

Applying the Collective Knowledge Doctrine to Searches and Seizures of Abandoned Property

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The Fourth Amendment provides fundamental protections for private citizens against intrusions by government officials upon their person and property. The exception to these protections has been expanded through the creation and development of the collective knowledge doctrine. There is currently a large circuit split regarding the expansion of the collective knowledge doctrine and whether this doctrine should apply to searches and seizures of abandoned property. The central issue in the circuit split is whether the police officer who ordered or completed the search or seizure of abandoned property must personally know that the object was abandoned. The Fourth Circuit has held that the collective knowledge doctrine does not apply to abandoned property. However, the Tenth Circuit has held that this doctrine should apply. The Supreme Court has not resolved this circuit split. This Article will discuss this circuit split and argue that the Supreme Court should resolve the circuit split by adopting the Tenth Circuit's approach.

INTRODUCTION.....	64
I. BACKGROUND.....	66
A. The Fourth Amendment	66
B. Abandoned Property	68
C. The Collective Knowledge Doctrine	69
II. THE CIRCUIT SPLIT.....	74
A. The Fourth Circuit Approach	74
B. The Tenth Circuit Approach.....	75
III. PROPOSED SOLUTION	77
A. The Supreme Court Should Provide Guidance	77
B. The Supreme Court Should Adopt the Tenth Circuit Approach	78
C. The Supreme Court Should Adopt Only Vertical Collective Knowledge.....	80
CONCLUSION	83

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Introduction

Recent protests and increased scrutiny of the police and their procedures has spurred discussion about the police's role and practices by those outside of the law enforcement and the legal profession. Because the Fourth Amendment guarantees constitutional protections against unreasonable searches and seizures by the government (i.e., the police),¹ constitutional restrictions on police procedures must be understood by laypeople discussing these important topics and police officers themselves. However, a recent circuit split has created a lack of consistency in the application of constitutional restrictions on police procedures across the nation. This inconsistency is dangerous because it may cause police officers to be less likely to understand—even trample upon—constitutional protections.

Thanks to the popularity of detective and police-centered television shows, books, and movies, the general public is typically more aware of the existence of the Fourth Amendment to the United States Constitution and its requirement² that police must either have a warrant or probable cause to search an individual's private property.³ But what most individuals may not know is that the police officers conducting searches do not need the knowledge required for probable cause; depending on which circuit court has jurisdiction over the search, a police officer conducting a search either needs to have been directed to perform the search by someone with the required knowledge,⁴ or they must have some knowledge that, when later combined with all knowledge of the other officers on the scene, creates a basis for probable cause.⁵ Furthermore, in some jurisdictions, if the property is abandoned, none of the officers searching the property need to have probable

1. U.S. CONST. amend. IV ("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.").

2. *See id.*

3. *See* Katie N. Smith, *Crime Shows and Constitutional Rights: Television Viewers' Exposure to Crime Shows and Their Knowledge of Constitutional Rights* 18 (Aug. 2018) (M.A. thesis, University of Hawai'i at Mānoa) (on file with the Hamilton Library, University of Hawai'i at Mānoa) (discussing how people who watch crime television shows are more likely to know and believe that they know their constitutional rights).

4. *See* United States v. Chavez, 534 F.3d 1338, 1348 (10th Cir. 2008) (holding that Drug Enforcement Administration (DEA) agents did not violate the defendant's Fourth Amendment rights when they searched his car for drugs because the DEA supervisor had the requisite knowledge for probable cause).

5. *See* United States v. Cook, 277 F.3d 82, 86–87 (1st Cir. 2002) (holding that police officers did not violate the Fourth Amendment when another officer saw the defendant exchange something with a person, even though the officer did not communicate what he saw to the other officers before they searched the defendant for cocaine).

cause or even know that the property is abandoned before conducting the search.⁶

In regards to abandoned property searches, there is a question of whether the Fourth Amendment requires the police officer directing or conducting the search to know that the property is abandoned before the search may occur. Currently, there is no consensus across federal circuits, and police officers in one jurisdiction, but not in another, may conduct a search before learning that the property was abandoned. This inconsistency creates a disparity in the constitutional protections afforded to individuals depending on their location. Additionally, should officers be able to justify the constitutionality of searches after they are completed? With the increased focus on police practices, it is essential that private citizens are protected from unconstitutional overreach by police. The courts and the administration of justice also benefit when evidence is collected in a constitutional manner. Police should be incentivized to conduct their searches effectively without acting in such a manner that would invalidate anything they find during those searches.

This Article explores the preceding questions by focusing on the circuit split over how courts apply the collective knowledge doctrine to searches and seizures of abandoned property. It will focus on two recent cases, *United States v. Ferebee*⁷ from the Fourth Circuit and *United States v. Jackson*⁸ from the Tenth Circuit. In examining these two cases, this Article will focus on three main questions: (1) whether the courts should apply the collective knowledge doctrine to searches of abandoned property; (2) whether the application of the collective knowledge doctrine should use the aggregation of information as used in horizontal collective knowledge cases; and (3) whether the United States Supreme Court should intervene and resolve this circuit split. This Article argues that courts should apply the collective knowledge doctrine to searches of abandoned property, just like the Tenth Circuit's application in *Jackson*.⁹ Although, the Article agrees with the Tenth Circuit in this regard, it also agrees with the Fourth Circuit's limitation of the collective knowledge doctrine to exclude the aggregation of information in horizontal collective knowledge cases. This Article will address the importance of a Supreme Court ruling on these issues so that there can be uniform constitutional protections against searches and seizures.

Section I will provide important background information on the constitutional protections and legal doctrines addressed in this Article. This section will give an overview of the Fourth Amendment's protections against

6. See discussion *infra* Section II.

7. 957 F.3d 406 (4th Cir. 2020).

8. 806 F. App'x. 645 (10th Cir. 2020).

9. *Id.* at 648.

unlawful searches and seizures, as explained by the Supreme Court. Next, Section I will explain the Fourth Amendment's application to abandoned property, the development of the collective knowledge doctrine, and the circuit courts' applications of this doctrine. Section II will discuss the circuit split, focusing on the Fourth Circuit's recent ruling in *United States v. Ferebee* and the Tenth Circuit's ruling in *United States v. Jackson*. Specifically, Section II will analyze the circuit courts' different approaches to applying the collective knowledge doctrine to searches and seizures of abandoned property. Section III will discuss the importance of the Supreme Court resolving this circuit split so that there can be uniform constitutional protections across the country. This section will argue that the Supreme Court should incorporate the collective knowledge doctrine into Fourth Amendment jurisprudence on the search and seizure of abandoned property. Finally, Section III will discuss how the Supreme Court's adoption of the collective knowledge doctrine would resolve the circuit split by preventing the aggregation of information from horizontal collective knowledge cases and limiting the doctrine to only vertical collective knowledge.

I. Background

A. *The Fourth Amendment*

The Fourth Amendment to the United States Constitution was created to limit government officials' power and protect private citizens from intrusions upon their person and property.¹⁰ The amendment states:

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.¹¹

This imposed limitation only applies to the government's actions and typically requires a warrant for arrests, searches, and seizures.¹² These searches and seizures are only valid when the government actor, most commonly a police or law enforcement officer, has reason to believe that the property is evidence of criminal activity.¹³

10. See *Elkins v. United States*, 364 U.S. 206, 209 (1960) (quoting *Weeks v. United States*, 232 U.S. 383, 391–93 (1914)) (“The effect of the 4th Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers and effects, against all unreasonable searches and seizures under the guise of the law.”).

11. U.S. CONST. amend. IV.

12. *Investigations and Police Practices: Overview of the Fourth Amendment*, 45 GEO. L.J. ANN. REV. CRIM. PROC. 3, 3 (2016) [hereinafter ANN. REV. CRIM. PROC.].

13. *Id.* at 74.

For property to be protected against intrusive searches and seizures by the government, an individual must have a reasonable expectation of privacy in their property.¹⁴ An individual must prove two elements to have a reasonable expectation of privacy.¹⁵ First, the individual must have “an actual (subjective) expectation of privacy” in a place or thing.¹⁶ Second, “society must be prepared to recognize that expectation as objectively reasonable.”¹⁷ If the individual does not have a reasonable expectation of privacy to the property, then the property is not protected by the Fourth Amendment.¹⁸

Although the Fourth Amendment creates the presumptive requirement for warrants, the Supreme Court has held that government actors may conduct warrantless searches and seizures in certain instances without violating the Fourth Amendment.¹⁹ The government actor may only conduct a warrantless search and seizure if there is probable cause or if there are other exigent circumstances, such as threats of imminent destruction of evidence, threats to the safety of the officers or the public, the hot pursuit of a suspect, or the belief that the suspect will flee.²⁰ The rule that allows warrantless searches and seizures is well established and is clearly outlined in *Carroll v. United States*.²¹ “On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer . . . the search and seizure are valid.”²²

A court may determine if there was probable cause for a warrantless search and seizure by looking at the totality of the circumstances.²³ Courts typically take a two-step approach to a probable cause determination.²⁴ First,

14. *Id.* at 5–6.

15. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

16. *Id.*

17. ANN. REV. CRIM. PROC., *supra* note 12, at 6–8; *see also Katz*, 389 U.S. at 361 (Harlan, J., concurring) (explaining that the second prong of the twofold requirement is “the expectation be one that society is prepared to recognize as ‘reasonable’”).

18. *Id.* at 8–10 (“Items or areas exposed to the public, abandoned, or accessed by consent are not protected because an individual does not have a legitimate expectation of privacy in those items or areas.”).

19. *Id.* at 3 (discussing that a literal interpretation of the Fourth Amendment does not require a warrant or probable cause for a search or seizure, but the Supreme Court has imposed requirements to effectuate the intent of the Fourth Amendment, with several exceptions).

20. *Id.* at 96–99.

21. 267 U.S. 132 (1925).

22. *Id.* at 149.

23. ANN. REV. CRIM. PROC., *supra* note 12, at 16 (citing *Illinois v. Gates*, 462 U.S. 213, 232, 238 (1983)) (“The Supreme Court has called probable cause . . . ‘a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules,’ and its existence must be determined by an analysis of the totality of the circumstances surrounding the intrusion.”).

24. *Id.*

the court will look at the historical facts leading up to the search.²⁵ The court will then determine if these facts create probable cause when “viewed from the standpoint of an objectively reasonable police officer.”²⁶ The court can consider a variety of historical facts to determine if the requisite probable cause existed for the warrantless search and seizure.²⁷ These facts may include the experience, training, and expertise of the police officer.²⁸ Corroborated information and information from a reliable source are also historical facts that can create probable cause.²⁹

If the historical facts in a case do not sufficiently amount to probable cause for a warrantless search and seizure, a court will find that an individual’s Fourth Amendment rights have been violated and that the search and seizure is unlawful.³⁰ An unlawful search and seizure will not necessarily preclude prosecution or overturn a conviction,³¹ but the court will generally suppress any evidence that officers found during an unlawful search and seizure.³²

B. Abandoned Property

Abandoned property is a significant exception to the probable cause requirement to justify warrantless searches and seizures. Similar to items that are in plain view or accessed through consent, abandoned property is not protected under the Fourth Amendment.³³ If property is abandoned, then there is no reasonable expectation of privacy to property.³⁴ The Supreme Court has held that abandoned property is not protected by the Fourth Amendment and a warrant is not required to search or seize abandoned property.³⁵ “By voluntarily abandoning property, an individual forfeits any reasonable expectation of privacy in that property, even if he or she retains an ownership interest in it.”³⁶

25. *Id.* (explaining that “historical facts” refers to “the events that occurred leading up to the stop or search”).

26. *Id.* at 16–17.

27. *Id.* at 17–22 (explaining different sources for historical facts, such as personal observations from police officers, informant information, weapons, or an association with an arrested person).

28. *Id.* at 17–18.

29. ANN. REV. CRIM. PROC., *supra* note 12, at 18–19.

30. *Id.* at 23.

31. *Id.* at 3.

32. *Id.*

33. *Id.* at 74.

34. *Id.* at 8–10.

35. *Abel v. United States*, 362 U.S. 217, 241 (1960) (“So far as the record shows, petitioner had abandoned [his property when he vacated and checked out of a hotel room]. He has thrown them away. So far as he was concerned, they were bona vacantia. There can be nothing unlawful in the Government’s appropriation of such abandoned property.”).

36. ANN. REV. CRIM. PROC., *supra* note 12, at 176–77.

The analysis of abandoned property for Fourth Amendment purposes focuses on the parties' intent, which may be inferred from the parties' words and actions as well as the circumstances surrounding the alleged abandonment.³⁷ One of the most common situations for abandoned property occurs when a defendant discards incriminating evidence during, or while fleeing, a police encounter.³⁸ For example, throwing property from a moving vehicle while police pursue the defendant is an abandonment.³⁹ Other instances of abandonment commonly accepted by courts include throwing property outside of a building, flushing property down a toilet, placing property in an outdoor trash receptacle, and refusing to accept the delivery of property.⁴⁰ If any of these actions occur, the court is likely to hold that the defendant forfeited any reasonable expectation of privacy to the property.⁴¹ If a defendant denied ownership of property, courts typically weigh this denial as a significant factor in abandonment considerations.⁴²

C. The Collective Knowledge Doctrine

An acting officer must know all the facts that create the requisite probable cause before any search and seizure can lawfully occur.⁴³ However, the Supreme Court created an exception to this rule when it established the collective knowledge doctrine in *Whiteley v. Warden*⁴⁴ and *United States v. Hensley*.⁴⁵ In *Whiteley*, the Court was asked to decide whether a warrantless arrest was proper based on the probable cause arising from an arrest warrant bulletin the arresting officer heard over the radio.⁴⁶ The Court ultimately held that this arrest was not constitutional under the Fourth Amendment due to a lack of probable cause for the warrant's existence.⁴⁷ But while making this decision, the Court wrote two sentences that served as the basis for creating the collective knowledge doctrine:

37. John P. Ludington, *Search and Seizure: What Constitutes Abandonment of Personal Property Within Rule That Search and Seizure of Abandoned Property Is Not Unreasonable—Modern Cases*, 40 A.L.R. 4th 381, § 2(a) (1985) (explaining that because abandoned property is an “intentional relinquishment” of a “reasonable expectation of privacy,” whether property is abandoned becomes a question of intent).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. See Derik T. Fettig, *Who Knew What When? A Critical Analysis of the Expanding Collective Knowledge Doctrine*, 82 UMKC L. REV. 663, 664 (2014).

44. 401 U.S. 560 (1971).

45. 469 U.S. 221 (1985).

46. *Whiteley v. Warden*, 401 U.S. 560, 563 (1971).

47. *Id.* at 568–69.

[The Court] do[es] not, of course, question that the Laramie police were entitled to act on the strength of the radio bulletin. Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause.⁴⁸

Then in *Hensley*, the Court further developed the collective knowledge doctrine when it relied on the language in *Whiteley* to decide whether an officer making an arrest based on a wanted bulletin issued by another police department, which had the requisite probable cause, violated the defendant's Fourth Amendment rights.⁴⁹ The Court stated that “[t]he law enforcement interests promoted by allowing one department to make investigatory stops based upon another department's bulletins or flyers are considerable, while the intrusion on personal security is minimal.”⁵⁰ Therefore, the Court held that as long as the bulletin or flyer that the acting officer relied upon was issued based on the requisite probable cause, there was no violation of the defendant's Fourth Amendment rights.⁵¹

The collective knowledge doctrine has been significantly expanded over time by the circuit courts.⁵² What started as only a few sentences in two Supreme Court cases is now a well-developed and commonly applied doctrine. Circuit courts have explained the reasoning behind this doctrine, stating that “[t]he rule exists because, in light of the complexity of modern police work, the arresting officer cannot always be aware of every aspect of an investigation; sometimes his authority to arrest a suspect is based on facts known only to his superiors or associates.”⁵³ But the collective knowledge doctrine has not been applied consistently across the circuit courts.⁵⁴ Some circuits have begun to split the application of the doctrine into vertical and horizontal cases.⁵⁵

48. *Id.* at 568.

49. *United States v. Hensley*, 469 U.S. 221, 223 (1985).

50. *Id.* at 232.

51. *Id.*

52. See, e.g., *United States v. Rodriguez*, 831 F.2d 162, 166 (7th Cir. 1987) (“[T]he officer making the investigatory stop might reasonably rely on the request of another investigator.”); *United States v. Nafzger*, 974 F.2d 906, 913 (7th Cir. 1992) (citing *United States v. Randall*, 947 F.2d 1314, 1319 (7th Cir. 1991)) (“[P]olice who actually make the arrest need not personally know all the facts that constitute probable cause if they reasonably are acting at the direction of another officer or police agency.”); *United States v. Woods*, 544 F.2d 242, 260 (6th Cir. 1976) (“[W]hen a group of agents in close communication with one another determines that it is proper to arrest an individual, the knowledge of the group that made the decision may be considered in determining probable cause, not just the knowledge of the individual officer who physically effected the arrest.”).

53. *United States v. Valez*, 796 F.2d 24, 28 (2nd Cir. 1986).

54. *Fettig, supra* note 43, at 674–75.

55. *Id.* at 672.

In a vertical collective knowledge case, the acting officer is directed to conduct the search, seizure, or arrest by an officer who has the requisite knowledge of all the facts that establish probable cause.⁵⁶ In this type of case, the acting officer's personal knowledge is not necessary to establish probable cause as long as a directing officer has the requisite knowledge.⁵⁷ For example, the Drug Enforcement Agency (DEA) in *United States v. Chavez*⁵⁸ set up a sting operation to target a known drug dealer.⁵⁹ The DEA agents called the drug dealer to confirm the deal and watched the defendant, Victor Chavez, take a small duffle bag into his car and drive toward the location of the deal.⁶⁰ The DEA agents followed the vehicle and requested that a canine officer with the New Mexico State Police make a traffic stop of Mr. Chavez's vehicle to search for drugs.⁶¹ After a search, the agents found a large amount of cocaine.⁶² Although the state police officer did not have the requisite probable cause to search the vehicle, the appellate court held that under the vertical collective knowledge doctrine the directing DEA officers had enough probable cause to warrant an exception under the Fourth Amendment.⁶³ Vertical collective knowledge cases are broadly accepted in circuit courts because the doctrine clearly traces back to *Whiteley* and *Hensley* and there is still a single officer with the requisite knowledge to establish probable cause.⁶⁴

In contrast, the acting officer in a horizontal collective knowledge case does not need to be directed by an officer with the requisite knowledge of all of the facts supporting probable cause.⁶⁵ Instead, all of the information known by the officers at the scene can be aggregated to support probable cause.⁶⁶ In such cases, no single officer must know all of the facts that support probable cause, and the acting officer does not have to be directed by a fellow officer.⁶⁷ For example, three police officers in *United States v. Cook*⁶⁸ patrolled a known drug area when one of the officers, Officer Freire, observed Cook standing with another man, beginning to exchange

56. *Id.*

57. *Id.* at 673.

58. 534 F.3d 1338 (10th Cir. 2008).

59. *Id.* at 1340.

60. *Id.* at 1341.

61. *Id.*

62. *Id.* at 1342.

63. *Id.* at 1348.

64. Fettig, *supra* note 43, at 673.

65. *See id.*

66. *Id.* at 672.

67. *Id.* at 673.

68. 277 F.3d 82 (1st Cir. 2002).

something.⁶⁹ Officer Freire did not tell the other officers what he had seen.⁷⁰ Then the other two officers noticed Cook enter his vehicle and decided to approach.⁷¹ One of the other officers, Officer Jones, began searching Cook and Officer Freire completed a pat down of Cook, finding crack cocaine in his shorts.⁷² The First Circuit held that Jones's search did not violate Cook's Fourth Amendment rights because the horizontal collective knowledge doctrine allowed Freire's knowledge to create probable cause for Jones's search, even without Freire communicating this knowledge to Jones.⁷³

Within circuit courts that apply horizontal collective knowledge, there is also a split on whether there must be some level of communication between officers in order to aggregate knowledge.⁷⁴ Most of the circuits that allow aggregation between officers on the scene require, at minimum, some communication.⁷⁵ For example, the Ninth Circuit held that there is a limited requirement for communication between officers, but the communication does not need to contain any information about probable cause.⁷⁶ The court held that "the collective knowledge doctrine includes no requirement regarding the *content* of the communication that one officer must make to another."⁷⁷ This is because the communication requirement only serves to prove that officers are working together in a team, as opposed to investigating separately alongside each other.⁷⁸ Alternatively, a minority of circuit courts allow aggregation with no communication whatsoever required between the officers.⁷⁹ There is no consensus among these courts as to how broadly the courts should apply this aggregation.⁸⁰

Due to some courts applying horizontal collective knowledge requirements to greatly expand the collective knowledge doctrine, there is a notable acknowledgement by courts themselves of the disagreement over whether and how broadly to apply this doctrine.⁸¹ Supporters of horizontal collective knowledge argue that it is necessary to expand the collective

69. *Id.* at 84.

70. *Id.* at 86–87.

71. *Id.* at 84.

72. *Id.* at 85.

73. *Id.* at 86–87.

74. Fettig, *supra* note 43, at 675.

75. *Id.*

76. *United States v. Ramirez*, 473 F.3d 1026, 1032–33 (9th Cir. 2007) (explaining that the conveyance of actual information between officers is not required to meet the threshold of the collective knowledge doctrine).

77. *Id.* at 1037.

78. *Id.* at 1033.

79. Fettig, *supra* note 43, at 675.

80. *Id.* at 675–77.

81. See *Ramirez*, 473 F.3d at 1032 (discussing disagreement between the First and Tenth Circuit).

knowledge doctrine because it allows police officers to act as an effective team,⁸² echoing the Ninth Circuit's rationale.⁸³ The First Circuit similarly held:

[C]ommon sense suggests that, where law enforcement officers are jointly involved in executing an investigative stop, the knowledge of each officer should be imputed to others jointly involved in executing the stop. . . . Basing the legitimacy of the stop solely on what the officer who first approaches the suspect knows, rather than on the collective knowledge of all of the officers who participate directly in carrying out the stop, thus makes little sense from a practical standpoint.⁸⁴

Although the majority of circuits allow some aggregation of information between officers, some circuits expressly oppose the expansion of the collective knowledge doctrine allowed by horizontal collective knowledge.⁸⁵ Skeptics often express concern that this expansion allows officers to piece together their personal knowledge of the facts and determine the requisite information for probable cause after the search, seizure, or arrest has already occurred, even though some information in isolation could be meaningless to an individual officer's probable cause analysis.⁸⁶ A court applying horizontal collective knowledge may justify the officer's actions because of the aggregation of facts when none of the officers on the scene actually had the requisite knowledge for probable cause.⁸⁷ The Fourth Circuit expressed these exact concerns:

[T]he collective-knowledge doctrine simply directs us to substitute the knowledge of the *instructing officer or officers* for the knowledge of the *acting officer*; it does not permit us to aggregate bits and pieces of information from among myriad officers, nor does it apply outside the context of communicated alerts or instructions. . . . Were we to adopt this rule, the legality of the search would depend solely on whether, after the fact, it turns out that the disparate pieces of information held by different officers added up to reasonable suspicion or probable cause.⁸⁸

82. Fettig, *supra* note 43, at 676–77.

83. *Ramirez*, 473 F.3d at 1033.

84. *United States v. Cook*, 277 F.3d 82, 86 (1st Cir. 2002).

85. Fettig, *supra* note 43, at 675.

86. *Id.* at 680.

87. *Id.*

88. *United States v. Massenburg*, 654 F.3d 480, 493 (4th Cir. 2011).

II. The Circuit Split

A. *The Fourth Circuit Approach*

In 2020, the Fourth Circuit ruled on whether the collective knowledge doctrine applies to the searches and seizures of abandoned property in *United States v. Ferebee*. In this case, Quentin Ferebee, who was previously convicted of a felony, was smoking marijuana at a friend's house when the police conducted a warrantless search of the property under the terms of his friend's probation.⁸⁹ When Ferebee was arrested for possession of marijuana, he told Officers Bensavage and Sinnott that the backpack sitting next to him was not his.⁹⁰ As Ferebee was being arrested, Officer Sinnott handed the backpack to Officer Grosse, who was not present to hear these statements.⁹¹ Officer Grosse searched the backpack and found Ferebee's ID, a firearm, drug paraphernalia, and marijuana.⁹² Ferebee moved to suppress the evidence found in the backpack, claiming that the officers unlawfully searched his property, violating his Fourth Amendment rights.⁹³ However, the district court denied this motion.⁹⁴ On appeal, Ferebee argued that the collective knowledge doctrine did not apply because Officer Grosse did not hear Ferebee disclaim ownership of the backpack and was not directed to complete the search by an officer who actually heard his statements.⁹⁵ As the Fourth Circuit does not allow for the aggregation of information between officers at the scene to fall under the collective knowledge doctrine, Ferebee alleged that this doctrine should not allow the search of his backpack.⁹⁶

But the Fourth Circuit held that "the collective-knowledge doctrine simply has no bearing on the propriety of the search in this case."⁹⁷ The defendant must have had a reasonable expectation of privacy to challenge the constitutionality of the warrantless search.⁹⁸ The court explained that a reasonable expectation of privacy creates standing for the defendant to contest the search: "[I]f the individual seeking to challenge a search does not have a legitimate expectation of privacy in the property or place being searched, the individual lacks 'standing' and the inquiry ends without consideration of the merits of the search claim."⁹⁹ The court pointed out that

89. *United States v. Ferebee*, 957 F.3d 406, 410 (4th Cir. 2020).

90. *Id.*

91. *Id.* at 410–11.

92. *Id.* at 411.

93. *Id.*

94. *Id.*

95. *Ferebee*, 957 F.3d at 411.

96. *Id.*

97. *Id.* at 412.

98. *Id.*

99. *Id.*

an analysis of whether property is abandoned only focuses on the intent of the defendant, while an analysis of the collective knowledge doctrine only focuses on the police officer's knowledge.¹⁰⁰ In this case, the court held that the backpack was abandoned at the time Ferebee told the officers that he did not own the backpack.¹⁰¹ There was no need to consider the collective knowledge doctrine since the backpack was definitively abandoned by the time Officer Gross searched it.¹⁰² As the court held, to require a police officer to be present during the abandonment of the property or to require an officer who was present during the abandonment to direct another officer to search the property is "inconsistent with the well-established rule that a search of abandoned property does not implicate the Fourth Amendment."¹⁰³

B. The Tenth Circuit Approach

During the same year as the *Ferebee* decision in the Fourth Circuit, the Tenth Circuit also ruled on whether the collective knowledge doctrine applies to the searches and seizures of abandoned property in *United States v. Jackson*. In *Jackson*, the detective on the scene informed other officers that a confidential informant had bought illegal drugs from a man standing next to the defendant, Garryn Jackson.¹⁰⁴ The detective observed Jackson exchange something with this man and then ordered the arrest team to move in and make contact with the two men.¹⁰⁵ The court observed that:

An officer approached Mr. Jackson, grabbed his arm, and told him he was "not going anywhere." Moments thereafter, Mr. Jackson fled on foot. The officer chased him and took him to the ground, at which point the officer heard a metallic sound. Someone yelled "gun," and Mr. Jackson stood up and continued his flight. Another officer, who also heard "a kind of clunk sound," saw Mr. Jackson run off. Officers at the scene recovered a firearm that a separate officer confirmed she had not seen in the street prior to the scuffle with Mr. Jackson.¹⁰⁶

After his arrest, Jackson moved to suppress all evidence, claiming that the officers did not have probable cause to arrest and search him.¹⁰⁷ He also claimed that he had not abandoned the firearm seized at the scene.¹⁰⁸ The district court denied Jackson's motion to suppress because he abandoned his firearm, so Jackson appealed to the Tenth Circuit.¹⁰⁹

100. *Id.* at 413.

101. *Ferebee*, 957 F.3d at 414.

102. *Id.* at 413–14.

103. *Id.* at 415.

104. *United States v. Jackson*, 806 F. App'x. 645, 646 (10th Cir. 2020).

105. *Id.*

106. *Id.* at 646–47.

107. *Id.* at 647.

108. *Id.*

109. *Id.*

In previous cases, the Tenth Circuit adopted the vertical collective knowledge doctrine, requiring that the officer requesting or ordering the arrest or search have the requisite probable cause.¹¹⁰ There is no requirement that any information establishing probable cause must have been communicated to the acting officer performing the arrest or search.¹¹¹ Because the officers on the scene were directed to make the arrest by officers with the knowledge of the requisite probable cause, the Tenth Circuit held that the warrantless search and seizure was constitutional under the vertical collective knowledge doctrine.¹¹²

Unlike the Fourth Circuit in *Ferebee*, the Tenth Circuit does not negate the importance of the collective knowledge doctrine when discussing whether property is abandoned.¹¹³ Even though the parties conceded in oral arguments that the abandonment issue would not need to be considered if there was probable cause for the search and seizure, the court disagreed and ruled on the abandonment issue.¹¹⁴ The court held that the firearm found on the scene was abandoned property because it was in plain view of the officers and because “his decision to continue fleeing from the police amounts to voluntary abandonment.”¹¹⁵ Because the court found that the firearm was abandoned property, the court affirmed the lower court’s ruling that the search was valid and constitutional.¹¹⁶

The Tenth Circuit appears to require the collective knowledge doctrine to apply to abandoned property. Because the court had already ruled that the vertical collective knowledge doctrine had created probable cause for the search and seizure in *Jackson*,¹¹⁷ the court could have followed the parties’ stipulation that the abandonment issue did not need to be considered. Instead, the court decided to discuss this issue, presumably to be instructive to lower courts on the abandoned property issue. The court emphasized that the police officers heard the firearm clank on the ground and saw the firearm on the ground after Jackson ran.¹¹⁸ If these facts were not present in the case, the officers would not have known that the firearm was abandoned and the

110. See *United States v. Whitley*, 680 F.3d 1227, 1234 (10th Cir. 2012) (applying the vertical collective knowledge doctrine in a case where a police officer has a reasonable suspicion that the defendant had a firearm); *United States v. Pickel*, 863 F.3d 1240, 1249–50 (10th Cir. 2017) (applying the vertical collective knowledge doctrine in a case where a police officer searched a truck).

111. *Whitley*, 680 F.3d at 1234; *Pickel*, 863 F.3d at 1249.

112. *Jackson*, 806 F. App’x. at 648.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* (explaining that the court “need not address the gun abandonment issue” because of the parties’ concessions, but proceeded to address it anyways).

118. *Jackson*, 806 F. App’x. at 648.

seizure of it could have violated Jackson's Fourth Amendment rights. Had the court not required the collective knowledge doctrine to apply to the searches of abandoned property, this analysis of whether or not the firearm was abandoned would be unnecessary. Therefore, the Tenth Circuit applied the collective knowledge doctrine to searches and seizures of abandoned property when holding that the seizure of Jackson's firearm did not violate his Fourth Amendment rights.

III. Proposed Solution

A. *The Supreme Court Should Provide Guidance*

The circuit split regarding the application of the collective knowledge doctrine to searches and seizures of abandoned property has a significant impact on the United States legal system's uniformity. The Fourth Amendment's protections are unquestionably fundamental rights and should be applied equally throughout the United States.¹¹⁹ However, the current circuit split is an inconsistency in the application of the Fourth Amendment's protections.

This inconsistency has unfortunate real-world consequences. Suppose an individual disclaims ownership of a bag to a police officer during an investigation. Then another officer searches the bag without being directed to do so and without knowledge of the bag's abandonment. Suppose this second officer finds the individual's identification and illegal drugs. If the individual moves to suppress the evidence found in the bag during the trial, jurisdiction alone would determine whether or not the motion is granted or overruled. If the event occurred in the Fourth Circuit, then, similar to what occurred in *Ferebee*,¹²⁰ the motion would be denied because a court would not apply the collective knowledge doctrine to the abandoned property. The inclusion of this evidence would likely be enough to convict the individual for possession of illegal drugs. But if that same event occurred only a few states over in the Tenth Circuit, the motion most likely would be granted because the court, like in *Jackson*,¹²¹ would apply the collective knowledge doctrine to the abandoned property. In the Tenth Circuit, the searching officer did not have probable cause to search the bag. The suppression of the

119. See Tracey Maclin, *The Central Meaning of the Fourth Amendment*, 35 WM. & MARY L. REV. 197, 197 (1993) ("The Fourth Amendment . . . presents a quandary for society. For some it embodies, *inter alia*, the right of every person 'to retreat into his own home and there be free from unreasonable governmental intrusion.' That conception of the amendment partially explains the familiar maxim: 'a man's home is his castle.' The Fourth Amendment also 'reflects experience with police excesses.' It makes plain, perhaps more than any other provision of the Bill of Rights, that the Constitution does not tolerate the tactics of a police state. Unquestionably, the protections of the Fourth Amendment are fundamental.").

120. See *United States v. Ferebee*, 957 F.3d 406, 413–14 (4th Cir. 2020).

121. See *Jackson*, 806 F. App'x. at 648.

evidence found in the bag would likely result in the individual not being convicted of possession of illegal drugs. These identical situations would have two entirely different results simply because of where the event occurred, despite the guarantees of the Fourth Amendment.

Also, because of the circuit split regarding horizontal collective knowledge, the same event could spawn additional legal outcomes in various courts. In the same hypothetical situation, if the court that heard the case was located in a circuit that applies the collective knowledge doctrine to abandoned property and allows for the application of horizontal collective knowledge, the result would likely be very different than in a circuit that applies the collective knowledge doctrine to abandoned property but does not allow for the application of horizontal collective knowledge. If the Ninth Circuit applied the collective knowledge doctrine to the abandoned property, they would likely deny the motion to suppress the evidence found in the bag.¹²² Although the officer who searched the bag was not directed to complete the search and did not have knowledge of the abandonment, the horizontal collective knowledge doctrine allows the knowledge of another officer on the scene to be imputed to the acting officer.¹²³ This result is different from the Tenth Circuit's outcome, which does not allow the application of the horizontal collective knowledge doctrine.¹²⁴ The Ninth and Tenth Circuits border each other, so, because of this circuit split, the result of this hypothetical case depends on a mere matter of feet for what circuit has jurisdiction over this event. This inconsistency is very troubling, as a citizen's location within the United States should not determine their constitutional protections. Therefore, the Supreme Court should provide guidance to resolve the circuit split and create uniformity throughout the circuit courts.

B. The Supreme Court Should Adopt the Tenth Circuit Approach

The Supreme Court should adopt the Tenth Circuit's application of the collective knowledge doctrine to searches and seizures of abandoned property. The Fourth Circuit was correct when it held that the Fourth Amendment does not protect abandoned property because the individual loses all reasonable expectation of privacy in the property.¹²⁵ But the Fourth Circuit also stated that abandonment can occur without the contemporaneous knowledge of any other person, so the acting officer did not need to have

122. See Fettig, *supra* note 43, at 672–73; United States v. Ramirez, 473 F.3d 1026, 1032–33 (9th Cir. 2007).

123. Fettig, *supra* note 43, at 672–73.

124. See United States v. Whitley, 680 F.3d 1227, 1234 (10th Cir. 2012); United States v. Pickel, 863 F.3d 1240, 1249 (10th Cir. 2017).

125. Ferebee, 957 F.3d at 412–13.

knowledge of the abandonment when they searched the property.¹²⁶ This holding is concerning and sets a dangerous precedent. While abandonment of property removes any Fourth Amendment protections, the officer should still be required to know that the property is abandoned prior to the search and seizure of the property. Suppose the acting officer or the officer directing the search is unaware that the property is abandoned and continues to conduct the search. In that case, the officer is unaware that they are not violating an individual's Fourth Amendment rights. This could easily lead to *post hoc* justifications of the search instead of gathering the requisite probable cause or knowledge of the abandonment before searching the property.¹²⁷

This type of justification is precisely what occurred in *United States v. Ferebee*. The officer who searched Ferebee's backpack was unaware that Ferebee had abandoned the property by disowning it to another officer, and the acting officer was not directed to complete the search by an officer who witnessed Ferebee abandoning the property.¹²⁸ Essentially, the acting officer had no knowledge that he was searching abandoned property. Therefore, he did not know that his actions were not violating Ferebee's Fourth Amendment rights until after the search was complete. Yet, the Fourth Circuit upheld this behavior and allowed this after-the-fact justification to continue by stating that it did not matter that the officer had no knowledge of the abandonment because the search occurred after the property was abandoned.¹²⁹

The precedent set by the Fourth Circuit could create an incentive for police officers to search property that they do not know is abandoned.¹³⁰ If police know that they can retroactively excuse the search with another officer's knowledge that the property was abandoned, the police may begin to search more property based only on the belief that the property could potentially be abandoned.¹³¹ This increase in searches without probable cause consideration is concerning for multiple reasons; not only are the police potentially violating the Fourth Amendment rights of the individuals whose property they are searching, as discussed previously, but this potential violation also creates issues for the administration of justice if vital evidence is suppressed in a trial. Suppose the earlier hypothetical individual had not abandoned their bag before the search, a gun connected to a murder was in their bag, and the officers searched the property anyway. In that case, the gun

126. *Id.* at 413–14.

127. See Fettig, *supra* note 43, at 685–86 (“[T]he aggregation rule may prompt an officer who lacks information to establish probable cause to ‘roll the dice’ by proceeding with a search or seizure ‘in the hopes that uncommunicated information existed’ that would justify the search.”).

128. *Ferebee*, 957 F.3d at 410–11.

129. *Id.* at 414.

130. Fettig, *supra* note 43, at 685–86.

131. *Id.*

as evidence is inadmissible at trial and the court will suppress the property, which is essential evidence. Individuals who might have been convicted had the police officer not conducted an unlawful search may be exonerated due to the lack of lawfully collected evidence.

Again, in *Ferebee*, the police officer did not know that Ferebee had abandoned the bag when he searched it.¹³² Had Ferebee not abandoned the bag, the officer could have very likely searched it anyway. Then the critical evidence in this case, including an illegal firearm and drug paraphernalia, would have been unlawfully obtained and would have been suppressed by the court, likely changing the outcome of the case. Potentially denying individuals their Fourth Amendment rights because of the ability to justify the search after-the-fact is not an outcome that benefits society at large. Additionally, while the cases mentioned in this Article focus mainly on drug-related crimes, the precedent they set can have ramifications in police investigations of severe, violent crimes where suppressing evidence could cause individuals who are a danger to themselves or others to be released back into society. Regardless of one's views of our criminal justice system as retributive or rehabilitative, incentivizing police to risk violating individuals' Fourth Amendment rights and risk suppressing any evidence found will not serve our society through the administration of justice.

If the Supreme Court adopts the Tenth Circuit approach, the application of the collective knowledge doctrine to searches and seizures of abandoned property would require that the acting officer either have the requisite knowledge that the property being searched was abandoned or the acting officer must have been directed to do so by an officer with the requisite knowledge.¹³³ This would eliminate the officer's ability to search property and then justify it *post hoc* by merely stating that another officer knew it was abandoned.

C. The Supreme Court Should Adopt Only Vertical Collective Knowledge

In deciding whether the collective knowledge doctrine applies to searches and seizures of abandoned property, the Court should also decide how the collective knowledge doctrine should be applied in any situation consistently. If the Supreme Court adopted the Tenth Circuit's application of the collective knowledge doctrine to searches and seizures of abandoned property, this adaptation should also resolve the current circuit split concerning the application of the collective knowledge doctrine in general. In the current circuit split, some circuits only allow vertical collective

132. *Ferebee*, 957 F.3d at 411.

133. *United States v. Jackson*, 806 F. App'x. 645, 648 (10th Cir. 2020).

knowledge while others allow both vertical and horizontal collective knowledge.¹³⁴

While this Article focuses on applying the collective knowledge doctrine to searches and seizures of abandoned property, it does not negate the equally concerning circuit split regarding the application of the collective knowledge doctrine in general. The inconsistent application of the collective knowledge doctrine to abandoned property causes different outcomes in cases due strictly to whether a certain jurisdiction applies the collective knowledge doctrine to abandoned property. Similarly, whether a circuit court applies the vertical or horizontal collective knowledge doctrine also significantly impacts the outcome of a case.

For example, in *United States v. Cook*, Cook was arrested after police officers found cocaine during a search of his vehicle and clothing.¹³⁵ The officer who viewed the exchange of goods had the requisite probable cause, but did not communicate this information to the officers who conducted the search or order them to search Cook.¹³⁶ Yet, the First Circuit applies the horizontal collective knowledge doctrine, so it aggregated all of the officers' knowledge of the scene to hold that the officers did not violate Cook's Fourth Amendment rights.¹³⁷ If this case had occurred in another jurisdiction that did not allow the application of horizontal collective knowledge, like the Tenth Circuit, the court's outcome likely would have been different. The court likely would have held that the search violated Cook's Fourth Amendment rights because the vertical collective knowledge doctrine only applies if the officer with the requisite knowledge of probable cause directs the search.¹³⁸ Had the court held that the search violated the Fourth Amendment, the court would likely suppress the evidence found in the search. So, if Cook had been prosecuted in a different jurisdiction that did not apply the horizontal collective knowledge doctrine, he likely would not have been convicted of drug possession. One's constitutional protections should not change only because of their location within the United States.

Additionally, many of the concerns that arise from the court's failure to apply the collective knowledge doctrine to searches and seizures of abandoned property also arise from the circuit courts allowing horizontal collective knowledge.¹³⁹ Horizontal collective knowledge also leads to *post hoc* justifications of searches and seizures.¹⁴⁰ Because horizontal collective knowledge does not require one individual with the requisite probable cause

134. Fettig, *supra* note 43, at 672.

135. *United States v. Cook*, 277 F.3d 82, 85 (1st Cir. 2002).

136. *Id.* at 84.

137. *Id.* at 86–87.

138. Fettig, *supra* note 43, at 672.

139. *See id.* at 680.

140. *Id.* at 685–86.

to direct the search, the search may occur without the acting officers knowing whether there is sufficient probable cause to conduct the search.¹⁴¹ The acting officers may only find out that they did not violate an individual's rights after the search was completed, which is concerning practice if it were adopted and practiced widely across police departments.

Additionally, horizontal collective knowledge could incentivize police officers to conduct searches with only an assumption that the other officers on the scene will be able to compile enough evidence after the fact.¹⁴² If the officers know that they can compile the officers' knowledge after the search is completed, they are much more likely to rush into searches and seizures without stopping to consider if they have the requisite knowledge for probable cause. Similar to the concerns of not applying the collective knowledge doctrine to searches and seizures of abandoned property, this incentive to rush into searches can lead to more violations of individuals' Fourth Amendment rights and to courts suppressing vital evidence at trial. In *Cook*, the officers found vital evidence of drug possession during their search—a search conducted on the assumption that one of the officers on the scene would have had the requisite knowledge for probable cause.¹⁴³ If none of the officers had viewed Cook receiving a package from another man (i.e., none of the officers would have the requisite probable cause), this evidence would have been obtained during an unconstitutional search and would have to be suppressed, resulting in Cook avoiding prosecution. When police officers are incentivized to risk violating Fourth Amendment rights and risk losing vital evidence, courts cannot effectively administer justice and society ultimately can suffer.

If the Supreme Court resolved the circuit split by limiting the collective knowledge doctrine to only include vertical collective knowledge, the incentive to justify searches *post hoc*, the risk of violating an individual's Fourth Amendment rights, and the risk of losing vital evidence will be dramatically lessened. Vertical collective knowledge requires the acting officers to have been ordered by someone with the requisite knowledge of probable cause, so police officers will have to consider their knowledge of the facts supporting probable cause before taking action.¹⁴⁴ They also will not be incentivized to justify their actions after the fact.¹⁴⁵ Furthermore, the Supreme Court can resolve this circuit split while resolving the circuit split regarding the application of the collective knowledge doctrine to searches

141. *Id.* at 672–73.

142. *See id.* at 685–86.

143. *United States v. Cook*, 277 F.3d 82, 84–85 (1st Cir. 2002).

144. *See Fettig, supra* note 43, at 672.

145. *See id.*

and seizures of abandoned property, solving two major circuit splits in one opinion.

Conclusion

Although the collective knowledge doctrine was created to increase police efficiency within the context of the Fourth Amendment of the United States Constitution, it is important that the expansion of the collective knowledge doctrine does not diminish critical Fourth Amendment protections. This doctrine should be applied uniformly throughout the country so that there is no difference in federal constitutional protections depending on the jurisdiction, and it should be applied in a manner that does not incentivize police officers to act without prior knowledge of probable cause. Justifying a search's constitutionality *post hoc* does not ensure the protections guaranteed by the Fourth Amendment.

It is important that the collective knowledge doctrine is not applied too broadly, so it does not restrict constitutional protections. It is also important for the doctrine to be applied to searches and seizures of abandoned property. The fact that an individual loses all reasonable expectation of privacy in their property once it is abandoned is indisputable.¹⁴⁶ However, this fact does not mean that police officers do not need to know that the property is abandoned before they conduct the search. It is important that courts apply the collective knowledge doctrine to searches and seizures of abandoned property to ensure that police officers know that they are not violating an individual's Fourth Amendment rights before they search abandoned property. Additionally, police officers should not have to wonder what they are constitutionally allowed to do without violating a citizen's rights. It would be beneficial for all police officers to be able to have consistent training on constitutional protections, which would be possible with the resolution of this current circuit split.

With added focus and scrutiny on police activity, uniform constitutional limitations on police procedures are imperative so that the police and the general public are aware of these limitations. A Supreme Court resolution of the circuit splits regarding the collective knowledge doctrine and its application to searches and seizures of abandoned property would be an important step towards ensuring that constitutionally guaranteed protections are well understood and consistently applied by the courts and law enforcement.

146. ANN. REV. CRIM. PROC., *supra* note 12, at 8–10.

