January 2, 2025

IN THE SUPREME COURT
OF THE UNITED STATES

No. 2024-2025

Tarun Bellator, Petitioner

vs.

The State of Frankfurt, Respondent

On Writ of Certiorari to the Supreme Court of the State of Frankfurt

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ORDER OF THE COURT ON SUBMISSION

IT IS THEREFORE ORDERED that counsel appear before the Supreme Court to present oral argument on the following issues:

1. Whether the Petitioner's disorderly conduct conviction violates Petitioner's First Amendment rights?

2. Whether the search of Petitioner's dorm room and subsequent seizure of the Petitioner's firearm and unlawful ID violate Petitioner's Fourth Amendment rights?

This entire case is the property of NCFCA Christian Speech & Debate.

Case content may undergo minor revisions if deemed necessary prior to the beginning of the competition season in January 2025. Please see version notes below.

Version Notes:
2025.01 published 9/10/2024
2025.02 published 11/4/2024 correction of paragraph one of section I. B. of case

Supreme Court for the State of Frankfurt[1]

No. 1-1982

Tarun Bellator
Defendant and Petitioner

vs.

State of Frankfurt
Prosecution and Respondent

Chief Justice Nicolas CATHCART delivered the opinion of the Court, joined by Justices Jonah ROBARTS, Clarice TOMAS, Simon ALITA, and Niles GORSTAGE.

Justice Aimi Coyne BARRY filed a dissenting opinion, JOINED BY Justices Sonja SOTO, Eileen KOGAN, and Britt CAVANAUGH.

[1] Frankfurt is the fifty-first state in the United States of America. Frankfurt does not have an intermediate trial court system. Under Frankfurt's law a defendant has a right to appeal directly to this Court.

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I. FACTUAL AND PROCEDURAL HISTORY

A.

Olympia is a small island nation in the Pacific that has two major ethnic groups: the Olympians and the Atlanteans. Both ethnic groups view the island as their historical homeland. Presently, the island is entirely under the rule and jurisdiction of the Olympian government. However, Atlantis, a semi-autonomous region located on the island, is home to the ethnic Atlanteans. This region, which constitutes 30% of the entire island, operates with a large degree of self-governance and independence.

An Atlantis militant organization has consistently lodged intermittent, armed insurgent conflicts against the Olympian government. Atlantean activists and residents view the Olympian government as oppressive invaders that have taken over the Atlantean homeland. Some Atlanteans use the slogan "From sea to sea, Atlantis shall be free." Originally, this expression was used to intimate the elimination of the Olympian state entirely from the island (from "sea to sea"). Of late, however, Atlantean activists maintain that the slogan merely reflects revolutionary and patriotic sentiment and should not be taken literally, but rather figuratively. These activists also call for the "liberation" of Atlantis.

Conversely, the Olympian government views the Atlantean region as controlled by terrorists who seek to destroy the Olympian government and people out of ethnic hatred and bigotry. The Olympians have a long history of being persecuted and oppressed for their ethnicity, and the Olympians view the island as their ancestral homeland. The Atlanteans similarly view the island as their ancestral homeland. This conflict has claimed hundreds of thousands of lives and displaced several million people over the last century.

In September of 2023, unprecedented hostilities broke out in the nation of Olympia when armed Atlantean militants attacked adults and children at an annual Olympian carnival celebration. 329 people were killed and 103 were taken hostage. Olympia immediately responded with a declaration of war and a military invasion of Atlantis.

This invasion has been highly controversial. The Olympian government and citizens contend that the invasion was necessary to defend themselves from racial violence and eliminate terrorist groups in Atlantis, while Atlanteans accuse Olympia of indiscriminately killing civilians, causing a humanitarian crisis, and (according to some) committing genocide.

This armed conflict has sparked numerous protests worldwide. Many of these protests have occurred on college campuses throughout the United States. Protests between those who support Atlantis and Olympia have caused volatile clashes between protestors and counter-protestors. Frankfurt State University (FSU), a public university, is the largest university in Frankfurt with 55,200 undergraduate students and 21,300 graduate students. FSU has not been immune to the protests. Frequent rallies, demonstrations, and other protests have taken place on and around the campus. Several protests devolved into riots, requiring intervention by law enforcement and resulting in the arrests of numerous protestors.

B.

Mr. Tarun Bellator is a 20-year-old junior who attends FSU. Mr. Bellator is a first-generation Atlantean American. In the fall semester of 2023, Mr. Bellator started a student organization in support of Atlantis called Students for Atlantis Solidarity ("SAS"). Presently, he serves as President of the organization's executive board (the "E-Board"). SAS grew quickly, registering over 200 student members by March 1, 2024. SAS engaged in fundraising for Atlantis and held regular meetings and events to raise public awareness regarding Atlantis' struggle for independence. During the spring semester, Mr. Bellator led and attended numerous protests at FSU against the Olympain invasion of Atlantis; however, he was neither arrested nor criminally charged for anything prior to the incident giving rise to the present case. Mr. Bellator has also strongly advocated for Atlantis on social media, frequently sharing posts of the current civilian death count stemming from the Olympian military operation in Atlantis; calling for an immediate ceasefire; and using the phrase "From sea to sea, Atlantis shall be free."

On May 1, 2024, at approximately 4:00 p.m., Mr. Bellator attended a "Ceasefire Now" rally. This rally was planned and organized by SAS and took place a mere three (3) days before the end of the spring semester. The rally was staged at the front entry gates of the University. Over 300 pro-Atlantean FSU students were in attendance. Simultaneously, approximately 70 to 80 other FSU students supporting Olympia staged a counter-protest. Due to the volatility of protests at several other universities, FSU's Board of Trustees requested that the FSU Campus Police Department (the "CPD") be present on campus and prepare to quell the protest if it presented a danger to property, the students, or faculty. When the "Ceasefire Now" rally began, both protestors and counter-protesters hurled insults at and traded chants with each other. Both sides were heated, but initially peaceful. Mr. Bellator brought a megaphone and proceeded to shout through the megaphone "From sea to sea, Atlantis shall be free" over the crowd. The CPD noticed the protestors and counter-protesters immediately became agitated after hearing this chant, and within 3–5 minutes, at approximately 4:11 p.m., violence erupted in close proximity to Mr. Bellator. Stones, bricks, bottles, and other projectiles were hurled between the protestors and counter-protestors, causing Mr. Bellator to duck to avoid the flying debris — though he continued to chant. Several fights also broke out. Various trash cans, dumpsters, and FSU vehicles were lit on fire. The school sustained over one million dollars in property damage during this chaos. Numerous protestors and counter-protestors were seriously injured and some had to be hospitalized. While he never ceased chanting, "From sea to sea, Atlantis shall be free," Mr. Bellator did not engage in any fights, damage or destroy any property, set any fires, throw any projectiles, or physically assault anyone.

At 4:30 p.m., the FSU President, in conjunction with the Chief of the CPD, officially declared the rally a riot. The Chief of the CPD set up a perimeter, began evacuating the premises, and made numerous arrests in an attempt to shut down the riot and restore order.[2] It took the CPD nearly 4 hours to quell the riot. By 8:15 p.m., order was restored to the campus as all who had attended the rally had disbanded, and school personnel began clean-up efforts. Roughly 53 Atlantean sympathizers and 30 counter-protestors were arrested.

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[2] Officers with the CPD are sworn officers who are given powers to enforce federal, state and local laws, in addition to any campus-specific policies. These include powers to arrest suspects and carry firearms.

C.

At around 4:45 p.m., during CPD's efforts to quell the riot, Savannah Patrick, the Vice-President of SAS, and Samuel Henry, the Secretary of SAS, tore down and defaced a statue of Thomas Jefferson. CPD officers arrested Patrick and Henry for breach of the peace/disorderly conduct. During a search incident to these arrests, CPD officers found snub-nose .38 revolvers concealed on both Ms. Patrick's and Mr. Henry's persons. At that same time and location, the CPD witnessed Mr. Bellator continuing to shout "From sea to sea, Atlantis shall be free," further agitating the protestors despite being told by CPD officers to discontinue the chant and set down the megaphone. Pursuant to orders to quell the riot, uniformed CPD officers John McLoud and Tony Barretta then advanced toward Mr. Bellator in an attempt to arrest him for breaching the peace/disorderly conduct. As they approached Mr. Bellator, the officers made brief eye contact with him, before he fled the area through a wooded hedge. Additionally, several protestors obstructed the officers' pathway. At this time they lost sight of Mr. Bellator. They could not continue their pursuit as their assistance was required for further crowd control. Officers McLoud and Barretta then conducted multiple arrests of other SAS members for breach of peace, disorderly conduct, felony assault, and/or felony battery for seriously injuring others with flying debris such as rocks and bottles. Several of the arrestees were in possession of illegally concealed items and weapons such as bear mace, bowie knives, and brass knuckles. These weapons prompted the CPD to become concerned that SAS members were armed and dangerous. Fearing further violence, the CPD requested the names and ages of all the SAS E-Board members from FSU and immediately initiated a search for every member of the E-Board.

By 7:00 p.m., the riot was not completely quelled, but many of the protestors had either disbanded or been taken into custody. As part of their search for the E-Board and pursuant to the goal of arresting Mr. Bellator for breach of the peace/disorderly conduct, Officers Barretta and McLoud proceeded to Mr. Bellator's dormitory. As they approached the building that housed Mr. Bellator's quad-style dorm room, the officers saw a young man — resembling Mr. Bellator from behind — running into the main entrance of the building. The CPD officers then gave chase; entered the building; and knocked on Mr. Bellator's quad room door. They were let in by Edward Trace, who identified himself and advised CPD that he lived in the quad. Dorm rooms at FSU consist of four individual bedrooms, each belonging to one student, and a common area between the rooms. While standing in the common area, the officers asked whether Mr. Bellator was inside his bedroom. Mr. Trace responded "I don't know," and pointed to Mr. Bellator's dorm room saying, "His room is over there; you can check." Mr. Bellator's dorm room door was partially open, but the officers were unable to see inside from where they were standing. The officers then heard what sounded like a window opening in Mr. Bellator's dorm room. The CPD officers entered the dorm room without knocking or announcing themselves and began to sweep Mr. Bellator's room. The officers observed an opened window over Mr. Bellator's desk and then discovered Mr. Bellator standing behind the adjacent closet door. Officer Barretta immediately advised Mr. Bellator that he was under arrest for violation of breach of the peace; disorderly conduct pursuant to Frankfurt Statutes, §867.03. Mr. Bellator was arrested without incident and Mirandized. Officer Barretta then handcuffed Mr. Bellator and transported him to the Stark County jail.

En route to the county jail, Mr. Bellator waived his right to remain silent and agreed to answer Officer Barretta's questions. Mr. Bellator insisted that he never intended for a riot or any

unlawful activity to occur. He pointed out that he had used the slogan “From sea to sea, Atlantis shall be free” on social media numerous times with no issue. Mr. Bellator argued that the phrase was merely an aspirational slogan for peace and liberation, and the phrase was not intended to be threatening or literal.

Officer McLoud remained behind in Mr. Bellator’s dorm room after Mr. Bellator was taken away. As he briefly scanned the room, he noticed an open drawer in Mr. Bellator’s computer desk. In the drawer he observed a brown paper bag containing what appeared to be a partially exposed firearm, which he photographed, seized, and opened. The bag contained a loaded Glock 19X pistol, a fake ID, and a receipt for the purchase of the handgun. According to the SAS E-Board member information that the CPD had obtained from the university, Officer McLoud recalled that Mr. Bellator was under twenty-one (21) years of age, and contacted school officials to double check his age. School officials further confirmed to Officer McLoud that Mr. Bellator was only twenty (20) years of age. Officer McLoud seized the bag, ID, firearm, and receipt, then bagged and tagged the items for placement in the evidence locker at the County Sheriff's Office. No other evidence of criminal activity was found in the dorm room, although the room was filled with Atlantean flags, poster board, markers, and paint. Officer McLoud proceeded to the County Sheriff's Office where Mr. Bellator was being held and formally arrested him under Frankfurt Statutes, Gun Control Act §422.63 and for Unlawful Identification under Frankfurt Statute §321.211.

D.

On the day immediately following the protest, the CPD initiated a formal investigation to determine how the “Ceasefire Now” rally devolved into a riot. The CPD investigation concluded that the protest had been heated, but initially lawful, until Mr. Bellator began chanting “From sea to sea, Atlantis shall be free.” Numerous witnesses identified that chant as the moment the protest and counter-protest erupted into a riot. Several counter-protestors pointed specifically to the chant started by Mr. Bellator as enraging them and driving them to begin physically and violently attacking the protestors. Many of the protestors stated that the chant inflamed their passions and emotions, leading them to throw projectiles and attack the pro-Olympian counter-protestors. Some even stated that they understood the chant as a call to action against the counter-protestors. Despite Mr. Bellator’s voluntary statements made to Officer Barretta, the police spoke with several witnesses who reported overhearing Mr. Bellator voicing his intentions to his colleagues before starting the chant. He was heard saying, “We need to make these genocidal murderers feel the violence they inflicted upon us” and “Death to the murderers.”

The CPD concluded, pursuant to its investigation, that Mr. Bellator was the instigator of the riot and that he had breached the peace. Thus, it referred the matter to the Stark County State Attorney’s Office.

E.

The Stark County State Attorney’s Office prosecuted Mr. Bellator on all three charges for which he was arrested. Pre-trial, Mr. Bellator brought a motion to suppress the firearm and false ID, arguing that the search and seizure violated the Fourth Amendment because the search was

conducted in the absence of a validly issued warrant. The trial judge, Honorable Henry X. Harper, denied the motion to suppress, thereby refusing to exclude the evidence.

During his criminal trial, Mr. Bellator's defense counsel motioned for a judgment of acquittal (JOA), arguing that Mr. Bellator's chant was protected speech per the First Amendment. Defense counsel also renewed its motion to suppress the evidence of the possession of the firearm and unlawful ID.[3] Both motions were denied by the trial judge. At the end of his criminal trial, the jury found Mr. Bellator guilty on all charges, and the trial judge sentenced Mr. Bellator to 60 days in jail followed by 12 months probation. Mr. Bellator challenges his conviction for disorderly conduct solely on the basis that the trial judge erred in denying the defense motion for Judgment of Acquittal (JOA) which was raised at the close of the prosecution's case in chief.[4] The judge determined that Mr. Bellator's chant was not protected First Amendment speech.[5] Mr. Bellator challenges his conviction for possession of a handgun and unlawful ID solely on the basis that any/all evidence of such, was the fruit of an unlawful search and, as such, should have been suppressed.

II. MAJORITY OPINION

Chief Justice CATHCART delivered the opinion of the Court.

This case raises two important questions. First, was Mr. Bellator's conduct protected by the First Amendment? Second, did CPD violate the Fourth Amendment when officers searched Mr. Bellator's dorm room without a warrant? We answer both questions in the negative.

A. First Amendment

The First Amendment provides, "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. Through the Fourteenth Amendment, this protection for free speech applies beyond the federal government to state and local governments as well.[6]

The right to freedom of speech codified in the First Amendment is not unlimited, however; numerous permissible restrictions on the right have been recognized by the Supreme Court over the years. At issue is whether the speech in the instant case is protected in context of the ever present tension between the right of one to freely express themselves and the authority of the

[3] A motion to suppress is a motion filed by a criminal defense attorney when there is a good faith argument that the evidence was illegally obtained through an unlawful search or seizure. The goal of a motion to suppress is to have the judge exclude the evidence against the defendant from trial, pursuant to *Mapp v. Ohio*, 367 U.S. 643 (1961) (evidence seized unlawfully, without a search warrant, cannot be used in criminal prosecutions in state courts).

[4] After the prosecution rested at trial, Mr. Bellator's defense counsel made a motion for judgment of acquittal (JOA) pursuant to Frankfurt's Rule 3.19 of Criminal Procedure which provides that, if at the close of all the evidence in a cause, the court is of the opinion that the evidence is insufficient to warrant a conviction, it shall, upon motion of the defendant enter a judgment of acquittal. In support thereof, defense counsel, Vinnie Gambini, argued that Mr. Bellator's conduct was protected speech under the First Amendment of the United States Constitution and as such did not constitute criminal conduct.

[5] Both the prosecution and the defense stipulated that if Mr. Bellator's chant was protected by the First Amendment, the charges would not have been brought.

[6] State universities and colleges are public institutions, which are funded by federal or state money and as such are agents of state or federal government.

government to protect the public. Relevant here are three such restrictions: incitement, true threats, and fighting words.

i. Incitement

Mr. Bellator's speech fell within the unprotected speech category of incitement. Speech is not protected when it is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). These are such words "which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). Here, Mr. Bellator did just that. He knew, or should have known, particularly based on the crowd's reaction and his attendance at prior protests, that the phrase "From sea to sea, Atlantis shall be free" was highly contentious. In the middle of a heated protest confrontation with his political adversaries, Mr. Bellator rallied his side, stirring them up to rage and action. Further, Mr. Bellator's statements before the chant shows that the immediate resulting unlawful riot was precisely his intent. Mr. Bellator was not ignorant. He was aware of the violent protests preceding his rally. Despite this, he chose to incite his side to violence and unlawful action against both the counter-protesters, Olympian and/or Olympian American students, faculty, and his own university.

Recently, the Fifth Circuit Court of Appeals found that conduct strikingly similar to Mr. Bellator's could constitute incitement. *See Doe v. Mckesson*, 71 F.4th 278 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 913 (2024). In *Mckesson*, an alleged protest leader, Mckesson, was sued for purportedly planning a Black Lives Matter protest that spiraled into a riot. The complaint averred that Mckesson was "in charge" of the protest; "gave orders" to the protesters; failed to "stop, quell, or dissuade" the riot; "incited the violence"; and directed the crowd. The rioters blocked a highway, and one unidentified rioter threw a rock or piece of concrete, injuring the plaintiff. The plaintiff sued Mckesson, in part, on the theory that he incited the riot. The Fifth Circuit agreed that, if the plaintiff's allegations were true, Mckesson's actions would be incitement. "Mckesson organized and directed the protest in an unsafe manner such that it was likely that a violent confrontation with the police would result, and in fact did result." *Id.* at 293. "[A]ctions that encourage legitimate expressive activity . . . are protected by the First Amendment, and actions that provide for unlawful behavior . . . are not." *Id.* at 294.

If Mckesson's conduct can qualify as incitement in *Mckesson*, then Mr. Bellator's conduct can as well. Like Mckesson, Mr. Bellator led a protest that devolved into a riot. Remember, Mr. Bellator was president of SAS, which organized this protest. Further, Mr. Bellator, just like Mckesson, failed to stop or dissuade the riot. Rather, he caused the riot by inciting the crowd with the chant that he knew (or certainly should have known) would inflame passions. Holding Mr. Bellator accountable for organizing and directing a "protest in an unsafe manner such that it was likely that a violent confrontation with the police would result, and in fact did result" does not offend the First Amendment. *Id.* at 293.

ii. True Threats

Additionally, Mr. Bellator's speech fell within the unprotected speech category of true threats. "'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group

of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). The facts of *Black* are particularly relevant. In that case, Virginia had made it a crime to burn a cross (a gesture commonly used by the Klu Klux Klan to intimidate African Americans and other minorities) with the intent to intimidate. The Supreme Court held that, while Virginia was not allowed to ban cross burning *per se*, it was allowed to ban cross burning when done with this intent. In other words, the Supreme Court held that Virginia could lawfully ban such expressive conduct because it constituted a "true threat" under the First Amendment.

Recently, the Supreme Court has elaborated on the test for true threats. In *Counterman v. Colorado*, 600 U.S. 66 (2023), the Supreme Court reversed the conviction of a man who had sent arguably threatening Facebook messages to a local singer. The *Counterman* Court explained that, "[w]hether the speaker is aware of, and intends to convey, the threatening aspect of the message is not part of what makes a statement a threat . . . [t]he existence of a threat depends not on the mental state of the author, but on what the statement conveys to the person on the other end." *Id.* at 74 (quotations omitted). To convict a defendant of a crime based on a true threat, however, the government needs to prove that the defendant acted recklessly, i.e., "that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Id.* at 69.

In this case, Mr. Bellator knew that the chant "From sea to sea, Atlantis shall be free" communicated the intent to unlawfully wipe out all Olympians from their homeland. That Mr. Bellator did not carry out that threat is of no import. "The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur." *Black,* 538 U.S. at 359–60 (quotations omitted) (alteration adopted). Further, Mr. Bellator demonstrated a clear intent to intimidate; he stated "we need to make these genocidal murderers feel the violence they inflicted upon us" and "Death to the murderers" shortly before beginning this chant. Thus, Mr. Bellator satisfied the recklessness standard from *Counterman*; he explicitly expressed the desire for Olympians to feel threatened by his speech. Mr. Bellator's speech was thus unprotected as a true threat against Olympians.

iii. Fighting Words

Finally, Mr. Bellator's speech was unprotected fighting words. "States are free to ban the simple use, without a demonstration of additional justifying circumstances, of so-called 'fighting words,' those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." *Cohen v. California*, 403 U.S. 15, 20 (1971). The facts here demonstrate that ordinary citizens, like Mr. Bellator, would be well aware that the chant uttered was a personally abusive epithet against Olympian students. Mr. Bellator also knew that, as a matter of common knowledge given the violent protests all over this and other campuses, such a chant would be inherently likely to provoke violent reactions.

Any one of these exceptions would be sufficient to place Mr. Bellator's speech outside of the protections of the First Amendment. His speech fell under all three exceptions. Thus, we uphold

the ruling of the trial court and affirm Mr. Bellator's conviction for breach of peace/disorderly conduct.

B. Fourth Amendment Analysis

The Fourth Amendment provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." U.S. Const. amend. IV. The Founders conceived the Fourth Amendment in effort to cure the evils of general warrants, as each search and seizure should be approved in advance by a neutral and impartial magistrate, based on the government's showing of probable cause to justify the search or seizure. During the last century, the Supreme Court has held that if the police seize evidence as part of an illegal search, the evidence cannot be admitted into court. This "Exclusionary Rule" deems such evidence inadmissible as "fruit of the poisonous tree." There are however, exceptions to the warrant requirement, and warrantless searches are reasonable if they fall within a recognized exception.

We turn to Mr. Bellator's motion to suppress the firearm and unlawful ID found by CPD. The crux of this issue is whether CPD unreasonably searched and seized the firearm and unlawful ID because it did not secure a warrant prior to doing so. The Fourth Amendment issue is straightforward. First, did Mr. Bellator demonstrate a subjective expectation of privacy in his dorm room that society would deem objectively reasonable? And if so, is there a recognized exception that justifies the warrantless search?

In *Katz v. United States*, 389 U.S. 347 (1967), Justice Harlan delineated the two-pronged test for identifying a "reasonable expectation of privacy" in his concurring opinion. This test has become the standard for evaluating whether a criminal suspect demonstrates a reasonable expectation of privacy deserving of Fourth Amendment protections. That fundamental test holds that, to conclude that a person is entitled to constitutional protection, courts consider: (1) whether the person, by his or her conduct, exhibited a subjective or actual expectation of privacy; and (2) whether that person's subjective expectation of privacy is one that society will objectively recognize as reasonable. Simply put, such an expectation must be one that is both subjectively understood by the individual and objectively recognized by society at-large.

The degree of privacy enjoyed by U.S. citizens must be guarded against unreasonable intrusion by law enforcement. A reviewing court must determine whether a search, as defined under the Fourth Amendment, rises to the level of a legal "search" mandating a warrant, and if so, whether an exception justifies the absence of a warrant.

We acknowledge the fact that courts have compared dormitory rooms to apartments or hotel rooms and provided Fourth Amendment protection. *See Devers v. Southern University,* 712 So. 2d 199 (1998) ("A dormitory room is a student's house for all practical purposes, and a student has the same interest in the privacy of his room as any adult has in the privacy of his home,

dwelling, or lodging”). Both parties have stipulated as much.[7] However, the extent of Fourth Amendment protections varies based on specific circumstances and legal precedents.

Pursuant to *Katz*, it is unconstitutional for law enforcement to conduct a search and seizure without a warrant where one has a reasonable expectation of privacy *unless* certain exceptions apply. In determining whether there is a valid exception we must look at the totality of the circumstances and balance the individual’s rights of privacy against the government’s need to gather evidence and apprehend criminals. Thus, we turn to applicable exceptions to the warrant requirement.

i. Exigency/Hot Pursuit

To determine whether an emergency situation existed that would justify an officer acting without a warrant, courts look at the totality of circumstances. Thus, when exigent circumstances exist, securing a warrant is neither practicable nor legally required. For instance, if an emergency situation requires swift action by law enforcement to prevent imminent danger to life, serious damage to property, the imminent escape of a suspect, or destruction of evidence, then the exception of exigency relieves law enforcement from securing a warrant. *See Brigham City v. Stuart*, 547 U.S. 398, 406 (2006) (finding officers’ entry into a home to provide emergency assistance “plainly reasonable under the circumstances”); *Illinois v. Mc-Arthur*, 531 U.S. 326, 331 (2001) (concluding that a warrantless seizure of a person to prevent him from returning to his trailer to destroy hidden contraband was reasonable due to exigency). When law enforcement engages in “hot pursuit” of a fleeing suspect they are afforded the opportunity to do so without a warrant. In determining whether the law enforcement officer acted appropriately, courts will typically look at the time when the officer makes the warrantless search or seizure to evaluate whether at that point in time a reasonable officer at the scene would believe it is urgent to act and impractical to secure a warrant. Courts may also consider whether a reasonable police officer would have believed their safety or others’ safety was threatened, and whether there was a serious crime involved.

Given the weapons concealed on the other E-Board members, CPD understood that a prompt response to the potential danger posed was crucial. Additionally, the CPD was aware that summer break at FSU was imminent. Evidence of criminal activity could be lost or destroyed when students leave campus. And if an officer reasonably concludes there is no time to obtain a warrant, that officer must be allowed to order a warrantless search.

The Supreme Court held in *United States v. Santana,* 427 U.S. 38 (1976), that exigent circumstances exception to the Fourth Amendment's warrant requirement applies to an officer-created exigency if the exigency does not arise from the officer's *unreasonable* or unconstitutional conduct. The *Santana* Court explained that under the exigent circumstances doctrine, officers may enter a home without a warrant although a prerequisite to gaining entry into a residence without a warrant under the doctrine is that the officers must have probable cause to believe that dangerous or suspicious activity is currently taking place.

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[7] Both parties have stipulated that Mr. Bellator had a reasonable expectation of privacy in his dorm room, and that a search was conducted. Thus, these issues are not before this Court.

In *Santana*, an undercover police officer arranged to buy illegal drugs from a suspect. When officers approached Santana's home, Santana was standing in the open doorway, holding a paper bag. As the officers shouted "police," Santana attempted to retreat into the house. The police apprehended Santana in the vestibule and arrested her, at which time packets of heroin fell out of the bag and the marked money used by law enforcement during the drug buy was found in her pockets. The Court found that the police had engaged in hot pursuit and cited *Warden v. Hayden*, 387 U.S. 294 (1967), in which the Court recognized the right of police to perform a warrantless entry into a home to arrest a robber and search for weapons. The Supreme Court, in *Santana*, made it clear that hot pursuit, although it must involve a "chase," need not "be an extended hue and cry in and about the public streets." *Id*. at 43. The High Court held that a suspect may not defeat an arrest, which has been set in motion in a public place, by retreating to a private place, even if that is one's home.

Similarly, in the instant case, the arrest began in a public place. The CPD attempted to apprehend Mr. Bellator at the protest. However, he escaped before the officers could execute an arrest. Any delay in arresting Mr. Bellator was because the officers were required to remain on scene to control the crowd and make arrests in effort to bring the riot to an end. Further, the CPD officers, once they caught a glimpse of Mr. Bellator entering his dormitory, renewed their pursuit. Although dormitories are typically treated as one's home and thus deserving of Fourth Amendment protections, Mr. Bellator could not thwart an arrest by concealing his whereabouts in his dorm room.

Although the Fourth Amendment ordinarily requires that police officers get a warrant before entering a home without permission, an officer may make a warrantless entry when "the exigencies of the situation" create a compelling law enforcement need. *See Kentucky v. King*, 563 U. S. 452, 460 (2011). Thus, before gaining entrance to a residence without a warrant under the doctrine of exigent circumstances, officers must have probable cause to believe dangerous or suspicious activity is taking place. Warrantless entry is constitutionally permissible if the officers are pursuing a fleeing suspect, seeking to prevent the destruction of evidence, or preventing potential harm to others — provided the officers do not create the urgent or exigent circumstances in effort to justify the warrantless entry. Our dissenting brothers' suggestion that the CPD created exigency in the case at bar, with respect, is misguided. The instant facts make clear that Mr. Bellator fled the riot, sought refuge in his dorm, and was part of a dangerous cabal (many of whom were arrested for felony assault and battery and were found to be in possession of dangerous weaponry). Further, it was the chant repeatedly uttered by Mr. Bellator that ratcheted up the protest and led to the melee.

Moreover, before entering Mr. Bellator's dorm room, the officers heard what sounded like a window opening, which either could have been associated with the destruction of evidence or Mr. Bellator's potential escape. Nothing in the facts indicate that the CPD created an exigency in effort to justify warrantless entry.

Justice Barry further argues that the CPD had sufficient time to obtain a warrant; however, the officers had sufficiently developed probable cause to arrest Mr. Bellator before entering his room. "Faulting the police for failing to apply for a search warrant at the earliest possible time after obtaining probable cause imposes a duty that is nowhere to be found in the Constitution." *Id.* at 467. Our dissenters fail to acknowledge that the CPD officers were required to remain on scene to assist with crowd control and arrests. At their first opportunity, after the protesters were

disbanded and the situation was quelled, they proceeded to Mr. Bellator's dorm room to execute an arrest; thus the CPD officers did not need a warrant.

In the case at bar, Mr. Bellator essentially fled the riot after being ordered to stop chanting. Thereafter, Mr. Bellator sought refuge in the closet of his dorm room after CPD entered the common area of his dormitory. CPD was in an active manhunt for Mr. Bellator when they observed him enter the dormitory building. Clearly, Mr. Bellator was attempting to conceal his whereabouts and avoid arrest. Therefore, Mr. Bellator is not deserving of Fourth Amendment protection for his criminal behavior and attempt to elude authorities. It was he, not the CPD officers, who created the exigency.

The dissent relies on *Lange v. California*, 141 S.Ct. 2011 (2021) in refusing to find that neither exigent circumstances nor hot pursuit excuse the warrantless entry of a misdemeanant's home. However, with respect, our esteemed dissenters misread the application of *Lange*. The Court, in *Lange*, clarified that a great many misdemeanor pursuits involve exigencies allowing warrantless entry and that whether a given one also allows so turns on the particular facts of the case. Here, Mr. Bellator had been part of a protest that became violent after he incited the crowd with his provocative chant. Thus, although Mr. Bellator was allegedly accused of a misdemeanor, the facts surrounding his criminal conduct cannot be ignored and more than justify the warrantless entry.

ii. Plain View

The plain view doctrine is an exception to the Fourth Amendment's right to be free from unreasonable, warrantless searches and seizures. When an officer is in a place he/she has the authority to be and has lawful authority to access or observe clearly visible evidence of a crime, it may be seized without a warrant. A warrantless home arrest is justified if police have probable cause to make the arrest, exigent circumstances necessitate entering the home, and the police did not create the exigent circumstances. *State v. Walker,* 62 A.3d 897 (N.J. 2013).

Moreover, the discovery of such evidence need not be inadvertent as per the U.S. Supreme Court's holding in *Horton v. California,* 496 U.S. 128 (1990). Simply put, officers can intentionally situate themselves where they believe they will observe a crime or find evidence and may obtain evidence without a warrant if the evidence is found in plain sight. In the case at bar, the officers, as our dissenting brethren incorrectly assert, did not violate any laws nor Mr. Bellator's constitutional protections by entering his dorm room. In *Horton*, the officer had a warrant to enter the suspect's home to seize property stolen through an armed robbery. Although the officer did not find the stolen goods, he found the weapons suspected of being used by the robber. The Court held that the evidence was properly seized pursuant to the plain view doctrine despite the fact that the warrant was not for weapons. The dissenters erroneously assert that, because the CPD had no arrest warrant, they were not legally in Mr. Bellator's private dorm room. The dissent fails to acknowledge that the officers had probable cause to arrest Mr. Bellator and were acting pursuant to exigent circumstances. Therefore, they were lawfully on the premises even in the absence of a warrant. Further, the bag which contained the partially exposed firearm and unlawful ID were left in an open drawer and in plain sight for the most casual observers.

When the police have a legal right to be where they are and they find incriminating evidence, regardless of whether the evidence was found inadvertently, the police may seize the evidence without a warrant under the plain view doctrine as per *Horton*. In the instant case, the CPD officers had a legal right to be in Mr. Bellator's dorm room. The officers were in Mr. Bellator's dorm room to effectuate his arrest. Based on his conduct at the riot, it was reasonable to presume that he may potentially be armed and dangerous. Officer McLoud was not actively searching the room or the desk when he found the brown paper bag which contained the firearm and unlawful ID. Rather, he inadvertently observed them while in the dorm room immediately after executing a lawful arrest.

iii. Consent

In determining whether consent, provided directly by a suspect or third party, was objectively reasonable, courts must look at the totality of the circumstances. Put another way, in measuring the validity and scope of consent, would a typical officer have understood the consent to be legitimate? The question before us then is whether it was reasonable for CPD to consider Mr. Bellator's roommate's consent to the common area — when coupled with the fact that Mr. Bellator's dorm room door was open — as also forming consent to enter Mr. Bellator's individual dorm bedroom. When an occupant of the dwelling consents to police entry, and the co-occupant does not object, a search is constitutional. In the instant case, Mr. Trace freely and voluntarily allowed the CPD to enter the dormitory. Mr. Bellator, although present beyond an open door just adjacent to the common area, neither closed his door nor refused CPD's entry. *See Fernandez v. California*, 571 U.S. 292 (2014) (an occupant's consent to search is effective under the Fourth Amendment as long as no other occupant who objects to the search is physically present). Moreover, the Supreme Court in *Fernandez* opined that, "Consent searches are part of the standard investigatory techniques of law enforcement agencies" and are "a constitutionally permissible and wholly legitimate aspect of effective police activity." *Id.* at 298 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 232 (1973)). The Court went further, stating that "It would be unreasonable—indeed, absurd—to require police officers to obtain a warrant when the sole owner or occupant of a house or apartment voluntarily consents to a search." *See id.* at 299. The Court in *Fernandez* relied in part on *United States v. Matlock*, 415 U.S. 164 (1974), where the Court held that the voluntary consent of any joint occupant of a residence to search jointly occupied premises is valid against the co-occupant.

The warrantless entry into a home and a subsequent search are constitutional where the police reasonably believe that the person consenting to their presence has the authority to do so even where no such authority exists. *See Illinois v. Rodriguez*, 497 U.S. 177 (1990). In *Rodriguez*, Justice Scalia opined that the Fourth Amendment only guarantees that evidence obtained from searches conducted *unreasonably* will be excluded at trial. Justice Scalia went further, finding that nowhere throughout constitutional jurisprudence has it been held that, to be reasonable, the government's beliefs must be proven correct. We find that CPD's reliance on the consent of the roommate, Mr. Trace, was reasonable. Moreover, regardless of whether Mr. Trace was actually a "roommate" of Mr. Bellator, the CPD reasonably relied on his authority to permit a search. The facts of the instant record wholly support the CPD's reasonable belief that Mr. Trace had apparent authority to consent to a search. The configuration of the dormitory is such that Mr. Trace was more akin to a housemate and thus authorized to give consent to law enforcement.

The dissent suggests that the "cure" to an unconstitutional search is a warrant. However, in the instant case, a warrant was not necessary because this court finds it was objectively reasonable for CPD to rely on the consent of Mr. Bellator's roommate to enter the common area and then the private area, although this was unnecessary given the officers' probable cause to make an arrest, which was sufficient to justify entry. The facts are "judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *See Terry v. Ohio,* 392 U.S. 1, 21-22 (1968). In the instant case, probable cause to arrest and search Mr. Bellator's dorm room meets the probable cause standard as outlined by the Supreme Court.[8]

III. DISSENTING OPINION

Justice BARRY, dissenting.

I must respectfully disagree with the majority. Mr. Bellator's convictions are an affront to both the First and Fourth Amendments. Accordingly, I would reverse both convictions.

A. First Amendment

Frankly, I am shocked that the majority attempts to shoehorn Mr. Bellator's speech into unprotected categories of speech that are famously narrow. As a matter of first principles, "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). Sadly, my friends in the majority do exactly what the Supreme Court has warned against: banning speech simply because society finds it offensive or disagreeable.

i. Incitement

Addressing these categories one-by-one, incitement plainly is inapplicable here. There is no factual evidence that Mr. Bellator intended to provoke a riot. His social media use, plus the general use of his controversial chant by activists writ large, demonstrate that Mr. Bellator was simply shouting a political slogan. The record is devoid of any plan, purpose, intent, or desire to start a riot. Under *Hess v. Indiana*, 414 U.S. 105 (1973), Mr. Bellator's speech is thus protected. In *Hess*, the Supreme Court reversed the disorderly conduct conviction of a protester at an anti-war demonstration who yelled, "We will take the [censored] street later." *Id.* at 107. The Supreme Court explained, "At worst, it amounted to nothing more than advocacy of illegal action at some indefinite future time. This is not sufficient to permit the State to punish [the] speech." *Id.* at 108. Here, even if Mr. Bellator's speech was advocating illegal action against Olympia at some indefinite future time, his speech is still protected under the First Amendment. Furthermore, the *Hess* Court explained that incitement only occurs when the speech is "directed to any person or group of persons." *Id.* Here, Mr. Bellator was merely chanting a slogan at a

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[8] Probable cause is a requirement found in the Fourth Amendment that must usually be met before police make an arrest, conduct a search, or receive a warrant. Courts usually find probable cause when there is a reasonable basis for believing that a crime may have been committed (for an arrest) or when evidence of the crime is present in the place to be searched (for a search). Under exigent circumstances, probable cause can also justify a warrantless search or seizure. Persons arrested without a warrant are required to be brought before a competent authority shortly after the arrest for a prompt judicial determination of probable cause.

rally. There is no evidence that Mr. Bellator was directing the chant to any specific person or group of persons. Finally, Mr. Bellator had no reason to anticipate an imminent riot. No riot erupted when he used the phrase on social media, so how was he to know or expect one to happen when he said it at a peaceful rally? In sum, *Hess* firmly closes the door on the majority's contrived attempt to squeeze Mr. Bellator's speech into the category of incitement.

If *Hess* was not enough, *Watts v. United States*, 394 U.S. 705 (1969), further demonstrates the error in the majority's reasoning. In *Watts*, the Supreme Court reversed the conviction of a defendant who, in protesting the Vietnam War draft, stated, "If they ever make me carry a rifle the first man I want to get in my sights is L.B.J. [i.e., then-President Lyndon B. Johnson]" *Id.* at 706. The Supreme Court explained that "the kind of political hyperbole indulged in by [the defendant]" did not constitute a true threat. *Id.* at 708. "[D]ebate on public issues should be uninhibited, robust, and wideopen, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id.* In this case, Mr. Bellator only engaged in the same kind of "political hyperbole" protected by *Watts*. His speech may have been "vehement, caustic, and sometimes unpleasantly sharp," but it is still protected by the First Amendment.

Similarly, the Sixth Circuit rejected an incitement claim in *Nwanguma v. Trump*, 903 F.3d 604 (6th Cir. 2018). In response to protesters at a campaign rally, President Donald Trump told the audience "get 'em out of here," resulting in the protestors being evicted. *Id.* The protestors were allegedly injured by other attendees as they were escorted out of the event. The protestors sued Trump, arguing that his speech was incitement and thus not protected by the First Amendment. *Nwanguma* rejected this argument. The court noted that, "Trump's words may arguably have had a tendency to encourage unlawful use of force, but they did not specifically advocate for listeners to take unlawful action and are therefore protected." *Id.* at 610. Here, Mr. Bellator's speech did not specifically advocate for any of his listeners to take unlawful action. He did not tell them to riot or destroy property. At worst, his chant was merely an indefinite call for the violent destruction of Olympia. One cannot argue that Mr. Bellator was specifically instructing his listeners to travel all the way to Olympia to overthrow it (and even if he was, such advocacy would certainly not be imminent, meaning the advocacy would not constitute incitement under the *Brandenburg* standard). It does not matter if listeners chose to interpret Mr. Bellator's words as inflammatory; his statement did not specifically encourage listeners to take any imminent, unlawful action.

As for the majority's reliance on *Doe v. Mckesson*, that case is inapplicable here. In *Mckesson*, Mckesson was sued in civil court for his oversight and organization of a riot. Here, Mr. Bellator is charged for something he said: a political slogan. The facts of this case are far closer to *Hess* (a controlling precedent of the Supreme Court) than *Mckesson* (a merely persuasive case from the Fifth Circuit that does not bind this Court).

ii. True Threats

Likewise, this was not a true threat. Mr. Bellator was not threatening anyone. Like many activists, he only used the phrase as an aspirational chant. Granted, Olympians may perceive this chant differently and feel threatened, but, as the Supreme Court has said:

> [A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute . . . is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.

Terminiello v. Chicago, 337 U.S. 1, 4 (1949). "Speech cannot . . . be punished or banned, simply because it might offend a hostile mob." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–35 (1992). Here, Mr. Bellator made no specific, direct, or definite threat against anyone. His chant is, at worst, communicating an indefinite future desire for the violent overthrow of Olympia. Even in that worst light, Mr. Bellator's speech is not a threat.

As for the majority's use of *Virginia v. Black*, the majority glosses over the key fact that differentiates that case from the facts here. In *Black*, even though the Court recognized that "the burning cross often serves as a message of intimidation, designed to inspire in the victim a fear of bodily harm," it did not categorically allow Virginia to ban cross burning. *See* 538 U.S. at 357. In other words, just because something can be (and often is) a threat, that does not mean that it always is a threat; and the state cannot categorically ban that speech. The majority ignores this crucial distinction, and its holding would have the effect of making the chant "From sea to sea, Atlantis shall be free" an inherently illegal phrase to ever say. Neither the First Amendment nor the Supreme Court allow for this result.

iii. Fighting Words

This reasoning applies to the notion of fighting words as well. As the Supreme Court has explained, free speech protects "unwelcome views and ideas which cannot be totally banned from the public dialogue." *Cohen,* 403 U.S. at 21. Frankfurt cannot ban Mr. Bellator's chant simply because Olympian students find the chant offensive and unwelcome. To hold otherwise is to allow a heckler's veto, something the First Amendment does not permit.

Furthermore, "[o]ffensive statements made generally to a crowd are not excluded from First Amendment protection; the insult or offense must be directed specifically at an individual." *Bible Believers v. Wayne Cnty., Mich.*, 805 F.3d 228, 246 (6th Cir. 2015). In other words, speech constitutes fighting words only if an "individual actually or likely to be present could reasonably have regarded the words . . . as a direct personal insult." *Cohen,* 403 U.S. at 20. Here, there is no evidence that Mr. Bellator directed his chant as a personal insult to any individual. His general chant to a crowd cannot constitute fighting words.

Thus, I would hold that Mr. Bellator's chant, while offensive to many, is still First Amendment protected speech.

B. Fourth Amendment Analysis

Due to the majority's shoehorned application of exceptions to the Fourth Amendment and failure to extend Fourth Amendment protections to Mr. Bellator, I respectfully dissent.

While there is no absolute prohibition on warrantless searches, the constitutional preference for warrants is so strong that searches and seizures without a warrant are *per se unreasonable* under the Fourth Amendment. The Amendment evinces a "strong preference for searches conducted pursuant to a warrant." *Illinois v. Gates*, 462 U.S. 213, 236 (1983). The Supreme Court has made clear that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions." *U.S. v. Borostowski*, 775 F.3d 851 (7th Cir. 2014) (quoting *Schneckloth*, 412 U.S. 218).

The courts have found that the ultimate touchstone of the Fourth Amendment is reasonableness. Although searches and seizures inside a home without a warrant are presumptively unreasonable, I concede that this presumption can be overcome by various exceptions to the Fourth Amendment's warrant requirement.

The Fourth Amendment protections serve as a necessary deterrent for unreasonable police practice to which the innocent *and guilty* are entitled. As Justice Benjamin Cardozo so eloquently pointed out, "The criminal is to go free because the constable has blundered." *People v. Defore,* 242 N.Y. 13 (1926). Professor Wigmore expounds on this concept in his preeminent treatise on American law:

> Titus, you have been found guilty of conducting a lottery;
> Flavius, you have confessedly violated the constitution.
> Titus ought to suffer imprisonment for crime, and
> Flavius for contempt. But no! We shall let you both go
> free. We shall not punish Flavius directly, but shall
> do so by reversing Titus' conviction. This is our way
> of teaching people like Flavius to behave, and of teaching
> people like Titus to behave, and incidentally of securing
> respect for the Constitution. Our way of upholding the
> Constitution is not to strike at the man who breaks it, but to
> let off somebody else who broke something else.[9]

The majority recognizes that the Parties have stipulated that Mr. Bellator had an objectively reasonable expectation of privacy in his dormitory and desk drawer, thus, a search occurred. Therefore, I turn to whether a valid exception to the Fourth Amendment justified the CPD's warrantless entry into Mr. Bellator's residence. I can find no legitimate exception.

i. Exigency/Hot Pursuit

The chief concern underlying the Fourth Amendment is directed toward giving police officers unbridled discretion to rummage at will among a person's private effects. If the government

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[9] 8 Wigmore, Evidence (3d ed. 1940), § 2184.

obtains information by physically intruding on persons, houses, papers, or effects, a trespass search has occurred. Justice Scalia, in *Jones v. United States*, 565 U.S. 400 (2012), restored a property-based approach to the Fourth Amendment. Pursuant to *Jones*, one need not demonstrate a reasonable expectation of privacy if law enforcement unlawfully intrude or trespass upon their houses, papers and effects.

In *Florida v. Jardines,* 569 U.S. 1 (2013), the Court deemed the police's use of a drug sniffing dog on the front porch of a suspect's residence, despite law enforcement never entered the home, an unconstitutional search, in violation of the Fourth Amendment. Because law enforcement obtained information by physically intruding on Jardines' property, the Court held there was no need to determine whether Jardines' expectation of privacy was intruded upon under *Katz*. The officers were gathering information in an area belonging to Jardines and immediately surrounding his house — the curtilage, which enjoys the same protection as the home itself. And they gathered that information by physically entering and occupying the area to engage in conduct not explicitly or implicitly permitted by the homeowner. Here, CPD actually intruded upon Mr. Bellator's home (his dorm room), as they failed to remain on the outside of Mr. Bellator's private residence. Thus, they were far more intrusive than the officers in *Jardines*. A trespass occurred similar to that in *Jardines*, a fact which dictates that the search in the instant case be deemed a Fourth Amendment violation.

Justice Scalia's opinion in *Jones* highlights the similarities between *Jones* and the case at bar:

> It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted." *Entick v. Carrington*, 95 Eng. Rep. 807 (C. P. 1765), is a "case we have described as a 'monument of English freedom' 'undoubtedly familiar' to 'every American statesman' at the time the Constitution was adopted, and considered to be 'the true and ultimate expression of constitutional law'" with regard to search and seizure. *Brower v. County of Inyo*, 489 U. S. 593, 596 (1989) (quoting *Boyd v. United States*, 116 U. S. 616, 626 (1886)). In that case, Lord Camden expressed in plain terms the significance of property rights in search-and-seizure analysis: "[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbor's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbor's ground, he must justify it by law." *Entick*, *supra,* at 817.

565 U.S. at 404.

The actions of the CPD clearly constituted a physical intrusion for the purpose of obtaining information — which, as per *Jones*, is not reasonable. Like in *Jones*, Officer McLoud physically remained in Mr. Bellator's dorm room to engage in a fishing expedition for potential evidence. Moreover, while the record makes clear that the campus police were on a "manhunt" after the protest, we must still examine the underlying offense for which Mr. Bellator was being pursued. It is not lost on the dissenters that Mr. Bellator was wanted merely for an alleged breach of the peace based on his exercising his right to free speech. The record is devoid of any allegations

associating Mr. Bellator with any violent or threatening behavior. He shouted out a symbolic slogan. Although the slogan may offend the sensibilities of some, it did not justify a warrantless search based on exigency. A well orchestrated "manhunt" in advance of a warrant being issued vitiates a claim of exigency based on the totality of the circumstances.

As per *Mincey v. Arizona*, 437 U.S. 385 (1978), facts supporting a claim of exigency by law enforcement must be heightened. "Protections of the Fourth Amendment must not be set aside simply because it would make investigating a crime more convenient." *Id*. at 393-394. In that case, a homicide was committed at Mincey's apartment, which was searched without a warrant. Despite the gravity of the crime, which involved the murder of a law enforcement officer, the Court held that a warrant was required to search Mincey's apartment. The Court pointed out that law enforcement could have easily obtained a warrant and although a warrantless search of a homicide crime scene may have been more convenient, the warrantless search was unconstitutional. The Court went further, explaining that "the mere fact that law enforcement may be made more efficient can never, by itself, justify disregard of the Fourth Amendment." *Id.* at 393. The Court noted that the "investigation of crime would always be simplified if warrants were unnecessary"; however, "[t]he Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law." *Id.* (citing *United States v. Chadwick*, 433 U.S. 1 (1977)). The *Mincey* Court further asserted that warrants are generally required to search a person's home or his person unless "the exigencies of the situation" make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment. *Id.* at 394 (quoting *McDonald v. United States,* 335 U. S. 451, 456 (1948)). In the instant case, there are no compelling circumstances justifying the warrantless search of Mr. Bellator's private dorm room or desk drawer. The search conducted by CPD may have been convenient and efficient, but it certainly was not based on exigency and thus unconstitutional. Further, the CPD officer who seized the firearm and unlawful ID did not search the drawer until *after* Mr. Bellator had been arrested and removed from the room. Therefore, no exigency persisted at that point because there was no threat of destruction of evidence. Had the CPD officers remained concerned about evidence of criminality at that point, they could have secured the premises and sought a warrant.

Kentucky v. King, 563 U.S. 452 (2011), a case relied upon by the majority, can easily be distinguished. The Court in *King* found "no evidence that the officers either violated the Fourth Amendment or threatened to do so prior to the point when they entered the apartment." In *King*, the officers "banged on the door as loud as they could and announced either 'Police, police, police' or 'This is the police.'" *Id*. at 471. In the instant case, unlike in *King*, and *Santana* (another case cited by the majority), the CPD officers never announced themselves. Nor did they knock on Mr. Bellator's dorm room door before entering his private room. The CPD officers could have announced themselves and asked for Mr. Bellator to come out of his room, which would have given them an opportunity to arrest him without having to enter his room and without incident. Moreover, the CPD officers denied themselves the opportunity of a consensual encounter. Perhaps Mr. Bellator, had he been asked, would have voluntarily consented to their entry and search. Further, they had ample time to seek a warrant prior to going to, or entering, Mr. Bellator's residence, unannounced. Instead, the CPD officers created an opportunity to claim exigency due to their own conduct.

Absent exigent circumstances, police cannot enter a home without a warrant in pursuit of a fleeing misdemeanant. *See Lange*, 141 S. Ct. 2011. The *Lange* Court held that the hot-pursuit exception does not *categorically* apply to fleeing misdemeanants although the Court indicated that some circumstances may justify the pursuit of those suspected of committing misdemeanors. The facts in the instant case certainly do not defeat the warrant requirement. Mr. Bellator was merely accused of a misdemeanor for chanting an innocuous phrase over a megaphone. In *Lange*, the suspect was arrested for driving under the influence, a much more serious crime than breach of peace/disorderly conduct. Despite this fact, the Court refused to find that DUI was the type of offense that excused a warrantless entry even when a DUI suspect retreats into his home after being pursued by the police. The facts of *Lange* are eerily similar to the facts herein. Both suspects were accused of minor crimes and retreated into their homes, thus, the warrantless entry in the instant case was neither justified by hot pursuit nor exigent circumstances. Further, three (3) hours passed before CPD pursued Mr. Bellator. The expiration of several hours can hardly be deemed "hot" pursuit. The totality of circumstances clearly vitiate the exigency/hot pursuit exception.

ii. Consent

When the State justifies a search on the basis of a suspect's consent, the Fourth Amendment requires that it demonstrate the consent was in fact voluntary. Voluntariness is to be determined from the totality of the surrounding circumstances. *See Schneckloth*, 412 U. S. at 227. The touchstone of the Fourth Amendment is reasonableness. Voluntary consent of someone who has actual or apparent authority over the place to be searched is a reasonable exception. However, in the instant case, Mr. Trace, had no such authority. Thus, the CPD required a warrant before searching Mr. Bellator's dorm or any contents therein. The CPD never sought Mr. Bellator's consent. Therefore, he never freely and voluntarily consented to the search of his dorm room or any effects contained therein, making the instant search unreasonable. The burden of proof rests with the prosecution to demonstrate the lawfulness of a warrantless search based on consent; a burden it cannot satisfy based on the facts of the instant records.

We must consider when and whether the consent of a third party is sufficient to replace the consent of an actual suspect. A third party can consent to a search to the detriment of another's privacy interest if the third party has actual authority over the place or thing to be searched. *See United States v. Matlock*, 415 U.S. 164 (1974). The third party may, in his own right, give valid consent when he and the absent, non-consenting person share "common authority" over the premises or property, or if the third party has some "other sufficient relationship" to the premises or property. *Id.* at 170–71. Common authority is shown by mutual use of the property by persons generally having joint access or control for most purposes. *Id.* at 171.

Mr. Trace, although he had authority to allow the CPD officers to enter the common areas, did not have the requisite legal authority to consent to the entry or search of Mr. Bellator's private dorm room. He had no joint access or control of Mr. Bellator's space. Moreover, a not so subtle nuance is that Mr. Trace and Mr. Bellator were neither related nor roommates. Had this been so, perhaps Mr. Trace's consent would have been sufficient for the police to rely upon in conducting the warrantless search. Our brethren in the majority rely on *Fernandez* and *Matlock* in finding that Mr. Trace's consent is sufficient to justify the warrantless search in the instant case. However, both cases are easily distinguishable as both cases dealt with co-occupants of the

residences searched. Here, Mr. Trace is not a co-occupant of Mr. Bellator's individual dorm bedroom. He merely lived in one of the other private three (3) units separated by the common area.

Mr. Trace had neither tacit nor explicit authority to provide consent on behalf of Mr. Bellator. Mr. Trace was nothing more than a *de facto* neighbor who lived in the next dorm room in the quad. The CPD officers had ample opportunity to seek Mr. Bellator's consent to search his private residence when they found him in his closet. Instead, they made no effort to make any such request before barging into his residence and searching his private desk drawer. What's more, CPD did not make any effort to even announce themselves or give warning of their entry prior to entering Mr. Bellator's private residence.

Moreover, the CPD officers made no effort to seek a warrant. The timeline makes it abundantly clear that they had more than enough time to seek a warrant for Mr. Bellator's arrest and search of his residence. The rally became violent at approximately 4:11 p.m., yet Officers McLoud and Barretta didn't go to Mr. Bellator's residence until around 7:00 p.m.. At this time, most of the protesters had already been evacuated and the protest had nearly been quelled. The majority's stance that an exigent circumstance existed due to the possibility of evidence being lost or destroyed when students left campus for summer vacation is, quite frankly, absurd. FSU's graduation ceremony was scheduled for four (4) days after the date of the protest, which marked the start of summer break, providing sufficient time for the CPD to secure a warrant. This timeline clearly undermines any assertion that exigent circumstances justified this warrantless search. It is also not lost on the dissenters that Mr. Bellator's arrest was not for any violent or victim-based crime. He was "wanted" merely for exercising his right to free speech. This context makes the warrantless search even more indefensible. We are reminded of the profound caution given by the distinguished Justice Oliver Wendell Holmes, who wrote "if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought -- not free thought for those who agree with us, but freedom for the thought that we hate." *United States v. Schwimmer*, 279 U.S. 644, 654-55 (1929). So, while Mr. Bellator may have taken a political and social position that offended the sensibilities of some, his arrest, in retrospect, could never have warranted a claim of exigency.

On balance, we must compare Mr. Bellator's "offense" to that of the suspect in *Mincey*, a man who brutally murdered a police officer. Just as this Court declined to find that the warrantless search of a cop killer's home was unconstitutional, here it cannot stand that a warrantless search of a residence occupied by one merely accused of exercising his constitutional right to free speech would be upheld. It appears lost on this Court, that Mr. Bellator participated in no violent behavior nor made any threats toward any attendee at the protest. He left the rally without incident and if the CPD believed him to be a threat to others they should have immediately pursued him regardless of any alleged or perceived need to remain on scene.

iii. Plain View

The plain view exception to the warrant requirement does not insulate the search and seizure in the instant case. *Collins v. Virginia,* clarifies the plain-view doctrine:

> "any valid warrantless seizure of incriminating evidence" requires that the officer "have a lawful right of access to the object itself." *Horton v. California*, 496 U. S. 128, 136–137 (1990); *see also id*., at 137, n. 7 ("'[E]ven where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure"); *Horton* (citing *Coolidge v. New Hampshire*, 403 U.S. 443 (1971)). ("It is one thing to seize without a warrant property resting in an open area . . . , and it is quite another thing to effect a warrantless seizure of property . . . situated on private premises to which access is not otherwise available for the seizing officer."). A plain-view seizure thus cannot be justified if it is effectuated "by unlawful trespass." *Soldal v. Cook County*, 506 U. S. 56, 66 (1992).

584 U.S. 586, 595 (2018). The *Collins* Court noted requirements for a warrantless seizure to be valid. The Court explained that an officer seizing evidence must have a lawful right to access or observe the seized object. That is, the plain view doctrine will not apply if the officer violated the Fourth Amendment in encroaching on the location where he/she gained access or sight to the object.

When the CPD officers traversed into Mr. Bellator's private dwelling from the common area of quad dorm space, they did so at their own peril without a warrant. Any evidence seized from that point on was fruit of the poisonous tree and should have been suppressed pursuant to *Mapp,* 367 U.S. 643. In the instant case, the CPD officers had "legal" access to neither Mr. Bellator's private residence nor his desk drawer. As the majority is aware, law enforcement officers may — for their own safety and to preserve destructible evidence of a crime for which a suspect is arrested — search unsealed and unlocked containers, but such a search is limited. It must be contemporaneous to the arrest *and* confined to the area within the arrestee's immediate control or to the area within the immediate vicinity of the arrest. Here, there was no evidence of criminality before Mr. Bellator had been removed from the area. Thus the campus police were not in danger nor was the evidence at risk of being destroyed. Nothing about the brown paper bag or its discovery justify the plain view exception to the warrant requirement.

The plain view doctrine demands that probable cause exist before an officer may search or seize evidence. In *Arizona v. Hicks*, 480 U.S. 321 (1987), a bullet was shot through the suspect's apartement's floor, injuring a man below. Officers entered the suspect's apartment to search for the shooter, other victims, and weapons. They seized three (3) weapons. One of the officers, after noticing some expensive stereo equipment, became suspicious that it was stolen. He moved the equipment so that he could see the serial numbers and learned that a piece of equipment had in fact been stolen, so he seized it immediately. Based on the serial numbers, it was later determined that some of the other equipment had been stolen as well and a warrant was issued for the equipment. The Court held that the search of the stereo equipment was unreasonable, as it was unrelated to the lawful purpose for which the officers were in Hicks' apartment. The search of the equipment did not fall under the plain view doctrine because the officer lacked probable cause to believe that the equipment was stolen. The officers in Hicks' apartment were not in the suspect's home to search for stolen goods, but rather for the shooting suspect, weaponry and/or victims. Similarly, the CPD officers were in Mr. Bellator's residence to arrest him on an alleged breach of peace/disorderly conduct charge which was merely associated with Mr. Bellator's freedom of speech. Simply put, Mr. Bellator was being arrested for the spoken word, not for

violence or use of any type of weaponry. Thus, searching the brown paper bag and seizing the firearm and unlawful ID contained therein, was unreasonable because there was no nexus between such items and his alleged criminal conduct. The CPD officers would have been justified in securing the premises and securing a warrant for the firearm once they found it, as they were aware that he was under the legal age to possess a firearm. Instead, they opted to engage in a convenient, but unconstitutional, search and seizure. Probable cause to believe that the firearm was used in the commission of the alleged breach of peace/disorderly conduct was required, and because the record is devoid of any such suggestion, the search was unreasonable and unconstitutional.

IV. Table of Cases

Some cases have been intentionally redacted to protect against the offensive language featured in the original text.

First Amendment Cases

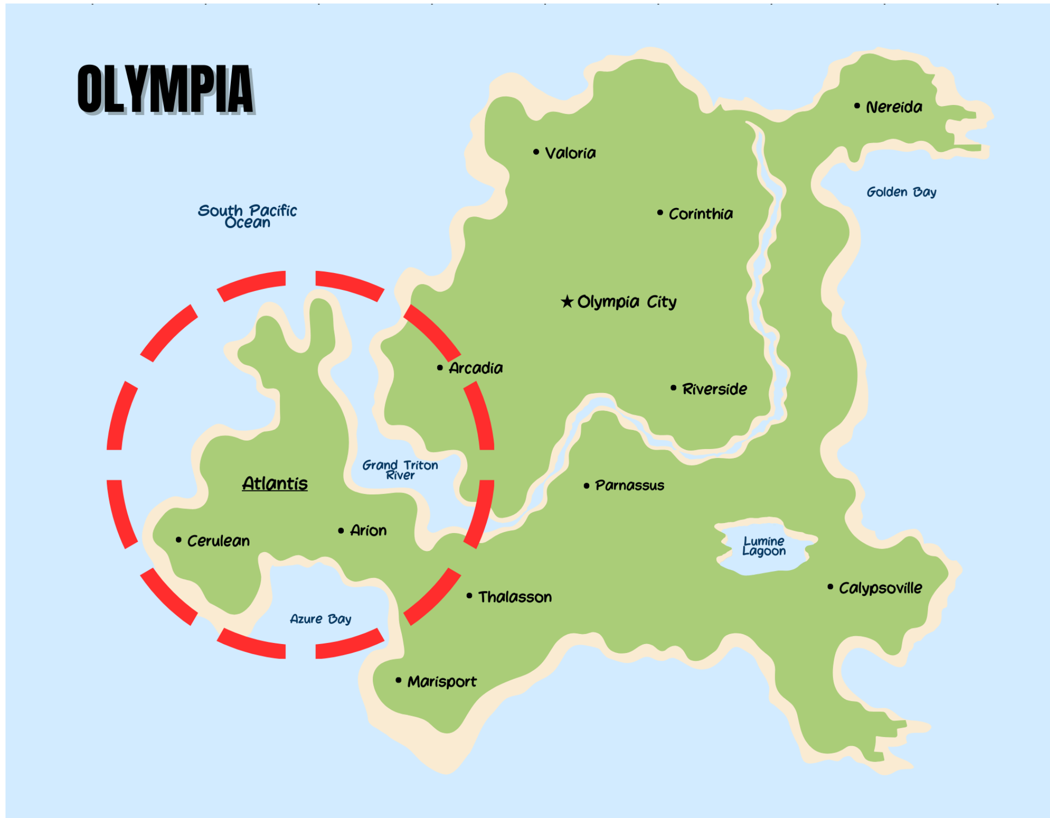
Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)
Terminiello v. Chicago, 337 U.S. 1 (1949)
Brandenburg v. Ohio, 395 U.S. 444 (1969)
Watts v. United States, 394 U.S. 705 (1969)
Cohen v. California, 403 U.S. 15 (1971)
Hess v. Indiana, 414 U.S. 105 (1973)
Texas v. Johnson, 491 U.S. 397 (1989)
Virginia v. Black, 538 U.S. 343 (2003)
Bible Believers v. Wayne Cnty., Mich., 805 F.3d 228 (6th Cir. 2015)
Nwanguma v. Trump, 903 F.3d 604 (6th Cir. 2018)
Counterman v. Colorado, 600 U.S. 66 (2023)
Doe v. McKesson, 71 F.4th 278 (5th Cir. 2023)

Fourth Amendment Cases

Katz v. United States, 389 U.S. 347 (1967)
United States v. Santana, 427 U.S. 38 (1976)
Mincey v. Arizona, 437 U. S. 385 (1978)
Arizona v. Hicks, 480 U.S. 321 (1987)
Horton v. California, 496 U.S. 128 (1990)
Illinois v. Rodriguez, 497 U.S. 177 (1990)
Brigham City v. Stuart, 547 U.S. 398 (2006)
Kentucky v. King 563, U.S. 452 (2011)
United States v. Jones, 565 U.S. 400 (2012)
Florida v. Jardines, 569 U.S. 1 (2013)
Fernandez v. California, 571 U.S. 292 (2014)
Collins v. Virginia, 584 U.S. 586 (2018)
Lange v. California, 141 S.Ct. 2011 (2021)

Notes:
1) Please note although the full content of each case in the Table is available through multiple sources, the links above are provided for convenience and to avoid offensive language found in the unredacted court opinions. Please contact MootCourtCommittee@NCFCA.org with any questions or concerns about the table of cases or the links provided.

APPENDIX A. Map of Olympia and Atlantis



APPENDIX B. Frankfurt Fluent News Article

Thursday, May 2, 2024

Frankfurt Fluent

Latest news and bulletin updates

Issue #313

Protests Over Ethnic Tensions Lead to Arrests at FSU

By Jacob Brinkley

Several arrests were made at Frankfurt State University on Wednesday after members of a student organization, Students for Atlantis Solidarity ("SAS") caused disruption. SAS members are supporters of Atlantis' long-standing struggle for national independence from the island nation of Olympia located in the Pacific. The "Ceasefire Now" rally began peacefully, but turned violent when protestors and counter- protesters clashed. According to eyewitnesses, Olympian supporters and SAS members clashed after exchanging insults. Some altercations became physical with projectiles being thrown by both sides. One protestor, described by many as an "agitator," repeatedly shouted, "From sea to sea, Atlantis shall be free," over a megaphone. FSU student and Olympian supporter Marty McFly told the Fluent that he overheard police ordering the student he identified as Tarun Bellator, to stop chanting, however the young man ignored their directives. The Fluent was unable to reach Bellator for comment. Before the event turned violent, both protestors and counter-protesters hurled insults at each other. Many students sustained injuries during the physical altercations, and several were transported to Frankfurt Memorial Hospital for treatment. The campus also sustained property damage, including trash cans, dumpsters, and vehicles being set on fire. The Dean of Students at FSU, Tristyn Hand, advised the Fluent that the university is estimated to have incurred over one million dollars in property damage due to the protest. The Fluent reached out to the FSU Campus Police Department, but they declined to comment as the investigation is ongoing.

Several more arrests are expected, and sources have told the Fluent that FSU remains braced for further protests. Tensions have escalated as pro-Atlantean student protests have erupted at many college campuses nationwide, forcing a number of colleges and universities to enlist the police to remove protesters and impose disciplinary action against students involved in these violent events. Despite the unrest, the university has no plans to delay graduation ceremonies, which are currently scheduled for Saturday, May 4th, at 7:00 pm.

Clean up efforts took over ten hours to restore the campus.

APPENDIX C. Composite Exhibit A 1-2 Photos FSU Protest

APPENDIX D. 2023 Frankfurt Statutes, Breach of the Peace; Disorderly Conduct §867.03

Whoever commits acts that are of such nature as to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of other persons, by engaging in disorderly conduct such as brawling or fighting, creating a loud and unreasonable noise, engaging in words that present a clear and present danger, or using offensive words that are inherently likely to provoke an immediate violent response shall be guilty of a misdemeanor of the second degree, punishable by up to six months in jail and a $500.00 fine.

APPENDIX E. 2023 Frankfurt Statutes, Gun Control Act §422.63

Anyone under the age of 21 is prohibited from possessing or purchasing a handgun from a licensed firearms dealer.[10]

APPENDIX F. 2023 Frankfurt Statutes, Unlawful Identification Card §321.211

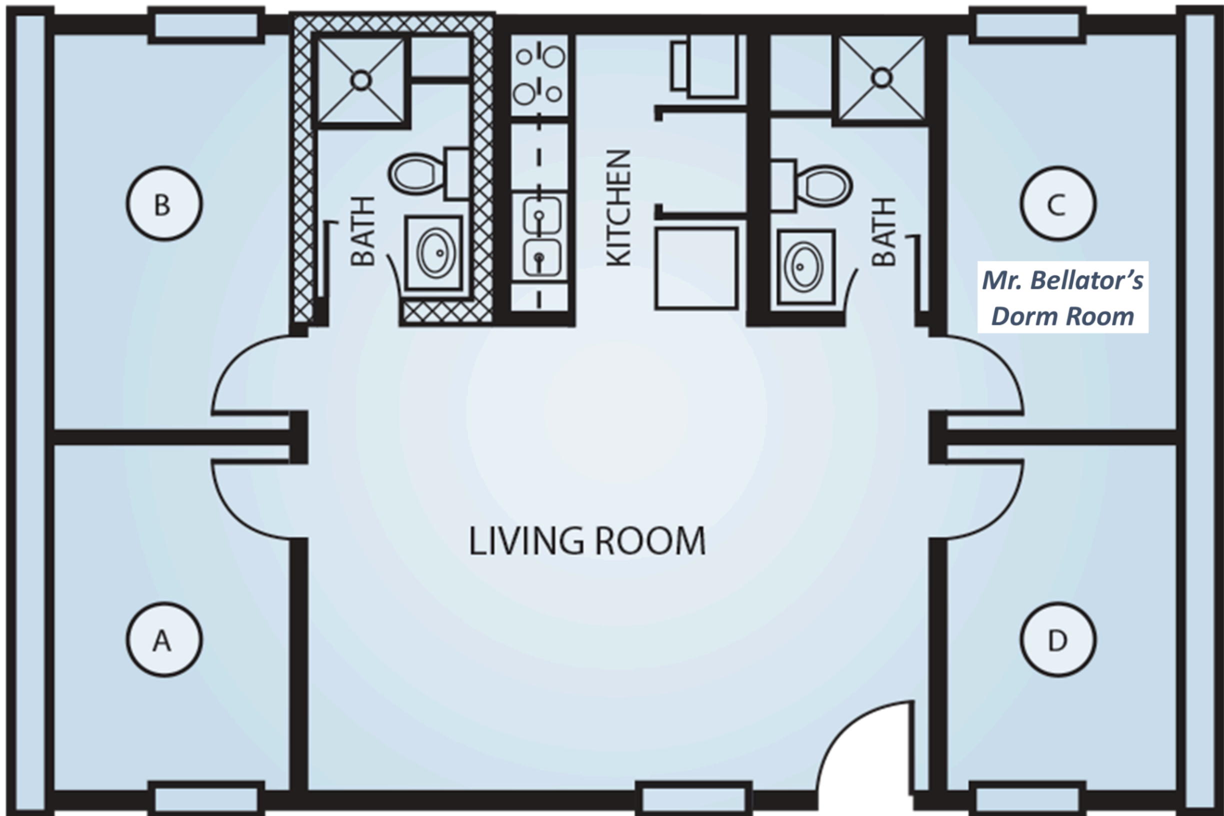
It is unlawful for any person to knowingly have in his/her possession, or to display any blank, forged, stolen fictitious, counterfeit, or unlawfully issued driver's license or identification card or any instrument in the similitude of a driver's license or identification card unless possession by such person has been duly authorized by the state of Frankfurt or other recognized legal entity.[11]

[10] A violation of Frankfurt's Gun Control Act §422.63 is a first degree misdemeanor punishable by up to one year in jail and up to a $1,000 fine.

[11] A violation of Frankfurt's Unlawful Identification Card Statute §321.211 is a first degree misdemeanor punishable by up to one year in jail and up to a $1,000 fine.

APPENDIX G. Photograph of Brown Bag in Petitioner's Desk Drawer

APPENDIX H. Diagram of FSU Quad Dorm Room



APPENDIX I. Bill of Sale for Glock 19X Pistol

FRANKFURT FIREARM BILL OF SALE

PART 1 - THE PARTIES

SELLER

Full Name: *GRAYSON B. STEELE* Driver's License No: *XXXXX8294*
Street Address: *45 JOLLY STREET* City: *DEYTON*
State: *FRANKFURT* ZIP: *41901* Phone: *XXX-XXX-1235*

BUYER

Full Name: *TARUN BELLATOR* Driver's License No: *XXXXX1742*
Street Address: *52 BLUE GRASS LANE* City: *DEYTON*
State: *FRANKFURT* ZIP: *41901* Phone: *XXX-XXX-3216*

PART 2 - FIREARM

1. **Cost ($)**: $785 Make: GLOCK Model: G19X
   Action: ☐ Bolt | ✔ Semi-Automatic | ☐ Pump | ☐ Lever | ☐ Break
   Caliber/Gauge: 9mm Serial Number (SN): 1018893

   TOTAL COST ($): $785

PART 3 - TRADE / PURCHASE

Seller accepts monetary funds in the amount of $785 to be paid:

- On the date of this bill of sale, known as June 2nd, 2023.

Page 1 of 3

PART 4 - BUYER'S DISCLOSURE

Buyer declares the following statements are true and he/she:

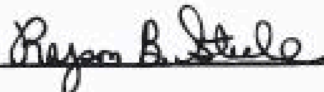
- Is not under the legal age to own a firearm;
- Has never been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;
- Is not a fugitive from justice;
- Is not an unlawful user of or addicted to any controlled substance;
- Has never been adjudicated as a mental defective or has been committed to a mental institution;
- Is not an alien illegally or unlawfully in the United states or an alien admitted to the United states under a nonimmigrant visa;
- Has not been discharged from the Armed Forces under dishonorable conditions;
- Having been a citizen of the United states, has never renounced his or her citizenship;
- Is not subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner;
- Has not been convicted of a misdemeanor crime of domestic violence;
- Can lawfully receive, possess, ship, or transport a firearm;
- Is not a person who is under indictment or information for a crime punishable by imprisonment for a term exceeding 1 year.

Buyer's Signature:

PART 5 - SELLER'S DISCLOSURE

Seller declares the following statements are true and he/she:

- Has verified that the firearm details are correct and the serial number is legible;
- Is the lawful owner of the firearm and has the legal right to sell the firearm;
- Has no knowledge of defects in the firearm;
- Believes the firearm is fit to be used for its intended purpose;
- Has never been used in a manner of questionable or certain illegality;
- Assumes no responsibility after the transfer of ownership has taken place.

Seller's Signature: 

PART 6 - SIGNATURES

On this 2nd day of June, 2023 the buyer and seller agree to the above described terms and conditions for the sale/trade/exchange of the firearm

Seller Signature: ______________________

Printed Name: RAYSON B. STEELE

Buyer Signature: ______________________

Printed Name. TARUN BELLATOR

Witness 1 Signature: ______________________

Printed Name: GERALD TRACE

Witness 2 Signature: ______________________

Printed Name: KIM HOLLOMON

PART 7 - ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF FRANKFURT
PUMPKIN COUNTY

On June 2nd, 2023, before me appeared

TARUN BELLATOR as **Buyer** of this Bill of Sale who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed

____
Notary Public

My commission expires: