# No Privacy in an “Out of Order” Restroom: Seventh Circuit Affirms Warrantless Entry and Constructive Possession in United States v. Scott

## Description

The United States Court of Appeals for the Seventh Circuit recently released an opinion in *United States v. Scott,* a case highlights reasonable expectations of privacy in the context of public restrooms and constructive possession of a firearm.

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### Summary of Facts

In December 2020, police officers arrived at a gas station mini-mart to investigate a robbery that had occurred outside earlier that day. They planned to secure any surveillance footage from the station. As the officers were approaching the entrance, they saw LaPierre Scott look in their direction and walk inside the mini-mart towards the restrooms. The store contained two single-occupancy restrooms side by side. Scott walked past the first one and entered the second restroom, which had a clear, visible “Out of Order” sign on it. After entering, Scott did not lock the door. The officers followed Scott into the restroom through the unlocked door. Inside, they found Scott standing on the handicap grab bars beside the toilet, with his arm extended through a removable ceiling tile. The officers found that Scott’s reaching into this concealed space was unusual and inconsistent with ordinary restroom use. As a result, they searched the area that he had been reaching. The officers discovered a firearm and subsequently did a custodial search of Scott, which revealed $871 in cash, ecstasy, eutylone (an ecstasy-type drug), methamphetamine, and marijuana.

Scott was charged as a felon in possession of a firearm and with possession of a controlled substance with intent to distribute. At district court, he argued that the evidence of the firearm should be suppressed because the search violated his Fourth Amendment rights. Specifically, Scott claimed that he had a reasonable expectation of privacy within the restroom. He also claimed that the evidence was insufficient to show he had possessed the weapon since it was not found directly on him. The district court rejected both arguments, concluding that Scott had no reasonable expectation of privacy in a restroom visibly marked as closed and left unlocked. Further, the court found that the circumstances of him reaching into the ceiling, the placement of the gun, and the lack of dust on the weapon proved constructive possession. Scott was convicted on all counts and appealed to the Seventh Circuit.


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**United States Court of Appeals for the Seventh Circuit**

On appeal, Scott contended that he had a reasonable expectation of privacy in the restroom he entered. The court relied on the United States Supreme Court case *Smith v. Maryland*, which laid out a two-part test about reasonable expectation of privacy. *Smith* established that a privacy expectation must be that the individual's conduct shows an actual expectation of privacy, which is subjective, and whether their subjective expectation of privacy is one that society recognizes as legitimate, which is objective.

The Seventh Circuit then turned to the question of whether Scott had a legitimate privacy expectation. To determine this, the court turned to their ruling in *United States v. Carlisle.* In *Carlisle*, the court outlined five factors: "(1) whether the defendant had an ownership interest in the thing seized or the place searched, (2) whether he had the right to exclude others from that place, (3) whether he exhibited a subjective expectation that it would remain free from governmental invasion, (4) whether he took normal precautions to maintain his privacy, and (5) whether he was legitimately on the premises." The Court explained that here, the restroom was marked "out of order." While a public restroom normally encourages use, the out of order sign signified that it was not functioning and marked as closed. This ultimately served as a notice to discourage usage and that the space was not available to the public. The court also noted that an "out of order" bathroom also serves as a notice that the gas station employees or other workers may enter to try to fix the issue or clean the bathroom at any point. Moreover, Scott failed to lock the door of the restroom after entering. The court found that this diminishes any reasonable expectation of privacy since any person who failed to lock a bathroom door could expect that someone may try to enter.

The Court proceeded to analyze Scott's second argument, that the officers saw him enter the restroom and should have believed that he went in to use it. The court rejected this argument based on the finding that the out-of-order sign was large and immediately above the restroom sign. Thus, the court found it reasonable for the officers to have believed that Scott saw the sign. The court also stated that this would support the belief that the restroom was not being used for its intended purpose. Therefore, the court ruled that Scott's failure to lock the door and the bathroom being out of order rendered any subjective expectation of privacy unreasonable.

Additionally, Scott claimed that he was not in actual, immediate control of the firearm. The court applied the constructive possession doctrine as defined by their holding in *United States v. White.* Their ruling in *White* allows possession to be inferred when a defendant has knowledge of and dominion or control over an object, even if it is not found on their person. In this case, Scott reached into the ceiling where the firearm was hidden where access is not legitimate, indicating control. Further, the gun was in clean condition compared with the dusty ceiling, hinting that it was put there recently. The court found that this supported an inference that he placed the firearm there to hide it and evade detection. Moreover, Scott's possession of the drugs found on him further demonstrated intent and control. Therefore, the court ultimately concluded that this combination of circumstantial facts was sufficient to uphold the possession conviction and rejected Scott's claim. Thus, the Seventh Circuit ultimately affirmed the district court's holding that Scott had no reasonable expectation of privacy in the out-of-order restroom and that there was sufficient evidence to prove constructive possession of the firearm.

**So, what are the key takeaways from today's training?**


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*Scott* emphasizes the importance of recognizing that individuals do not have a reasonable expectation of privacy in clearly marked and non-functioning public spaces. This can include an out of order restroom, especially if the door is not locked. Further, it is clear that law enforcement officers may lawfully enter such spaces without a warrant to investigate and seize contraband. *Scott* also emphasizes that possession of a firearm or other contraband does not require physical holding. Constructive possession can be established through circumstantial evidence like proximity, actions demonstrating control, and intent to hide the item. In practical form, it is crucial for officers to diligently observe behaviors and the surrounding environment to build a fact-based case for possession. Thorough documentation and clear articulation of facts supporting searches and possessions are needed to uphold evidence in court while respecting constitutional protections.

***United States v. Scott***, **No. 24-1903 (7th Cir. 2025)**

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