

71506-2

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NO. 71506-2-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM T. WRIGHT,

Appellant.

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BRIEF OF RESPONDENT

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I. ISSUES

1. Are the trial court's factual findings supported by substantial evidence?

2. Do the factual findings support the trial court's conclusions of law?

3. Has the State met its burden to show consent, an exception to the warrant requirement, was properly obtained for the search of the hotel room?

II. STATEMENT OF THE CASE

A. FACTS OF THE CRIME.¹

On September 5, 2010, at approximately 5:30 a.m., police responded to an alleged sexual assault at Extended Stay America, a hotel in Bothell, Washington. A.B. reported she woke up in the hotel room with a man she did not recognize, she did not know how she got to the room or what had happened the night before, and the crotch of her jeans and underwear had been cut or ripped open. A.B. further reported the man repeatedly hung up the phone when she tried to call her friends and he left when she began to yell. Police contacted A.B.'s friends who indicated that they had been at

¹ Defendant cites extensively to the verbatim report of proceedings from the trial. Brief of Appellant at 8-21. Those facts were not before the court at the suppression hearing.

a tavern with A.B. when she began talking with an unknown male and the two of them walked off in the same direction. The bartender later provided the friends with a phone number for the unknown male. The friends eventually contacted the unknown male, William Thomas Wright, defendant, who told them A.B. was in a hotel room and she was okay. CP 92, 96-97.

B. PROCEDURAL HISTORY.

On April 26, 2012, defendant was charged with Attempted Indecent Liberties. CP 101-102.

On April 10, 2013, defendant filed a motion to suppress. The motion was heard on April 18, 2013. At the suppression hearing the court heard testimony from Sonya Abdullah, the hotel manager, Bothell Police Detective Chissus, and considered the hotel guest registration card signed by defendant, the folio receipt from the hotel, and the consent to search form signed by the hotel acting manager, Nancy Dylan. Exhibits 1, 2, and 3; CP 89-95; RP² 2-39.

The following facts are based on the evidence presented at the suppression hearing:

² RP refers to the verbatim report of proceedings for the April 18, 2013, CR 3.6 hearing. Other hearings are designated by date, e.g. RP (12/16/13).

Defendant checked into the Extended Stay on September 5, 2010, at 12:05 a.m. Defendant dated the registration card 9/4/10, when he signed it. He paid cash for one night and was assigned room 209. The standard check-in time was any time after 3:00 p.m. and the standard check-out time was 12:00 noon. Since defendant rented the room for one night his check-out time was noon on September 5, 2010. The registration card and the folio receipt both show an "arrival" of 9/5/2010, and a "departure" of 9/6/2010. Abdullah explained that discrepancy was due to the fact that defendant's check-in was after midnight and the hotel's computer registration system automatically prints the next day because the system does not allow zero nights. The hotel's standard procedure is to inform a guest of the actual check-out time during the check-in. No evidence was presented that defendant received copies of the registration card or the folio receipt. The hotel has procedures for guests to extend their stay; the guest can contact the front desk before noon and either pay for an additional night, or asks to extend the check-out time. Defendant did not make any such request. Exhibit 2, and 3; RP 5-21, 29.

On September 5, 2010, Detective Chissus was assigned to the case and responded to the Extended Stay in Bothell. He

contacted Detective Odegaard and was advised of the status of the investigation. Patrol had received a call at approximately 5:30 a.m. that morning, contacted the alleged victim in the hotel lobby, and transported her to the hospital. Officers had also contacted hotel staff, confirmed that no one was inside room 209, and had hotel staff secure the room. At 1:35 p.m., Detective Odegaard contacted Nancy Dillon, the on duty manager, and obtained consent to search room 209. Exhibit 1; RP 22-26, 27-30.

At 1:50 p.m. police went up to room 209; the room was locked and unoccupied. Using a key provided by hotel staff, police entered the room and began photographing and searching the room. No personal belongings, such as identification, suitcases, clothing, or anything obviously connected to defendant, were found in room 209. RP 26-27, 30-31.

No evidence was presented at the suppression hearing regarding items discovered in the hotel room during the search. RP 26-27. However, Detectives Odegaard and Chissus did testify about the search at trial. RP (12/10/13) 202-221, 225-226, 232-243; RP (12/11/13) 252-264, 310-316, 334-337; RP (12/12/13) 375-376. In addition to property belonging to the hotel, the following items were collected during the search of the room: ten bottles of

beer—seven full and three partially consumed; a can of shaving cream; a dildo; jean fibers; and a razor. RP (12/10/13) 205-206, 210, 212-213, 216-219, 226, 233, 236-243; RP (12/11/13) 254-255, 258-261, 263-264, 310-311, 334-337.

At the conclusion of the suppression hearing the court found that defendant arrived and checked-in to the hotel just after midnight on September 5th. Defendant paid for one night. The hotel computer system cannot give the same check-out date as the check-in date, so the system indicated the 6th rather than the 5th. Defendant departed from the hotel before 5:30 a.m. on September 5th and did not return to the hotel. The room was secured. Consent to search the room was given by the on-site manager at 1:35 p.m. When police searched the room, defendant's personal effects were not in the room. The court concluded: defendant rented the room for one night, and after noon on the 5th he no longer had a reasonable expectation of privacy or tenancy in that room; the police obtained a valid consent to search from the hotel manager after 1:35 p.m.; a search warrant was not required to search the room. The court denied defendant's motion to suppress. The court entered written findings and conclusions on January 31, 2014. CP 33-38; RP 38-39; RP (1/31/14) 751-752.

On December 9-13, 2013, the case proceeded to trial on amended information. On December 16, 2013, the jury found defendant guilty of indecent liberties. On January 31, 2014, defendant was sentenced to 24 months confinement. Defendant timely appealed. CP 1-2, 18-32, 56, 78-79; RP (12/16/13) 724-726; RP (1/31/14) 747-751.

III. ARGUMENT

A. STANDARD OF REVIEW.

The court reviews a trial court's ruling on a motion to suppress evidence to determine whether substantial evidence supports the trial court's factual findings and whether the factual findings support the trial court's conclusions of law. State v. Winterstein, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009); State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). The Appellate court reviews only those facts to which error has been assigned. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Challenged findings are verities if they are supported by evidence of a sufficient quantity to persuade a fair-minded, rational person of their truth. State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003); State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). "Evidence is substantial when it is enough 'to persuade a

fair-minded person of the truth of the stated premise.” Garvin, 166 Wn.2d at 249; State v. Reid, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999). In testing the sufficiency of the evidence, the reviewing court does not weigh the persuasiveness of the evidence. Rather, the court must defer to the trier of fact on issues involving conflicting testimony, credibility of witnesses, and the weight and persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-875, 83 P.3d 970 (2004), abrogated in part on other grounds, Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004); State v. Asaeli, 150 Wn. App. 543, 567, 208 P.3d 1136 (2009). Unchallenged findings of fact are verities on appeal. State v. Valdez, 167 Wn.2d 761, 767, 224 P.3d 751 (2009), State v. Gaines, 154 Wn.2d 711, 716, 116 P.3d 993 (2005).

Conclusions of law in an order pertaining to suppression of evidence are reviewed de novo. State v. Arreola, 176 Wn.2d 284, 291, 290 P.3d 983 (2012); Garvin, 166 Wn.2d at 249. In making its review, an appellate court may affirm on any grounds supported by the factual record, regardless whether such grounds were relied upon by the lower court. State v. Avery, 103 Wn. App. 527, 537, 13 P.3d 226 (2007). Here, substantial evidence supports the trial

court's factual findings and those findings support the court's conclusions of law.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Defendant assigns error to the trial court's finding of fact 5³ and the trial court's conclusions of law 1, 2 and 3. Brief of Appellant at 1.

1. Findings Of Fact.

The trial court made the following findings of fact:

1. The defendant checked into a hotel in Bothell, Snohomish County, Washington[,] in the early morning hours on September 5, 2010—just after midnight on September 4, 2010.
2. The defendant paid for one night. The computer-based registration system at the hotel does not allow entry of a check-out date on the same day as the guest's check-in date, so in the defendant's case, the guest registry reflected a check-out date of September 6, 2010[,] even though in reality, he was expected to vacate the room by the normal check-out time on September 5, 2010.
3. Officers from the Bothell Police Department were called to the room shortly after 5:30 a.m. on September 5, 2010. The defendant had already departed the hotel by that time. Officers secured the hotel room he had been staying in and there is no evidence the defendant returned to the hotel that day.
4. Per hotel policy, check-out time was 12:00 p.m. At 1:35 p.m. on September 5, 2010, the hotel's on-

³ The unchallenged findings of fact 1, 2, 3, and 4 are verities on appeal. Valdez, 167 Wn.2d at 767.

site manager gave the police officers consent to search the hotel room.

5. Officers entered the room, searched it, and recovered several items of evidence. The defendant's personal effects were not in the room.

CP 33-34; RP 38-39.

Defendant assigns error to the last sentence of finding of fact 5: "The defendant's personal effects were not in the room." Brief of Appellant at 1. At the suppression hearing, Detective Chissus testified that no personal belongings—identification, suitcases, clothing, anything that was obviously connected to defendant—were found in the room. RP 26-27. No other testimony or evidence pertaining to what was discovered in the room was offered at the suppression hearing. A reviewing court must defer to the trier of fact on issues involving credibility of witnesses, and the weight and persuasiveness of the evidence. Thomas, 150 Wn.2d at 874-875; Asaeli, 150 Wn. App. at 567. Substantial evidence supports the trial court's finding that defendant's personal effects were not in the room.

2. Conclusions Of Law.

Defendant assigns error to the trial court's conclusions of law 1, 2 and 3. Brief of Appellant at 1. The trial court's conclusions of law read:

1. The defendant rented the hotel room for one night. After noon on September 5, 2010, he no longer had any reasonable expectation of privacy or tenancy in the room.
2. The officers from the Bothell Police Department were constitutionally permitted to enter the room pursuant to consent from the hotel's on-site manager. No search warrant was required.
3. Accordingly, the defendant's motion to suppress is denied.

CP 34; RP 39. The factual findings support the trial court's conclusions of law.

C. THE STATE MET ITS BURDEN SHOWING THAT CONSENT WAS PROPERLY OBTAINED FOR THE SEARCH OF THE HOTEL ROOM.

The Fourth Amendment to the United States Constitution protects individuals against unwarranted searches and seizures. Article I, section 7 of the Washington Constitution provides greater protection to individuals than the Fourth Amendment. State v. Rankin, 151 Wn.2d 689, 694, 92 P.3d 202 (2004). Generally, evidence obtained in violation of article I, section 7 must be suppressed. State v. Allen, 138 Wn. App. 463, 469, 157 P.3d 893 (2007). Evidence seized from an illegal search is generally suppressed under the exclusionary rule or the fruit of the poisonous tree doctrine. Gaines, 154 Wn.2d at 716–717; Parris, 163 Wn. App. at 117. Unless an exception is present, a warrantless search

is impermissible under both article I, section 7 of the Washington Constitution and the Fourth Amendment to the United States Constitution. Gaines, 154 Wn.2d at 716. The State has the burden to show that a warrantless search or seizure falls within one of the exceptions to the warrant requirement. State v. Acrey, 148 Wn.2d 738, 746, 64 P.3d 594 (2003); State v. White, 141 Wn. App. 128, 135, 168 P.3d 459 (2007). One such exception to the warrant requirement is consent to a search. State v. Walker, 136 Wn.2d 678, 682, 965 P.2d 1079 (1998); State v. Leach, 113 Wn.2d 735, 738, 782 P.2d 1035 (1989). To establish valid consent, the State must show that the person consenting to the search had authority to consent, the consent was voluntary, and the search did not exceed the scope of the consent. State v. Thompson, 151 Wn.2d 793, 803, 92 P.3d 228 (2004). The court reviews the validity of a warrantless search de novo. State v. Parris, 163 Wn. App. 110, 116, 259 P.3d 331 (2011) review denied, 173 Wn.2d 1008, 268 P.3d 942 (2012); State v. Kypreos, 110 Wn. App. 612, 616, 39 P.3d 371 (2002). In the present case, the trial court's finding that the hotel's on-site manager gave the police consent to search the hotel room supports the court's conclusion that the police were constitutionally permitted to enter the room pursuant to that consent

and were not required to obtain a search warrant. CP 34; RP 39. The issue is whether the State has shown that consent for the search of the hotel room was properly obtained from the hotel manager after the expiration of defendant's tenancy.

Generally, a motel guest has the same expectation of privacy during his tenancy as the owner or renter of a private residence. Stoner v. California, 376 U.S. 483, 490, 84 S. Ct. 889, 893, 11 L.Ed.2d 856 (1964); State v. Davis, 86 Wn. App. 414, 419, 937 P.2d 1110, review denied, 133 Wn.2d 1028, 950 P.2d 478 (1997). However, the expectation of privacy does not survive the expiration of the tenancy, unless the hotel has accepted late payment from the defendant or tolerated overtime stays by the defendant in the past. Davis, 86 Wn. App. at 419, citing People v. Montoya, 914 P.2d 491, 492 (Colo. Ct. App. 1995) (fact that motel occasionally granted overtime stays on a case-by-case basis, did not establish policy of allowing grace period giving defendant a reasonable expectation that he would be allowed to remain beyond the check-out time); United States v. Owens, 782 F.2d 146, 150 (10th Cir. 1986) (management had previously allowed defendant to remain in room past check-out time without consequences); United States v. Watson, 783 F. Supp. 258, 263 (E.D. Va. 1992)

(defendant had previously remained in his motel room past check-out time without consequence). When a guest vacates a hotel room the guest's expectation of privacy in the room terminates and the hotel has the exclusive right to its possession. Abel v. United States, 362 U.S. 217, 241, 80 S. Ct. 683, 698, 4 L.Ed.2d 668 (1960). Police can search a hotel room without a search warrant when the room has been vacated and the hotel management has given consent to search. Abel, 362 U.S. at 241; State v. Roff, 70 Wn.2d 606, 612, 424 P.2d 643 (1967).

In the present case, the evidence showed that defendant checked into the Extended Stay America hotel in Bothell just after midnight, rented a room for one night, and was required to vacate the room by 12:00 noon on September 5, 2010. Exhibit 2, and 3; RP 6-21. No evidence was presented that defendant made any arrangements to extend his stay, nor that the hotel has ever accepted late payment from defendant or tolerated overtime stays by defendant in the past. The evidence also showed that defendant left the room on September 5, 2010, by 5:30 a.m. and when the hotel staff secured the room no one was in it. RP 23-24, 27-29, 31. No evidence was presented that defendant returned to the hotel after his departure. The evidence further showed that on

September 5, 2010, the hotel management voluntarily consented to a search of the room at 1:35 p.m. Exhibit 1; RP 12-13, 24-26, 39. Police searched the room at approximately 1:50 p.m. No identification, suitcases, clothing, or anything obviously belonging to defendant were found in the room. RP 26-27, 31.

The trial court correctly concluded that there was substantial evidence to justify the search of the hotel room. At the time of the search petitioner had vacated the room terminating any expectancy of privacy. The hotel had the exclusive right to possession and voluntarily consented to a search of the room. The search, undertaken without a warrant, was entirely lawful. Abel, 362 U.S. at 241; Roff, 70 Wn.2d at 612. The State met its burden of showing that consent to search the hotel room was properly obtained after the expiration of defendant's tenancy.

IV. CONCLUSION

For the reasons stated above, the appeal should be denied and defendant's conviction affirmed.

Respectfully submitted on August 28, 2014.

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