

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIAN GARRETT,
Plaintiff-Appellant,

v.

DENVER C.A.R.E.S.,
Defendant-Appellee,

On Appeal from the United States District Court
for the District of Colorado
No. 1:23-CV-01033-DDD-JPO
The Honorable Daniel D. Domenico

**MOTION OF THE CATO INSTITUTE FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE IN SUPPORT OF APPELLANT BRIAN GARRETT**

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Dated: February 21, 2024

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The Cato Institute is a nonprofit entity operating under § 501(c)(3) of the Internal Revenue Code. *Amicus* is not a subsidiary or affiliate of any publicly owned corporation and does not issue shares of stock. No publicly held corporation has a direct financial interest in the outcome of this litigation due to *amicus*'s participation.

RULE 29 DISCLOSURE STATEMENT

No counsel for either party authored this brief in whole or in part. No person or entity other than *amicus* made a monetary contribution to its preparation or submission.

MOTION FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*

Pursuant to this Court's discretion, the Cato Institute respectfully moves for leave to file an *amicus* brief supporting Appellant Brian Garrett, to assist the Court in its consideration of his claims. All parties were provided with notice of *amicus*'s intent to file as required under Rule 29(2). Counsel for Mr. Garrett has consented to the filing of this brief. Counsel for the Appellee has not consented.

INTEREST OF *AMICUS CURIAE*

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice focuses on the scope of criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and

defendants, citizen participation in the criminal justice system, and accountability for law enforcement.

Amicus's interest in this case arises from its mission to support the rights that the Constitution guarantees to all citizens. Cato has a particular interest in this case because it concerns the continuing vitality of the Fourth Amendment and its ability to act as a meaningful restraint on the exercise of government power.

ISSUE TO BE ADDRESSED BY *AMICUS*

Amicus will discuss how Denver CARES's emergency commitment of Brian Garrett violated the Fourth Amendment. Specifically, *amicus* will focus on the danger of extending the "collective knowledge" doctrine to these circumstances. Doing so would allow institutions like Denver CARES to simply rely on the say-so of police officers and abdicate their own independent duty to continually confirm that there is legal authority to detain someone. The "collective knowledge" doctrine may be applicable when one police officer is forced to make a split-second decision and rely on the advice of another. But it should have no applicability when persons are detained against their will for extended periods and when a fact necessary for their detention (intoxication) will naturally dissipate.

In addition, this brief will discuss the perverse incentives that arise when a private institution has a profit motive to detain persons against their will for longer periods of time, underscoring the importance of Fourth Amendment protections.

CONCLUSION

For the reasons stated above, the Cato Institute respectfully requests that the Court grant this motion to participate as *amicus* in the above-captioned case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Counsel certifies under FRAP 32(g) that the foregoing motion meets the formatting and type-volume requirements set under FRAP 27(d) and FRAP 32(a). The motion is printed in 14-point, proportionately-spaced typeface utilizing Microsoft Word and contains 392 words, including headings, footnotes, and quotations, and excluding all items identified under FRAP 32(f).

*/s/ Thomas A. Berry
Counsel for Amicus Curiae*

Dated: February 21, 2025

CERTIFICATE OF SERVICE

The undersigned certifies that on February 21, 2025, he electronically filed the above motion with the Clerk of Court using the CM/ECF System, which will send notice of such filing to counsel for all parties to this case. The undersigned also certifies that lead counsel for all parties are registered ECF Filers and that they will be served by the CM/ECF system.

/s/ Thomas A. Berry
Counsel for Amicus Curiae

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *amicus* certifies that (1) *amicus* does not have any parent corporations, and (2) no publicly held companies hold 10% or more of the stock or ownership interest in *amicus*.

INTEREST OF *AMICUS CURIAE*¹

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999 and focuses in particular on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

Cato's interest in this case arises from its mission to support the rights that the Constitution guarantees to all citizens. Cato has a particular interest in this case because it concerns the continuing vitality of the Fourth Amendment and its ability to act as a meaningful restraint on the exercise of government power.

¹ Pursuant to Fed. R. App. P. 29, counsel for *amicus* states that no party's counsel authored any part of this brief and no person other than *amicus* made a monetary contribution to fund its preparation or submission.

SUMMARY OF ARGUMENT

Brian Garrett was simply drinking with his friends and roughhousing in his own front yard when police responded to a call from his neighbor. The police detained Garrett, placed him in handcuffs, and transferred him to Denver's Emergency Service Patrol. Aplt. App. 157. The Emergency Service Patrol then transferred Garrett to Denver Community Addiction Rehabilitation and Evaluation Services ("Denver CARES"). *Id.* "Even though he repeatedly asked to leave, Denver CARES admitted Mr. Garrett for detox, and held him in a locked dormitory until the next morning." *Id.* at 156.

Although Denver CARES calls the process "voluntary," their policy is that "[i]f a person asks to leave, they are encouraged to stay, and not permitted to leave without permission." *Id.* at 158. Denver CARES consistently denied Garrett's requests to leave, even though he was not a clear danger to himself or others. Aplt. App. 133. To make matters worse, Denver CARES threatened Garrett with extended detention if he continued to try to exercise his rights. *Id.* Garrett consistently asked to leave after being transported by police and refusing to sign a consent form. *Id.* at 159. Nevertheless, Denver CARES documented Garrett as a "voluntary" admit. *Id.*

Garrett has now sued Denver CARES under the Fourth Amendment. Because Garrett was clearly not admitted to Denver CARES voluntarily, Denver CARES now relies on its authority to detain Garrett pursuant to Colorado's Emergency

Commitment Statute. That statute authorizes law enforcement to put individuals into protected custody when there is probable cause that they are intoxicated *and* “clearly dangerous to the health and safety of the person’s self or others.” COLO. REV. STAT. § 27-81-111(1)(a) (emphasis added).

However, Denver CARES did not *itself* have probable cause to believe that Garrett was both intoxicated *and* clearly dangerous to himself or others. Nor does Denver CARES even allege that it did. Instead, Denver CARES denies that it had a responsibility to assess probable cause to commit Garrett, arguing that it could rely on the police officers who brought Garrett to the facility.

Further, the problems with Garrett’s detention did not end with his intake. Colorado’s Emergency Commitment statute requires facilities like Denver CARES to immediately release people from emergency commitment once the facilities no longer have probable cause to commit those individuals. Accordingly, the statute provides that “[i]f the administrator [of the treatment facility] determines that the application fails to sustain the grounds for emergency commitment . . . the administrator shall refuse the commitment, *immediately* release the detained person, and encourage the person to seek voluntary treatment, if appropriate.” *Id.* § 27-81-111(b)(4) (emphasis added). Likewise, “[w]hen the administrator [of the treatment facility] determines that the grounds for commitment no longer exist, the administrator shall discharge the person committed under this section.” *Id.* § 27-81-

111(b)(5). Yet Garrett was released well past the time when he could have been considered dangerous or intoxicated, because Denver CARES first required him to meet with a counselor before he was released. Order on Mot. to Dismiss at 4.

Thus, Denver CARES violated Garrett's Fourth Amendment rights twice over. It did so by (1) initially detaining him without assessing probable cause; and (2) prolonging Garrett's detention past the time when he could have been intoxicated and clearly dangerous.

Finally, abuses like those that occurred in this case are likely to continue unless this Court sends a clear message that they are illegal. Denver CARES is incentivized to violate the Fourth Amendment and detain individuals even when there is no cause to do so because it profits from these detentions. This profit motive leads institutions like Denver CARES to err on the side of *retaining* detainees, but both the Fourth Amendment and the Colorado Emergency Commitment Statute require the opposite. This Court should reverse the district court's dismissal of Garrett's claims.

ARGUMENT

I. Denver CARES Must Continually Reassess Whether It Has Probable Cause to Detain Plaintiffs.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . . against unreasonable . . . seizures.” U.S. CONST. amend. IV. Denver CARES must comply with the Fourth Amendment because it is a state actor,

managed by the Denver Health and Hospital Authority and staffed by state employees.

While the state has a compelling interest in ensuring the safety of intoxicated individuals and the public, the Supreme Court has also recognized that involuntary commitment is a “massive curtailment of liberty” that often results in “adverse social consequences.” *Vitek v. Jones*, 445 U.S. 480, 491–92 (1980). Because “the seizure of persons for detoxification . . . is closely analogous to a criminal arrest,” officers can only detain an intoxicated person if the officers have probable cause to believe the individual is a danger to himself or others. *Anaya v. Crossroads Managed Care Sys., Inc.*, 195 F.3d 584, 590–91 (10th Cir. 1999); COLO. REV. STAT. § 27-81-111(1)(a).

As a general rule, “the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty.” *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). However, in the emergency commitment context, the courts allow a neutral factfinder other than a judge to assess whether probable cause exists to detain a person. *Carberry v. Adams Cnty. Task Force on Alcoholism*, 672 P.2d 206, 210 (Colo. 1983). Although “due process demands only that a neutral factfinder independently determine that the statutory requirements for commitment and release are satisfied,” a neutral factfinder at Denver CARES must still fill this role and assess whether the probable cause standard has been met. *See id.* This

requirement means that Denver CARES has an obligation to assess whether the grounds for commitment have been satisfied before it accepts an individual for detainment.

Yet Denver CARES erroneously relies on the “collective knowledge” doctrine to argue that it can rely on police officers’ assessment of probable cause rather than its own. Aplt. App. 70. Under the collective knowledge doctrine, “an arrest or stop is justified when an officer having probable cause or reasonable suspicion instructs another officer to act, even without communicating all of the information necessary to justify the action.” *United States v. Whitley*, 680 F.3d 1227, 1234 (10th Cir. 2012). This doctrine was created so that officers could act swiftly and rely upon each other in the line of duty, since “officers do not often have the luxury of time and should be able to reasonably rely on the information provided by other officers without having to cross-examine them about the foundation for the transmitted information.” *United States v. Latorre*, 893 F.3d 744, 755 (10th Cir. 2018) (internal quotation marks omitted).

The collective knowledge doctrine is simply inapplicable here. Its reasoning is relevant for law enforcement officials making split-second decisions or taking other actions in circumstances where full communication is otherwise infeasible. But it holds little weight where Denver CARES has the time to conduct its own

assessments and can easily evaluate both danger and drunkenness upon admitting individuals into the facility.

Precedents applying the collective knowledge doctrine demonstrate that the doctrine was developed only for cases where police officers rely on each other for information that cannot be communicated easily. In *Latorre*, for example, the collective knowledge doctrine was invoked where several law enforcement agencies cooperated on a three-day investigation to detain Latorre for conspiring to traffic marijuana. *Id.* at 747–50. This Court applied the collective knowledge doctrine because “the Illinois state police, Homeland Security, and Wyoming state police all functioned as a team to stop and question Latorre.” *Id.* at 755. This Court reasoned that “[t]his type of interstate and interagency effort is necessary to pursue and complete an interstate investigation involving an aircraft in transit—that Officer Weidler did not directly communicate all facts supporting reasonable suspicion to [the detaining officer] does not negate the constitutionality of the stop.” *Id.*

Here, there were no interstate efforts to complete a criminal investigation. Denver CARES could have conducted, and in fact did conduct, its own assessment of probable cause. *See Aplt. App. 158* (district court acknowledging that Denver CARES conducted an intake assessment). But Denver CARES now seeks to rely on the police officer’s assessment instead and absolve itself of any responsibility.

Denver CARES further argues that it need not assess probable cause at any point *after* intake. This argument also falls short because probable cause of intoxication dissipates over time as the intoxication itself goes away. The authorizing statute is clear that Denver CARES is obligated to release people *immediately* once probable cause has dissipated. COLO. REV. STAT. § 27-81-111(b)(4). While probable cause in a criminal case likely exists until some exculpatory evidence is found, probable cause that a person is both intoxicated and clearly dangerous will continually dissipate once that person has stopped drinking. So, too, the harm that the state seeks to prevent—danger caused by alcohol abuse—will steadily diminish.

As a result, Denver CARES is uniquely situated to continually determine whether a person meets the criteria for detention under Colorado’s Emergency Commitment Statute. Unlike police officers in the line of duty, the staff at Denver CARES have the time and experience to assess whether a person is intoxicated and presents a clear danger. Once a person has been arrested and brought into Denver CARES’s custody, there is no immediate danger and thus no exigent circumstances. Denver CARES has the time to assess at intake whether the grounds for emergency commitment have been met. Once custody has been transferred, Denver CARES is in the best position to then assess whether an emergency commitment is and remains appropriate, including by tests for blood alcohol level.

Further, Denver CARES's staff is trained to know when a person is both intoxicated and presents a clear danger to themselves or others. While the collective knowledge doctrine is useful for police officers who need to act quickly to respond to crimes, there is no legitimate reason for Denver CARES to pass off probable cause determinations to police officers in this context.

Neither police officers nor Denver CARES may "ignore easily accessible evidence and thereby delegate [its] duty to investigate and make an independent probable cause determination based on that investigation." *Baptiste v. J.C. Penney Co.*, 147 F.3d 1252, 1259 (10th Cir. 1998). In other words, the reliance must be "objectively reasonable." *Id.* at 1260. Although Denver CARES argues that it should be able to rely on police officers' assessment, Denver CARES conducted its own assessment of Garrett when he arrived. It should have known that Garrett presented no clear danger to himself or others.

II. Denver CARES Violated the Fourth Amendment by Prolonging Garrett's Detention Without Probable Cause.

Although Garrett's estimated sober time was recorded as 5:03 am, Denver CARES did not let Garrett leave until 5:37 am. Aplt. App. 159–60. Colorado's Emergency Commitment Statute provides that "[w]hen the administrator [of the treatment facility] determines that the grounds for commitment no longer exist, the administrator *shall* discharge the person committed under this section." COLO. REV. STAT. § 27-81-111(5) (emphasis added). Not only did Denver CARES not follow

the plain meaning of the statute, but Denver CARES also violated the Fourth Amendment by prolonging Garrett’s detention.

Even a brief detention “must last no longer than is necessary to effectuate its purpose, and its scope must be carefully tailored to its underlying justification.” *Lundstrom v. Romero*, 616 F.3d 1108, 1120–21 (10th Cir. 2010) (omitting internal quotation marks). For example, in *Lundstrom*, this Circuit found that the police unreasonably seized the plaintiffs by placing them in handcuffs for a period of 10 to 45 minutes during a child welfare check. *Id.* at 1118, 1122–26. In cases like the one presented here, a seizure is unconstitutional if it is unreasonable, regardless of whether the seizure is brief.

In the *Terry*-stop context, the courts have also held prolonged detentions unconstitutional, even though these stops are brief. For example, this Court held that a detention lasting 90 minutes was unreasonable and thus violated the Fourth Amendment. *See Walker v. City of Orem*, 451 F.3d 1139, 1149 (10th Cir. 2006) (reasoning that the detention was allegedly excessive and unnecessary for “investigative purposes”). While that case involved a less intrusive *Terry* stop, this Court still considered a short but unreasonable detention unconstitutional. And that detention was shorter than the one at issue in this case. The analysis hinges on reasonableness, not whether the detention was *de minimis* because it lasted for a few

hours or less. This Court should conduct the same reasonableness analysis here, finding Denver CARES's prolonged detention unreasonable.

III. Profit-Motivated “Drunk Tanks” Like Denver CARES Are Incentivized to Commit Fourth Amendment Violations.

“The security of one’s privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society.” *Wolf v. Colorado*, 338 U.S. 25, 27 (1949), *overruled on other grounds by Mapp v. Ohio*, 367 U.S. 643 (1961). Without the Fourth Amendment’s protection against unreasonable seizures, law enforcement officials could exercise their power in completely arbitrary ways. The Fourth Amendment thus strikes a careful balance between protecting individual liberty and combatting crime, a balance favoring liberty over efficiency. As Justice Brennan aptly remarked, “[W]hat the Framers understood then remains true today—that the task of combating crime and convicting the guilty will in every era seem of such critical and pressing concern that we may be lured by the temptations of expediency into forsaking our commitment to protecting individual liberty and privacy.” *United States v. Leon*, 468 U.S. 897, 929–30 (1984) (Brennan, J., dissenting).

Justice Brennan’s dissenting remarks ring true today. Of course, criminal law enforcement would be more effective and efficient if police could ignore the requirements of probable cause and due process. Nevertheless, the Fourth Amendment preserves individual liberty at the cost of a less powerful state.

Permitting officers to intervene whenever a person might be engaging in harmful behavior has obvious potential for abuse. However noble Denver CARES's vision for preventing alcohol abuse might seem, Denver CARES's Google reviews raise concerns about what is happening at their facility. One reviewer wrote that he was "held here against [his] will when [he] was not under arrest" and that the staff at Denver CARES "illegally coerced [him] to sign documents to be released . . ."² Another reviewer wrote about how her daughter was "targeted" by Denver CARES while she was attending a concert and "after 15 hrs in solitary detox," her daughter "left [Denver CARES] covered in bruises."³ The Fourth Amendment must be strictly applied here to prevent these abuses of power.

Further, Denver CARES is financially incentivized to commit Fourth Amendment violations. In addition to its substantial state funding, Denver CARES charges detainees for their detentions. Aplt. App. 160 (Garrett was charged \$315 at the end of his detention). Unlike state-funded prisons, Denver CARES has a motive to admit every intoxicated person into its facilities, regardless of whether they meet the criteria under Colorado's Emergency Commitment Statute. Thus, even when

² Available at <https://tinyurl.com/2s3jycu>.

³ Available at <https://tinyurl.com/42vycn66>.

there is not an actual basis for involuntarily committing people, Denver CARES is financially incentivized to look the other way.

This Court should recognize the serious Fourth Amendment concerns implicated when drunk tanks like Denver CARES detain innocent and vulnerable people for profit.

CONCLUSION

For the foregoing reasons, and those presented by Appellant, this Court should reverse the district court's dismissal of Garrett's claims.

Respectfully submitted,

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Dated: February 21, 2024

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 2,740 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

*/s/ Thomas A. Berry
Counsel for Amicus Curiae*

Dated: February 21, 2025

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

1. All required privacy redactions have been made in accordance with 10th Cir. R. 25.5;
2. The hard copies to be submitted to the court are exact copies of the version submitted electronically; and
3. The electronic submission was scanned for viruses with the most recent version of a commercial virus scanning program, Bitdefender Endpoint Security Tools, and is free of viruses.

*/s/ Thomas A. Berry
Counsel for Amicus Curiae*

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