THE DANGERS OF *U.S. V. CARLOSS*

Under the current Fourth Amendment jurisprudence, the "right to privacy" is guaranteed and persons, papers, effects, homes, and curtilages are protected from unreasonable searches and seizures by government officials.[1] However, through numerous cases, the Supreme Court has carved out a number of exceptions for purposes of law enforcement.[2] One major police technique at issue today is the use of knock-and-talks. A knock-and-talk is a police procedure that allows officers to knock on the door of a private residence for the purpose of obtaining consent to speak with a resident or to conduct a search.[3] Recently, the 10th Circuit Court of Appeals struck a blow to the Fourth Amendment protection for homes and curtilages by holding that police may conduct a knock-and-talk under an implied license to approach and "No Trespassing" signs did not revoke the implied license.[4]

This article will focus on the Court's most recent decision concerning knock-and-talks, *U.S. v. Carloss*,[5] and how that decision will affect the 10th Circuit as it stands. Section I of this article will focus on the Court's decision by summarizing the facts of the case, the majority opinion, and the dissent. Section II of this article will discuss the effect the recent decision will have in the 10th Circuit based on the argument given by the State.

I. *UNITED STATES V. CARLOSS*

A. Facts

Law enforcement officials went to the home of Ralph Carloss, a felon, to investigate tips that he possessed firearms and sold methamphetamine.[6] The officers conducted a knock-and-talk to speak with Carloss, despite numerous professionally printed "No Trespassing" signs in the yard, aligning the sidewalk, and on the front door.[7] After exiting from the back door and answering a few questions, Carloss denied the offic-

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1. U.S. CONST. amend. IV; *see also* Katz v. United States, 389 U.S. 347 (1967) (stating the Constitution protects the right to privacy).
2. *See generally* Wyoming v. Houghton, 526 U.S. 295 (1999); Florida v. Riley, 488 U.S. 445 (1989); California v. Ciraolo, 476 U.S. 207 (1986); Minnesota v. Carter, 525 U.S. 83 (1998); Terry v. Ohio, 392 U.S. 1 (1968); United States v. Matlock, 415 U.S. 164 (1974); Illinois v. Rodriguez, 497 U.S. 177 (1990).
3. Ian Dooley, *Fighting For Equal Protection Under the Fourth Amendment: Why "Knock-and-Talks" Should Be Reviewed Under the Same Constitutional Standard as "Stop-and-Frisks"*, 40 NOVA L. REV. 213, 218 (2015).
4. United States v. Carloss, 818 F.3d 988, 997 (10th Cir. 2016).
5. *Id.* at 988.
6. *Id.* at 990.
7. *Id.*

ers' request to search the home and said he was not the homeowner and could not give permission.[8] However, as Carloss went to enter the home to seek permission, officers followed him in after asking if it was okay to wait inside.[9] While in the home, the officers observed drug paraphernalia and a white powder residue that appeared to be methamphetamine in Carloss's room.[10] Though the homeowner refused to give consent for the search, the police returned after obtaining a search warrant based on the observations made while in the home.[11] Police found "multiple methamphetamine labs" and lab components, a loaded shotgun, two blasting caps, ammunition, and drug paraphernalia during the search.[12]

B. Majority Opinion

The majority opinion, authored by Judge Ebel, found the officers' knock-and-talk did not violate the Fourth Amendment and Carloss voluntarily consented to the officers accompanying him into the home.[13] The Court reasoned the officers did not violate the Fourth Amendment by conducting a knock-and-talk in light of the decision in *Florida v. Jardines*,[14] which held an officer has an implied license to enter a home's curtilage to knock on the door if seeking to speak with the home's occupants like any member of the public.[15] The Court concluded the question of whether the implied license had been revoked depended on the context in which a member of the public or an officer encountered the signs and the message that those signs would have conveyed to an objective person under the circumstances.[16] In Carloss's case, the Court found the "No Trespassing" signs placed around the home would not have conveyed to an objective officer that he could not go to the front door and knock to speak consensually with Carloss.[17] Moreover, the Court concluded Carloss's consent was voluntary because his consent was not the product of a Fourth Amendment violation and it was unreasonable to believe Carloss could not have consented to them accompanying him into the home because he initially declined to give the officers consent to search the home.[18]

8. I*d.* at 990–91.
9. *Id.*
10. *Id.* at 991.
11. *Id.*
12. *Id.*
13. *Id.* at 991, 998.
14. Florida v. Jardines, 133 S. Ct. 1409 (2013).
15. *Id.* at 1416.
16. *Carloss*, 818 F.3d at 994.
17. *Id.* at 994.
18. *Id.* at 998–99.

C. Dissenting Opinion

The dissenting opinion, authored by Judge Gorsuch, addressed the implications of the court's holding.[19] He began by discussing the theory behind the knock-and-talk technique which holds that everything happens with consent so a warrant is unneeded.[20] However, a home's curtilage is protected by the Fourth Amendment so officers need a warrant, exigent circumstances, or consent to enter a home or to reach the front door.[21] Despite limitations, the government suggested the officers enjoy an irrevocable right to enter a home's curtilage to conduct knock-and-talks.[22] While the posting of a sign does not begin and end the Fourth Amendment inquiry or revoke the implied license in every instance, the question in this case is whether multiple and clearly posted signs along the path and curtilage can suffice to revoke the implied license without resort to fences or other obstacles.[23] Though there is historical evidence that posted signs would suffice to ward off unwanted visitors, the majority disregarded the common law rule by suggesting posted notices cannot suffice to warn off reasonable visitors.[24] The dissent concluded by noting that though the majority did not suggest a plain, simple, and appropriately placed "No Trespassing" sign is insufficient, such specificity of its analysis might invite more cases for the courts to make fine judgments about the placement or content of a sign.[25]

II. WHAT ARE THE EFFECTS OF THIS HOLDING

Under current case law, a knock-and-talk is not subject to Fourth Amendment scrutiny because there is a belief the procedure is consensual.[26] Therefore, instead of addressing whether police had justification to knock on a private door, the Court analyzes what happened after police intruded into a private area.[27] However, numerous cases have attempted to control or provide guidelines for this frequently used technique. *Kentucky v. King*,[28] *United States v. Jones*,[29] and *Jardines*[30] held a Fourth

19. *Id.* at 1003 (Gorsuch, J. dissenting).
20. *Id.*
21. *Id.*
22. *Id.* at 1004.
23. *Id.* at 1003–04.
24. *Id.* at 1009.
25. *Id.* at 1013–14.
26. Dooley, *supra* note 3, at 214.
27. *Id.* at 223.
28. Kentucky v. King, 563 U.S. 452, 471 (2011) (stating the "conduct was entirely consistent with the Fourth Amendment, and we are aware of no other evidence that might show that the officers either violated the Fourth Amendment or threatened to do so (for example, by announcing that they would break down the door if the occupants did not open the door voluntarily").
29. United States v. Jones, 565 U.S. 400, 404 (2012) (holding "that the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search'").
30. Florida v. Jardines, 133 S. Ct. 1409, 1415 (2013) ("While law enforcement officers need not "shield their eyes" when passing by the home "on public thoroughfares," an officer's leave to

amendment search occurs when an officer trespasses on a constitutionally protected area for the purposes of conducting a search. Moreover, the *Jardines* court held an officer may approach a home and knock on the door for the purpose of gathering evidence only if there is (1) sufficient suspicion to justify a knock on the door, (2) an exigency that justifies the intrusion, or (3) a warrant supported by probable cause.[31] However, the *Carloss* ruling changes the guidelines for knock-and-talks within the 10th Circuit.

Instead of applying the rule found in *King*, *Jones*, and *Jardines* or utilizing the roadmap established in *Jardines*, the court decided to put in place a complicated rule that fails to evaluate the reason for police presence on constitutionally protected areas. The court also expanded the use of the implied license for law enforcement purposes. Under the *Jardines* decision, the implied license of social norms only allowed government officials to do as much as a civilian could do.[32] However, the *Carloss* decision almost extends the implied license to a permanent easement because the court's focused analysis on the content of the sign did little to help create a bright-line rule or to put government officials or citizens on notice of when the license was revoked.[33]

III. CONCLUSION

The 10th Circuit Court of Appeals' decision in *Carloss* set an unworkable precedent by focusing on the wording of the "No Trespassing" signs instead of the signs intent and purpose. Moreover, the court's analysis fails to coincide with the special protections the Fourth amendment grants to the home. Despite the roadmap laid out by *King, Jones,* and *Jardines*, which addresses how police should handle knock-and-talks in a way that is consistent with the constitution under the present jurisprudence, *Carloss* gives government officials unrestricted access to physically intrude onto one's property in hopes of conducting a search. This unrestricted power is a threat to the Fourth Amendment and can be easily abused by law enforcement.

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gather information is sharply circumscribed when he steps off those thoroughfares and enters the Fourth Amendments protected areas.").

31. *Id.* at 1416–17.

32. *Id.* at 1416.

33. United States v. Carloss, 818 F.3d 988, 1013–14 (10th Cir. 2016) (Gorsuch, J. dissenting).

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