the circumstances, it reasonably appears that a third party has mutual use or control over the property, an officer may reasonably believe that party has authority to consent to a search. But, if circumstances indicate there is any ambiguity regarding the third party's mutual use or control of the property, a warrantless entry without further inquiry is unlawful. Here, the officers suspected that W.M. was victim of sex trafficking. She also told Officer Nelson that she had runaway from home and was homeless before she met Mr. Larson. W.M. was sixteen years old, did not own the

apartment, was slapped by Mr. Larson when she did something he did not approve of, did not pay the cellphone bill, and was told to use a cellphone Mr. Larson could monitor her activity on. In addition, W.M. and Mr. Larson kept separate food, closet space, and nightstands. A reasonable officer would not believe that W.M. had mutual use or control of the entire apartment or the cellphone.

IV. STANDARD OF REVIEW

In reviewing a motion to suppress for a Fourth Amendment violation, "determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal," with findings of fact reviewed for clear error. *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

V. ARGUMENT

1. The special needs exception does not apply to this case.

The touchstone of the Fourth Amendment is reasonableness. *Ohio v. Robinette*, 519 U.S. 33, 39 (1996). Thus, the Fourth Amendment requires that all searches and seizures be reasonable because "no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000); *Terry v. Ohio*, 392 U.S. 1, 9 (1968). The Fourth Amendment acts as a safeguard against arbitrary and invasive actions by the government, and seeks to preserve the privacy, dignity, and security of citizens of the United States. *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 613-614 (1989). As such, absent certain exceptions, or exigent circumstances, the Fourth Amendment requires governmental actors to obtain a warrant prior to conducting a search.

One such exception to the warrant requirement is special needs. Special needs requires a threshold determination as to whether the primary purpose is ordinary law enforcement. If the

intrusion proves to serve a purpose beyond the normal need for law enforcement, then the governmental interest must be weighed against the invasion of privacy on the individual. *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 449 (1990). The special needs exception is a closely guarded category. *Ferguson v. City of Charleston*, 532 U.S. 67, 84 (2001). Some examples of where the Court previously recognized the special needs exception include: alcohol sobriety checkpoints (*Mich. Dep't of State Police*, 496 U.S. 444), border searches (*United States v. Flores-Montano*, 541 U.S. 149 (2004)), inventory searches (*South Dakota v. Opperman*, 428 U.S. 364 (1976)), administration searches (*Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967)), DNA upon arrest (*Maryland v. King*, 133 S. Ct. 1958 (2013)), searches of probationers (*United States v. Knights*, 534 U.S. 112 (2001)) and parolees (*Samson v. California*, 547 U.S. 843 (2006)), visual strip search of those admitted to jail (*Florence v. Bd. of Chose Freeholders*, 132 S. Ct. 1520 (2012)), and drug testing in railroad workers (*Skinner*, 489 U.S. 602), custom officials (*Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989)), and students involved in extracurricular activities (*Bd. of Educ. v. Earls*, 536 U.S. 822 (2002)). L.O. 1923 seeks to push beyond those previously recognized categories and dispose of the Fourth Amendment during a sporting event when a particular crime might be more likely to occur.

A. The primary purpose of L.O. 1923 is ordinary law enforcement.

The District Court asserted that the primary purpose of L.O. 1923 is the protection of Starwood Park's vulnerable youth. R. at 6. However, this misrepresents the primary and immediate purpose of the ordinance. Functionally, L.O. 1923 acts as a means to preemptively catch those possibly about to engage in, or facilitate, a commercial sex act with a minor. R. at 2. This means the objective of L.O. 1923 is to catch people about to be, or currently engaging in, the commission of a crime. Ordinary law enforcement requires keeping the peace, upholding the

law, preventing crime, and catching those involved in the commission of one. The primary purpose of the ordinance is thus indistinguishable from ordinary law enforcement's "general interest in crime control." *City of Indianapolis*, 531 U.S. at 42. The claim of special needs here is merely being used as a mechanism to dispense with traditional Fourth Amendment requirements by lowering the bar for what constitutes a permissible search.

a. The ultimate goal cannot justify the immediate and primary purpose of collecting evidence for proof of a crime.

Although the ultimate goal of L.O. 1923 may be to protect the youth, decrease the prevalence of human sex trafficking, and prevent the effects of being a victim of that crime, it uses ordinary law enforcement as a means to an end under the guise of special needs. Of course "law enforcement involvement always serves some broader social purpose or objective," but this general objective cannot immunize an unlawful search "under the special needs doctrine by defining the search solely in terms of its ultimate, rather than immediate, purpose." *Ferguson*, 532 U.S. at 84. Victoria City law enforcement often has difficulty locating the perpetrators of this particular crime. R. at 2. While sympathetic to their plight, the ordinance cannot stand under the exception of special needs simply because officers have difficulty catching perpetrators of a crime. The ultimate goal is admirable, but the immediate goal of reaching the broader purpose is nothing more than ordinary law enforcement and therefore L.O. 1923 is unconstitutional.

Similar to the present case, in *Ferguson* the ultimate purpose of the policy was to protect the youth – those yet unborn. In particular, the city wanted women engaged in cocaine use to enter substance abuse treatment. *Ferguson*, 532 U.S. at 70, 84. The ultimate goals of the policy – protecting the fetus, curtailing pregnancy complications and medical costs, and getting these women into a treatment program – fell short of the special needs exception because this was no different than ordinary law enforcement. *Id.* The immediate and primary purpose of the search

"was to generate evidence for law enforcement purposes in order to reach [those] goals." *Id.* at 83. Analogously, the primary purpose of L.O. 1923 is to aid officers in preventing and catching those involved in human trafficking, in order to meet the ultimate goal of protecting Victoria City youth. The ordinance lowers the threshold for officers to search an individual, so they may generate evidence to either arrest or remove those involved in human trafficking. Thus, the ordinance is indistinguishable from ordinary law enforcement despite its secondary goals.

Another example where the Court found special needs did not apply was in *City of Indianapolis v. Edmond*. The city implemented roadblocks to conduct drug checkpoints similar to a border checkpoint or sobriety checkpoint, in order to intercept illegal narcotics. *City of Indianapolis*, 531 U.S. at 35. In holding that the city's actions were unconstitutional, the Court stated that it has "never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing." *Id.* at 41. In contrast to a sobriety checkpoint, where the primary purpose is public safety, and the detention is short in both length and duration, the narcotics checkpoint was none of these things. *Id.* at 39, 50. Even if the broader social purpose was public safety from drug use, the immediate implementation of the roadblock allowed an extensive search to find perpetrators of the crime.

Although not as directly clear in its asserted purpose, L.O. 1923 is no different. The ordinance allows officers to dispense with traditional Fourth Amendment requirements and conduct a search for evidence linking an individual to human trafficking. Just as the drug checkpoint served as a means to stop and search individuals to discover whether they were engaging in illegal activity, L.O. 1923 does the same. While a broader social purpose might be served, this cannot dispense with the protections of the Fourth Amendment in the name of

special needs. Therefore, the ordinance is unconstitutional because the primary purpose is ordinary law enforcement.

B. Assuming arguendo that L.O. 1923's primary purpose is not ordinary law enforcement, then the governmental interest does not outweigh the intrusion of privacy to Mr. Larson.

If this court finds that L.O. 1923 "serves special governmental needs, beyond the normal need for law enforcement, [then] it is necessary to balance the individual's privacy expectations against the Government's interests to determine whether it is impractical to require a warrant." *Mich. Dep't of State Police,* 496 U.S. at 449. Although Mr. Larson does not contend that the government lacks a compelling interest in this case, the interest still cannot outweigh the intrusion of privacy permitted by the ordinance. Although the language of L.O. 1923 seems to limit the scope and duration, functionally it permits a full-blown search. Here, L.O. 1923 allows a search to determine whether someone is engaged in, or about to be engaging in, sex trafficking of a minor. As the present case demonstrates, the only way to procure such evidence to make that determination, is through a full-blown search. Mr. Larson's pockets were emptied and his possessions sorted through based on no more than his accompaniment by a young looking and slightly promiscuously dressed girl and his tattoos. R. at 3. Mr. Larson was not simply patted down to ascertain if weapons were on him, but had his person thoroughly intruded upon to determine whether the officers' suspicions were accurate.

a. The ordinance functionally allows a pervasive search in both detention and scope.

This type of invasive search which subjects Mr. Larson to an embarrassing public display and degradation of his human dignity cannot be justified even with a government interest in preventing sex trafficking and protecting the Starwood Park youth. Imagine a father walking into the hotel lobby with his daughter who is equally promiscuously dressed. Based on a set of facts like this alone L.O. 1923 permits officers to then conduct a thorough search of that father and his

daughter to make sure they are not engaging in a crime. This cannot be permissible. Never before has the Court completely and so summarily dispensed with the Fourth Amendment requirements in the name of a government having an interest in the fruits of a search. Special needs cases are usually characterized by their limited detention and minimal intrusion on the individual.

For example, the Court's reasoning in allowing sobriety checkpoints, but not a narcotics checkpoint, in part turned on the extra invasion and amount of time needed to conduct the checkpoint when looking for narcotics as opposed to checking sobriety. *City of Indianapolis*, 531 U.S. at 39, 50. A sobriety checkpoint takes a minimal amount of time to be conducted unless the person is suspected of intoxication. *Id.* The present case is more alike to the narcotics checkpoint because it requires a longer stop and more pervasive search. Under the ordinance, a person is stopped, thoroughly searched, and pocket contents inspected to make a determination of suspicion. The detention time is not limited to a mere inconvenience for those entering the hotel.

Additionally, other cases where the special needs exception applied did not include such an intense invasion. In drug testing both railroad workers and students engaged in extracurricular activities, the invasion that resulted was those persons giving a sample of urine or being subject to a breath test. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 658 (1995). This is done with no physical intrusion onto the person, and takes a minimal amount of time to acquire or administer. Conversely, the search of Mr. Larson could take extensive time depending on how long it takes the police to ascertain whether or not the individual is involved in the crime.

b. The lobby of a hotel does not subject a citizen to a lower expectation of privacy in his person.

Another critical distinction here lies in those typically subjected to the special needs exception. Railroad workers and students engaged in extracurricular activities have a lower expectation of privacy upon entering those premises. While a hotel in not as secure a place for

privacy as the home, this Court has not held that a hotel provides no expectation of privacy to those individuals acquiring accommodations within. Furthermore, the District Court cited the example of probationers and parolees as an example of invasion of privacy not outweighed by the governmental interest in reducing recidivism and promoting rehabilitation of those persons. R. at 7. However, a probationer or parolee gives up and exchanges the privacy rights most citizens expect in their person, in order to have more freedom than they would in jail. So the two are not alike in any sense. A person entering a hotel lobby to book a room for the evening did not exchange a lesser privacy interest with the government. So the District Court's analogy wholly fails.

While Mr. Larson does not downplay the government's stated interest, that interest cannot be so strong as to constitute the pervasive intrusion to his person and others subject to L.O. 1923. The intrusion on the privacy of the individual under the ordinance is simply too strong to be outweighed by the governmental interest in this case. The length of detention, scope of intrusion on Mr. Larson's person, and the affront to dignity of individuals entering a hotel lobby all weigh against justifying the government's ability to conduct a thorough search for evidence based on mere suspicion alone. Thus, this ordinance cannot be constitutional because it does not fall under the special needs exception.

C. Allowing L.O. 1923 to fall under the special needs exception violates the Fourth Amendment on policy grounds.

The problem here is that L.O. 1923 goes past even the ordinary bounds of permissible law enforcement. This ordinance dispenses with any traditional safeguards of the Fourth Amendment and entirely subsumes its protection by justifying a full-blown search on reasonable suspicion alone. Even *Terry* stop and frisks are justified first on reasonable suspicion of criminal activity, and then reasonable suspicion that the individual may possess a weapon which risks

safety to the officer. *Terry v. Ohio*, 392 U.S. at 24-25. Here, reasonable suspicion allows an officer to conduct a pervasive search. While the language of the ordinance purports "to limit scope and duration to that which is reasonably necessary to ascertain whether the individual searched is engaging" in facilitating a minor's commercial sex act, the scope of such a search cannot logically be limited. R. at 2. In order to determine whether such conduct might be occurring, an officer must, like in Mr. Larson's case, conduct a full search and exploration of the individual's person and property to determine whether their reasonable suspicion can lead to an arrest. This goes substantially beyond *Terry* and demonstrates an intrusion on the privacy of the individual not yet recognized by any court.

Further, permitting this ordinance to fall under the special needs exception says, in essence, that the Fourth Amendment is disposable anytime a particular crime is difficult to combat. Exceptions to the warrant requirement are limited in order to "protect privacy interests by assuring citizens subject to a search or seizure that such intrusions are not the random or arbitrary acts of government agents." *Skinner*, 489 U.S at 622. Therefore, those instances in which special needs are recognized should not be taken lightly. The Fourth Amendment operates to protect citizens, once an instance of intrusion is found to be permissible, that privacy can rarely be reestablished by later invalidating the intrusion in a subsequent case. Additionally, a warrant provides extra protection through "detached scrutiny of a neutral magistrate, and thus ensures an objective determination whether an intrusion is justified in any given case." *Id.* In this case, requiring a warrant before a full-blown search is no more than what the Fourth Amendment requires, and therefore L.O. 1923 fails constitutional muster.

2. Under the totality of the circumstances, it was unreasonable to conclude that W.M. possessed apparent authority to consent to a search of either Mr. Larson's apartment or his cellphone.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…" U.S. Const. amend IV. "It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant…is 'per se unreasonable…subject only to a few specifically established and well-delineated exceptions.'" *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). Consent is one of the exceptions. *Id.* Consent is sufficient to permit a warrantless search if obtained from either the owner of the property or a third party who possesses common authority over the premises. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990).

"Common authority is…not to be implied from the mere property interest a third party has in the property." *United States v. Matlock*, 415 U.S. 164, 172 n.7 (1974). "[T]he authority which justifies the third party consent…[rests on] mutual use of the property by persons generally having joint access or control for most purposes." *Id.* Joint access or control must be such that "it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right." *Id.* A third party possesses apparent authority to consent if "the officers who conduct the search reasonably believe that the third party has actual authority to consent." *United States v. Fultz*, 146 F.3d 1102, 1105 (9th Cir. 1998). "Even when a third party lacks actual authority to consent…the Fourth Amendment is not violated if the officers reasonably relied on the third party's apparent authority to consent." *United States v. Clutter*, 674 F.3d 980, 983 (8th Cir. 2012).

An officer may rely on a third party's consent if the facts available to the officer at the moment would lead a man of reasonable caution to believe that the consenting party had authority over the premises. *Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990). This is an objective standard. *Id.* However, "[e]ven when the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry." *Id.* If circumstances would lead "a person of reasonable caution to question whether the third party has mutual use of the property, 'warrantless entry without further inquiry is unlawful.'" *United States v. Waller*, 426 F.3d 838, 846 (6th Cir. 2005).

A. W.M. did not possess apparent authority to consent to a search of the apartment.

a. Facts available to the officers at the moment W.M. consented, would not lead a man of reasonable caution to believe that she had mutual use or control of the premises.

In *Gillis*, the defendant's girlfriend, Williams, called police and told them about drug activity she had witnessed the defendant engage in at the residence. *United States v. Gillis*, 358 F.3d 386, 388 (6th Cir. 2004). The police knew that Williams's name was on the lease and that she stayed at the residence at issue as well as at another house. *Id.* Williams also gave police detailed information about where the defendant had hidden drugs in the residence. *Id.* She told police that she had keys to interior doors and although she did not have keys to the exterior metal doors, she could open them because they were broken. *Id.* Williams gave consent to the officers to search the residence. *Id.* The court concluded that Williams had apparent authority to consent because she told the officers that she continued to use the residence and demonstrated her detailed knowledge of the premises. *Id.* at 391.

In *Ryerson*, Lawicki went to police to regain custody of her infant daughter. *United States v. Ryerson*, 545 F.3d 483, 485 (7th Cir. 2008). Lawicki explained that she could not enter her

home at Gillette Lane to get her daughter and belongings because Ryerson had changed the locks while she was gone. *Id.* An officer told Lawicki that she could break a window and enter the residence if she lived there; Lawicki then followed the officer's suggestion. *Id.* Krumscheid, Ryerson's employee, saw the broken window and reported a burglary. *Id.* Police then interviewed Lawicki about the alleged burglary. *Id.* During the interview, Lawicki repeatedly told officers that she lived at Gillette Lane and that Ryerson sold drugs and weapons at the residence. *Ryerson*, 545 F.3d at 485. The officers asked Lawicki if they could search the residence. *Id.* She consented and took them to Gillette Lane. *Id.* Krumscheid willingly let Lawicki and the police enter the residence. Before entering, Lawicki warned the police about a "vicious cat" inside. *Id.* at 486. The next day Lawicki consented to a second search of the home. *Id.*

The court explained that Lawicki possessed apparent authority to consent to a search of the residence. *Id.* at 489. Even though Lawicki claimed she did not have keys to the residence, Krumscheid, Ryerson's agent, willingly opened the door. *Id.* This reasonably suggested to the police that he recognized her as a legitimate resident. *Id.* In addition, she demonstrated intimate knowledge of the house by warning the police about the cat and adeptly guiding the officers through the home. *Id.* It was reasonable for police to believe that Lawicki had authority to consent because it appeared that she used the home and had intimate knowledge of it. *Id.*

In *Gillis*, the girlfriend had keys to the interior doors, her name was on the lease, and she demonstrated detailed knowledge of the premises. In *Ryerson*, the girlfriend was readily let into the residence by the defendant's agent, she told police she lived there with the defendant and her daughter, and she had detailed knowledge of the residence. In contrast, here, W.M. did not demonstrate to the officers that she had detailed knowledge of the residence. She claimed to live

there but could not demonstrate to the officers that this was a reasonable claim. W.M. was sixteen years old and the officers thought she was a victim of sex-trafficking. R. at 28. Her name was not on the lease (R. at 29) and she had to use a spare key hidden under a fake rock to get in (R. at 30). Unlike the girlfriends in *Gillis* and *Ryerson*, W.M. did not present anything to the officers to justify the belief that she had mutual use or control of the apartment.

Furthermore, Officer Nelson knew that W.M. was sixteen years old and that she was a runaway. R. at 27. He knew that before she met Mr. Larson she had been homeless. R. at 27. She also told Officer Nelson that when she had texted a guy from school Mr. Larson slapped her and told her she could only use a phone that he could check her activity on. R. at 27. W.M. told Officer Nelson that she lived at the Sasha Lane residence and shared "everything" with Mr. Larson and kept what belongings she owned there. R. at 27. However, a reasonable officer would not interpret these claims as facts establishing mutual use and control. In light of the other facts, a reasonable officer would conclude that W.M. was controlled by Mr. Larson. She was a sixteen-year-old girl, who had runaway from home, and when she did something Mr. Larson disapproved of, he slapped her. Officers cannot be permitted to selectively choose whichever facts they need to justify a warrantless search. Rather, officers must assess the totality of the information available to them at the time. Based on the totality of the circumstances in this case, no reasonable officer would have believed that W.M. had authority to consent to a search of Mr. Larson's home.

In *Arreguin*, officers knocked on a residence door and Valencia answered. *United States v. Arreguin*, 735 F.3d 1168, 1172 (9th Cir. 2013). With the door open, officers could see another man, Arreguin, holding a shoebox in the foyer. *Id.* The officers then saw Arreguin disappear from view and later return without the shoebox. *Id.* The officers asked Valencia if they could

search the home and he consented. *Id.* Some of the officers went in the direction they had seen Arreguin disappear and found a master bedroom. *Id.* While some of the officers were conducting the search, one officer questioned Arreguin. *Id.* at 1173. During the questioning, the officers discovered that Arreguin lived at the residence and that Valencia was a guest. *Id.*

The court explained that when the officers obtained Valencia's consent, "they knew virtually nothing about: (1) him; (2) the various separate rooms and areas inside the Residence; or (3) the nature and extent of Valencia's connection to those separate areas." *Id.* at 1175. Further, Valencia's mere presence at the home did not, by itself, support the conclusion that he had authority to consent to a search of the master suite. *Arreguin*, 735 F.3d at 1176. Arreguin's act of placing property in the room "is, if anything, consistent with his occupancy of that portion of the premises." *Id.* Therefore, based on the facts available to the officers, a reasonable person would not presume that Valencia had joint use or control over the all of the areas searched. *Id.* at 1177.

Similar to the officers in *Arreguin*, Officer Nelson did not know the extent of W.M.'s joint use or control over the various areas in the apartment. Officer Nelson was aware that W.M. and Mr. Larson kept separate closest space and did not share food. R. at 33. He was also aware that she needed a hidden spare key to get in. R. at 31. These facts cast doubt on W.M.'s claims that she and Mr. Larson shared "everything." Confining W.M. to only certain portions of the apartment suggests that Mr. Larson controlled the apartment and that W.M. could not consent to a full search.

b. At most, the facts available to the officers demonstrated that it was ambiguous whether W.M. had mutual use or control of the premises.

"[A]pparent authority cannot exist if there is ambiguity as to the asserted authority and the searching officers do not take steps to resolve the ambiguity." *United States v. Purcell*, 526

F.3d 953, 963 (6th Cir. 2008). In *Purcell*, the court found that Crist, the defendant's girlfriend, had apparent authority to consent to a search of a duffel bag. *Id.* Christ told officers that the bag belonged to her and her purse was sitting on top of the bag. *Id.* But, once the officers discovered that the bag contained men's clothing and none of Crist's personal belongings, ambiguity arose. *Id.* at 964. "When a situation starts as unambiguous but subsequent discoveries create ambiguity, any apparent authority evaporates." *Id.* The court held that although Crist's initial statements could lead a reasonable officer to conclude she possessed authority to consent to a search, the discovery that the bag did not contain her belongings gave rise to ambiguity about her authority. *Id.*

Even if W.M.'s statements that she lived at the Sasha Lane apartment and shared "everything" with Mr. Larson were sufficient to lead a reasonable officer to believe she had authority to consent to a search, subsequent facts created ambiguity regarding her mutual use and control of the apartment. W.M. told Officer Nelson that she did not pay rent, that she had her own section of the closet, and that she and Mr. Larson kept separate food. R. at 33. The fact that W.M. and Mr. Larson had separate closet space and did not share food indicates that W.M. did not have mutual use or control of the entire apartment. These facts created ambiguity as to W.M.'s extent of control and use of the apartment. As such, a reasonable officer would not believe that W.M. had authority to consent to a search of the apartment.

B. W.M did not possess apparent authority to consent to a search of the cellphone.

In *Buckner*, police received complaints regarding online fraud committed by someone using AOL and eBay accounts opened in the name of Michelle Buckner. *United States v. Buckner*, 473 F.3d 551, 552 (4th Cir. 2007). Michelle told officers that she did not know anything about illegal transactions, but that she did have a computer at home leased in her name.

Id. at 553. Later, police went to Michelle's home while Frank, her husband was not present. *Id.* Michelle told the police they could take anything that they needed. *Id.* The computer Michelle suggested was leased in her name was on the table in the living room and turned on. *Id.* Michelle gave consent for officers to seize the computer and copy the hard drive. *Id.* Frank, later argued that Michelle did not have authority to consent to a search because the computer was password protected and he was the only one who knew the password. *Buckner*, 473 F.3d at 553.

The court explained that Michelle possessed apparent authority to consent to a search of the computer. *Id.* at 555. At the time Michelle consented, the officers knew that the computer was located in a common living room in the Buckner's marital home, the computer was on and Frank was not present, that fraud had been conducted from that computer using accounts opened in Michelle's name, and that the computer was leased solely in Michelle's name. *Id.* Under the totality of the circumstances, the officers reasonably perceived that Michelle had authority to consent to a search of the contents of the computer. *Id.*

In contrast, here, the totality of the circumstances did not make it reasonable for Officer Nelson to believe that W.M. possessed authority to consent to a search of the cellphone. The cellphone was located on a nightstand with "men's glasses, a fake Rolex men's watch, and some condoms." R. at 35. On the second nightstand in the room there was "an issue of 'Seventeen' magazine" and a pink sleep eye-cover. R. at 37. Whereas the computer in *Buckner* was in a common area, the cellphone in this case was on a man's nightstand. During his deposition Officer Nelson stated that the nightstand where he found the phone could have been either a man's or woman's nightstand. R. at 35. But, any reasonable officer would conclude that a nightstand containing men's glasses and a man's watch was a man's nightstand while W.M. owned the nightstand containing "Seventeen" magazine. Officer Nelson knew that Mr. Larson

and W.M. had separate closet space and food. R. at 33. A reasonable officer would have inquired into whether the nightstand with the cellphone was shared or only belonged to Mr. Larson. In addition, in *Buckner* the computer was leased solely to Michelle. In this case, the cellphone was paid for solely by Mr. Larson. R. at 34. In *Buckner*, it was reasonable for police to conclude Michelle had mutual use and control of the computer because the computer was in a common area and Michelle leased it. Unlike *Buckner*, the cellphone here was on a man's nightstand and paid for only by Mr. Larson. This level of ambiguity weights directly against a reasonable officer concluding that W.M. had authority to consent to the search.

In *Andrus*, officers went to the Andrus residence to conduct a "knock and talk" interview with the hope of obtaining consent to conduct a search. *United States v. Andrus*, 483 F.3d 711, 713 (10th Cir.). Dr. Andrus, Ray Andrus's father, answered the door and invited the officers inside. *Id.* Dr. Andrus told the officers that Ray lived in the center bedroom, did not pay rent, and lived in the home to help care for his parents. *Id.* He also told the officers that he felt free to enter Ray's room when the door was open but he always knocked if it was closed. *Id.* While the officers were there, Ray's door was open but he was not home. *Id.* Dr. Andrus gave consent for the officers to search the computer. *Id.* The officers then went to Ray's room and conducted a forensic analysis on his hard drive. *Id.*

The court explained that at the time the officers obtained consent they knew that Dr. Andrus owned the house, paid the internet bill, had access to Ray's room at will, and he did not say or do anything to indicate his lack of ownership or control over the computer. *Id.* at 720-21. In addition, the computer on Ray's desk was in plain view and it appeared available for use by other household members. *Id.* The court explained that under the totality of the circumstances, the facts known to the officers at the time reasonably suggested that "Dr. Andrus was, at least,

one user of the computer." *Id.* at 722 (emphasis in original). "That objectively reasonable belief would have been enough to give Dr. Andrus apparent authority to consent to a search." *Id.*

In contrast to *Andrus*, W.M. did not own the apartment or pay the cellphone bill. R. at 33-34. Although she had access to the cellphone and the room where the cellphone was found, facts indicated that she lacked ownership or control over the phone. A sticker on the phone was the same design as Mr. Larson's tattoo, W.M. indicated that Mr. Larson regularly used the phone, and the password was the same numbers that were tattooed on Mr. Larson's neck. R. at 34. In *Andrus*, the totality of circumstances suggested that Dr. Andrus had authority to consent because he demonstrated ownership and control over the premises. In contrast, here, W.M. did not exhibit ownership and control over either the apartment or the cellphone. Mr. Larson had told W.M. to use his phone because he wanted to monitor her activity. R. at 30. This does not suggest that W.M. had mutual use or control over the phone.

VI. CONCLUSION AND PRAYER FOR RELIEF

The Court of Appeals ruling should be affirmed because the special needs exception and apparent authority doctrine are not met in this case. The purpose of the Fourth Amendment is to protect citizens from unreasonable search and seizures. Allowing the search to stand here would work against the policy interest in deterring unreasonable police conduct. Exceptions to the warrant requirement are narrow, and should not be arbitrarily expanded or taken advantage of to do away with the safeguards of the Fourth Amendment. Special needs requires something beyond ordinary law enforcement, and the government interest must outweigh the intrusion on privacy of the individual.

In addition, the Court of Appeals decision should be upheld because it was not reasonable for Officer Nelson to believe W.M. had apparent authority to consent to a search. No reasonable

officer would conclude that a sixteen-year-old runaway, who is suspected of being a victim of sex trafficking, had apparent authority to consent to a search of the apartment or the cellphone. The touchstone of Fourth Amendment analysis is reasonableness. Concluding that it was reasonable to believe W.M. could consent to a search would greatly expand the apparent authority doctrine to the point that it is no longer grounded on reasonableness.