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COURT OF APPEALS

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STATE OF WASHINGTON

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No. 40215-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DALPHINE HOOPII,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 09-1-00390-6
The Honorable Thomas Larkin, Judge
The Honorable Brian Tollefson, Judge

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it concluded that the warrantless viewing of a motel registry was a legitimate search and not an unconstitutional invasion of Appellant's privacy.
2. The trial court erred when it concluded that the inadvertent viewing of Appellant's last name on the motel registry gave the community corrections officer a legitimate reason to view Appellant's more detailed individual registry card.
3. The trial court should have granted Appellant's motion to suppress because the evidence collected during a warrantless search of Appellant's motel room and personal possessions was discovered only after an unconstitutional search of a motel registry.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where the community corrections officer was only at the motel in order to verify the living arrangements of two probationers, and where the officer did not suspect the two probationers of noncompliance with the terms of their release, did the officer have authority to view a motel registry containing the names and room numbers of every guest registered at the motel? (Assignment of Error 1)

2. Were Appellant's privacy rights violated when a community corrections officer viewed a list of all guests registered at the motel, and when the officer viewed Appellant's individual registry card simply because the officer recognized her last name as belonging to a known offender who had violated the conditions of her release? (Assignment of Error 2)
3. Do all motel guests retain a privacy interest in their registry information even if other registered guests have given up that right based on their status as probationers? (Assignments of Error 1 & 2)
4. Should the evidence collected during a warrantless search of Appellant's motel room and personal possessions have been suppressed, where the evidence was discovered only after an unconstitutional search of a motel registry? (Assignment of Error 3)

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The State charged Dalphine Hoopii with three counts of unlawful possession of a controlled substance with intent to deliver (methamphetamine, Oxycodone, and Lorazepam) (RCW 69.50.401), and one count of bail jumping (RCW 9A.76.170). (CP 65-67)

Hoopii moved pursuant to CrR 3.6 to suppress all items seized during a search of her motel room, arguing that a Corrections Officer's warrantless viewing of a motel registry list and individual registry card, which alerted the Officer to Hoopii's presence at the motel, was unconstitutional. (CP 20-43; 09/02/09 RP 80-89)¹ The trial court disagreed and denied the motion to suppress. (CP 59-64; 09/02/09 RP 97-99)

Following a bench trial, the judge found Hoopii guilty on all four counts. (CP 74-83; RP1 3; RP3 349-54) The court sentenced Hoopii to a standard range sentence totaling 132 months plus one day of confinement.² (CP 90-91; RP4 383) This appeal timely follows. (CP 105)

B. SUBSTANTIVE FACTS

1. Facts from CrR 3.6 Hearing

Community Corrections Officer Joanne Springer supervises offenders who are subject to conditions of release from the Department of Corrections. (09/02/09 RP 7, 8) As part of that

¹ Citations to the transcript containing the CrR 3.6 hearing, held on 09/02/09, will be to the date of the proceeding followed by the page number. Citations to the remaining transcripts containing trial and sentencing, labeled volumes 1 thru 4, will be to the volume number followed by the page number.

² This total term included three consecutive 24-month school zone enhancements. (CP 91; RP4 383)

supervision, Springer verifies and inspects her offenders' proposed living arrangements. (09/02/09 RP 9) She also monitors offenders to ensure that they are in compliance with the conditions of their release. (09/02/09 RP 9) If Springer develops a reasonable suspicion during one of her contacts that the offender is in violation of the conditions of release, she has statutory authority to search the offender and his or her residence and personal belongings. (09/02/09 RP 10)

On January 20, 2009, Springer went to the Hometel Inn in Fife to investigate living arrangements for two offenders on her caseload, Robert Brown and Shirley Butts. (09/02/09 RP 12-13) Brown had recently requested permission to move to the Hometel Inn. (09/02/09 RP 12, 14) Butts had already reported that she was living at the Inn, but had not provided Springer with a specific room number. (09/02/09 RP 13, 14)

The Hometel Inn keeps two records of guests; one is a printed page containing a list of room numbers and the last name of the guest registered to each room. (09/02/09 RP 15-16) The Inn also keeps a second, more detailed record, consisting of cards containing the full name of the registered guest and other occupants, a copy of the guests' photo identifications, and the

guests' vehicle license information. (09/02/09 RP 15-16, 17) This information is sorted according to the guest's room number. (09/02/09 RP 16)

When she arrived at the Inn, Springer went to the front desk to verify Brown's and Butts' room numbers. (09/02/09 RP 15) Springer asked to look at the printed list. (09/02/09 RP 16, 17) As she was verifying the room numbers, she noticed the name Hoopii listed as the occupant of room 245. (09/02/09 RP 16-17) Springer testified that she knew of a Dalphine Hoopii who was an offender on a colleague's case load, and knew from conversations with the colleague that DOC had issued a warrant for Dalphine Hoopii because she had failed to report her current whereabouts. (09/02/09 RP 16, 56, 58)

Springer asked to see the detailed registry card for room 245 to determine if the registered Hoopii was Dalphine Hoopii. (09/02/09 RP 18) After reviewing the individual registry card, including the copy of Hoopii's photo identification, Springer confirmed that the registered guest was the same Dalphine Hoopii. (09/02/09 RP 18) Springer confirmed that the DOC warrant was still in effect, then called the Fife Police Department to request backup. (09/02/09 RP 18, 66)

Springer and several Fife Police Officers went to room 245 and knocked on the door. (09/02/09 RP 18-19, 70) When Dalphine Hoopii answered, Springer immediately took her into custody. (09/02/09 RP 19) Hoopii admitted that she had recently smoked marijuana, which was in violation of the conditions of her release. (09/02/09 RP 23) Springer determined that two other guests present in Hoopii's room were also on active DOC supervision. (09/02/09 RP 21, 22) Springer noticed empty beer cans in the room, and believed that the two guests were also in violation of the no-alcohol condition of their release. (09/02/09 RP 21, 22)

Springer began to search the room and the personal belongings in the room. (09/02/09 RP 24, 25) Inside a backpack, Springer found a glass smoking device, baggies containing a white powder substance, and baggies and bottles containing various unidentified prescription pills. (09/02/09 RP 25-26)

2. Facts from Trial

In addition to testimony similar to that presented during the CrR 3.6 hearing, the State presented additional testimony that the officers found \$305.00 in cash and "crib notes" listing different controlled substances with corresponding dollar values. (RP1 55, 64) Hoopii admitted that the backpack and purse belonged to her.

(RP1 49; RP2 140, 143; RP3 212) Hoopii also claimed ownership of a digital scale found during a search of her guest's car. (RP1 75-76, 143; RP3 215)

A forensic scientist weighed and tested the substances found in the backpack, and concluded that there was 2.1 grams of methamphetamine, 119 tablets of Oxycodone, and 365 tablets of Lorazepam, which are all controlled substances (RP3 227-28, 229, 232, 240-41)

According to law enforcement witnesses, drug sellers often carry large amounts of cash, possess scales to measure and weigh drugs for sale, keep "crib notes," and possess several different types of narcotics. (RP1 65; RP3 216, 258-59, 264)

A deputy prosecuting attorney testified that Hoopii had received written notification to appear at a court hearing on July 16, 2009, and that she did not respond when her case was called. (RP3 169-97, 198)

The State also presented testimony that a school bus for special education students stops just beside the driveway of the Hometel Inn, and that a regular school bus stop is located on Pacific Avenue within 1000 feet of the Hometel Inn. (RP2 87, 89; RP3 284-85)

IV. ARGUMENT & AUTHORITIES

Both the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution protect citizens against warrantless searches and seizures.³ Warrantless searches are per se unreasonable. State v. Parker, 139 Wn.2d 486, 496, 987 P.2d 73 (1999). Because this is a strict rule, courts limit and narrowly construe exceptions to the warrant requirement. Parker, 139 Wn.2d at 496. When challenged, the State bears the heavy burden of proving that a warrantless search falls within an exception. Parker, 139 Wn.2d at 496.

Article I, section 7 of the Washington Constitution provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." In State v. Jorden, our State Supreme Court held that "[a]bsent a valid exception to the prohibition against warrantless searches, random viewing of a motel registry violates article I, section 7 of the Washington State Constitution." 160 Wn.2d 121, 131, 156 P.3d 893 (2007). (A copy of the State v. Jorden majority opinion is attached in the Appendix.)

³ Article I, section 7 provides greater privacy protections than the Fourth Amendment to the United States Constitution. State v. Jackson, 150 Wn.2d 251, 260, 76 P.3d 217 (2003); State v. Vrieling, 144 Wn.2d 489, 495, 28 P.3d 762 (2001).

Relying on Jorden, Hoopii argued below that viewing both the printed registry list and Hoopii's registry card were warrantless, suspicionless searches conducted in violation of article I, section 7. (CP 20-43; 09/02/09 RP 80-89) The trial court disagreed, and entered the following relevant conclusions of law:

[2] CCO Springer legitimately viewed the Homotel Inn's guest registry while conducting a compliance check on the residence and living arrangements of two offenders, as required under RCW 9.94A.700. This was not the kind of suspicionless search that is prohibited under State v. Jorden . . . because CCO Springer did not randomly view the motel registry in a "fishing expedition." Instead, CCO Springer looked at the motel registry solely for the purpose of conducting compliance checks on two offenders . . . who had each reported the Homotel Inn as their primary residence.

[3] In the process of conducting compliance checks . . . CCO Springer inadvertently saw Hoopii's name on the motel registry. CCO Springer was not obligated to ignore Hoopii's name when she knew that there was a felony warrant for her arrest.

(CP 62-63) The trial court's conclusions were incorrect because the court too narrowly applied the reasoning and holding of the Jorden Court when it found that Springer legitimately viewed the printed registry.⁴ Furthermore, even if her initial view of the registry list was legitimate, the facts known to Springer did not provide a

⁴ A trial court's conclusions of law entered following a CrR 3.6 hearing are reviewed *de novo*. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999) (citing State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996)).

well-founded suspicion justifying a search of Hoopii's individual registry card.

In Jorden, Lakewood area motels and hotels participated in a program in which officers would review guest registers on a random basis and without individualized or particularized suspicion. 160 Wn.2d at 124. Guests were told that a valid identification was required for check-in and that the identification is kept on file, but guests were not told of the possibility of random, suspicionless searches of the registry by law enforcement. 160 Wn.2d at 124.

During one such search, a Pierce County Deputy Sheriff saw Jorden's name, checked for warrants and, after discovering two outstanding warrants, went to Jorden's room to confront him. Upon entering the room, officers saw cocaine in plain view. Jorden, 160 Wn.2d at 124. Jorden was arrested and charged with unlawful possession of a controlled substance. The trial court denied Jorden's motion to suppress the cocaine, and Jorden was eventually convicted as charged. Jorden, 160 Wn.2d at 124-25.

On appeal, Jorden argued that the Deputy's search of the motel registry violated his privacy rights under the state constitution. Jorden, 160 Wn.2d at 125. The Supreme Court agreed, finding that individuals have a privacy interest in the

information contained in a motel registry and that random, suspicionless searches of registries is a violation of Art. I, section 7 of the Washington state constitution. 160 Wn.2d at 121, 130. The Court held that the information obtained from the registry was unlawfully obtained, and the evidence found in Jordan's room should have been suppressed. 160 Wn.2d at 131.

In considering whether there is a legitimate privacy interest in a motel registry, the Court stated:

[T]here is more information at stake than simply a guest's registration information: an individual's very presence in a motel or hotel may in itself be a sensitive piece of information. There are a variety of lawful reasons why an individual may not wish to reveal his or her presence at a motel. As the amicus American Civil Liberties Union (ACLU) points out, couples engaging in extramarital affairs may not wish to share their presence at the hotel with others, just as a closeted same-sex couple forced to meet at the motel also would not. The desire for privacy may extend to business people engaged in confidential negotiations, or celebrities seeking respite from life in the public eye. One could also imagine a scenario, as Jordan's trial attorney pointed out during the motion to suppress, where a domestic violence victim flees to a hotel in hopes of remaining hidden from an abuser.

Additionally, we note the sensitivity of the registry information in and of itself. Not only does it reveal one's presence at the motel, it may also reveal co-guests in the room, divulging yet another person's personal or business associates.

160 Wn.2d at 129 (citations omitted).

In this case, the trial court's conclusion that Springer's request for the registry list was not unconstitutional because it was not a random "fishing expedition" overlooks the broader holding of the Jorden Court, which is that "the information contained in a motel registry-including one's whereabouts at the motel-is a private affair under our state constitution, and a government trespass into such information is a search." Jorden, 160 Wn.2d at 130. The Jorden Court was concerned not just with the randomness of the search presented in that case, but also with the violation of privacy committed against all registered occupants and their guests. Under Jorden, *any* warrantless search of a motel registry is an unconstitutional invasion of privacy *unless* "the government [can] express at least an individualized or particularized suspicion about the search subject or present a valid exception to a warrantless search." 160 Wn.2d at 130

In this case, the State did not show that there was any reasonable suspicion of criminal activity or violation of Brown's or Butts' community custody conditions. Springer was there only to confirm their living arrangements. (09/02/09 RP 14; CP 59) But even if Springer needed to confirm their room numbers, and even if those numbers could have been given to law enforcement

legitimately, that does not permit Springer or other law enforcement officials to view the printed registry list. The hotel clerk could have simply told Springer the room numbers for Brown and Butts. There was no legitimate reason for Springer to view the entire list containing the last names of all registered guests, which under Jorden is private and protected information.

Even if Springer legitimately viewed the registry list, and inadvertently saw the last name Hoopii on the list, Springer still did not have authority to request and view Hoopii's detailed registry card. The registry cards contain the full name of the registered guest and other occupants, a copy of the guests' photo identifications, and the guests' vehicle license information. (09/02/09 RP 15-16, 17; CP 60) Under Jorden, the information on the card "is a private affair under our state constitution, and a government trespass into such information is a search." 160 Wn.2d at 130

Accordingly, even if Springer had authority to view the registry list, in order to search an individual registry card, the State must still establish "at least an individualized or particularized suspicion about the search subject or present a valid exception to a warrantless search." Jorden, 160 Wn.2d at 130.

First, Springer did not have a sufficient “individualized or particularized suspicion” justifying a search of the registry card. The simple fact that a person has an uncommon name, or shares a last name with a suspected offender, does not alone give law enforcement the right to invade that person’s privacy without a warrant.

Probationers and parolees do have a diminished expectation of privacy. Still, a community corrections officer may only conduct a warrantless search of the individual or his property if the search is reasonable and the officer has a well-founded suspicion that a violation of the conditions of release has occurred. RCW 9.94A.631(1); State v. Massey, 81 Wn. App. 198, 200-01, 913 P.2d 424 (1996); State v. Lucas, 56 Wn. App. 236, 243-44, 783 P.2d 121 (1989). A well-founded suspicion is less than probable cause and is similar to the reasonable suspicion required for a Terry stop. Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); State v. Simms, 10 Wn. App. 75, 87, 516 P.2d 1088 (1973). A suspicion is reasonable when based on specific and articulable facts and the rational inferences drawn from those facts. Terry, 392 U.S. at 21.

Springer saw the last name Hoopii, and she is personally

aware of two probationers with that last name.⁵ (CP 60; 09/02/09 RP 18, 35) But surely there are more than two Hoopii's in the state and the nation. In fact, Springer testified that the last known address for Dalphine Hoopii was somewhere in Idaho. (09/02/09 RP 39). It was not rational to infer, without any other facts, that the Hoopii registered at the Homotel Inn was the same Hoopii who had failed to report to her CCO. Simply seeing the last name Hoopii on the registry list did not provide a sufficiently reliable, individualized and well-founded suspicion that the registered Hoopii was a probationer or parolee who had violated the conditions of their sentence or release.

The warrantless search of the Homotel Inn's registry list was not legitimate because it was a broad and unreasonable intrusion into the privacy of each registered guest, including Dalphine Hoopii. The search of Hoopii's individual registry card was also improper because Springer did not have sufficient facts from which to logically conclude that the registered guest was Dalphine Hoopii. Both searches violated article I, section 7 of the Washington state constitution, and were improper under our Supreme Court's holding

⁵ Springer testified that she had no reason to believe that the other Hoopii was not in compliance with the conditions of release. (09/02/09 RP 35)

in Jorden, supra. When an unconstitutional search occurs, all subsequently obtained evidence and statements become fruit of the poisonous tree and must be suppressed. State v. Ladson, 138 Wn.2d 343, 359, 979 P.2d 833 (1999) (citing State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986)).

V. CONCLUSION

Jorden clearly and unequivocally held that the information in a motel or hotel registry is private. If law enforcement is allowed to view an entire list of registered guests when they have a particularized suspicion or valid warrant exception pertaining to only particular guests, then the privacy interests of all other registered guests are violated. Moreover, sharing an uncommon name with a known offender should not mean that an individual has a diminished right of privacy, and must endure frequent invasions of their privacy.

The trial court's narrow understanding of Jorden should be rejected, and this court should find that the searches of the Homotel Inn's registries were unconstitutional. Daphine Hoopii's convictions should be reversed, and her case remanded with instructions that

the evidence seized in the search of her motel room be suppressed.

DATED: May 28, 2010



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CERTIFICATE OF MAILING

I certify that on 05/28/2010, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: (1) Kathleen Proctor, DPA, Prosecuting Attorney's Office, 930 Tacoma Ave. S., Rm. 946, Tacoma, WA 98402; and (2) Dalphine Hoopii, DOC# 763786, Washington Corrections Center for Women, 9601 Bujacich Road NW, Gig Harbor, WA 98332-8300.



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APPENDIX

State v. Jordan, 160 Wn.2d 121, 156 P.3d 893 (2007)

Supreme Court of Washington,
En Banc.
STATE of Washington, Respondent,
v.
Timothy Enrique JORDEN, Petitioner.
No. 76800-5.

Argued Jan. 26, 2006.

Decided April 26, 2007.

Background: Defendant was convicted by a jury in the Superior Court, Pierce County, Rosanne Nowak Buckner, J., of unlawful possession of cocaine and sentenced to 22 months in prison. Defendant appealed. The Court of Appeals, 126 Wash.App. 70, 107 P.3d 130, affirmed.

Holding: Granting defendant's petition for review, the Supreme Court, Bridge, J., held that the practice of checking the names in a motel registry for outstanding warrants without individualized or particularized suspicion violated defendant's constitutional rights.

Reversed.

J.M. Johnson, J., filed a separate concurring opinion.

Madsen, J., filed a dissenting opinion in which Charles W. Johnson, J., concurred.

West Headnotes

[1] Searches and Seizures 349 ↪12

349 Searches and Seizures

349I In General

349k12 k. Constitutional and Statutory Provisions. Most Cited Cases

(Formerly 349k23)

State constitutional provision governing warrantless searches of a citizen's private affairs qualitatively

differs from the Fourth Amendment and in some areas provides greater protections than does the federal constitution. U.S.C.A. Const.Amend. 4; West's RCWA Const. Art. 1, § 7.

[2] Searches and Seizures 349 ↪24

349 Searches and Seizures

349I In General

349k24 k. Necessity of and Preference for Warrant, and Exceptions in General. Most Cited Cases

Warrantless search is per se unreasonable under state constitution unless it falls under one of Washington's recognized exceptions. West's RCWA Const. Art. 1, § 7.

[3] Searches and Seizures 349 ↪26

349 Searches and Seizures

349I In General

349k25 Persons, Places and Things Protected

349k26 k. Expectation of Privacy. Most Cited Cases

"Private affairs," for purposes of state constitutional provision governing warrantless searches of a citizen's private affairs, are those interests which citizens of the state have held, and should be entitled to hold, safe from government trespass. West's RCWA Const. Art. 1, § 7.

[4] Searches and Seizures 349 ↪26

349 Searches and Seizures

349I In General

349k25 Persons, Places and Things Protected

349k26 k. Expectation of Privacy. Most Cited Cases

In determining whether a certain interest is a private affair deserving protection under state constitution, a central consideration is the nature of the information sought—that is, whether the information obtained via the governmental trespass reveals intimate or discrete details of a person's life. West's RCWA Const. Art. 1, § 7.

[5] Amicus Curiae 27 ↪3

27 Amicus Curiae

27k3 k. Powers, Functions, and Proceedings.

Most Cited Cases

Supreme Court is not bound to consider argument raised only by amici.

[6] Searches and Seizures 349 ↪13.1

349 Searches and Seizures

349I In General

349k13 What Constitutes Search or Seizure

349k13.1 k. In General. Most Cited Cases

Searches and Seizures 349 ↪26

349 Searches and Seizures

349I In General

349k25 Persons, Places and Things Protected

349k26 k. Expectation of Privacy. Most

Cited Cases

Information contained in a motel registry-including one's whereabouts at the motel-is a private affair under state constitution, and a government trespass into such information is a search. West's RCWA Const. Art. 1, § 7.

[7] Searches and Seizures 349 ↪76

349 Searches and Seizures

349I In General

349k76 k. Corporations; Offices and Records. Most Cited Cases

Law enforcement practice of checking the names in a motel registry for outstanding warrants without individualized or particularized suspicion violated defendant's rights under state constitutional provision governing warrantless searches of a citizen's private affairs. West's RCWA Const. Art. 1, § 7.

****894** Rebecca Wold Bouchey, Attorney at Law, Mercer Island, WA, for Petitioner.

Todd Andrew Campbell, Pierce County Pros. Attorneys Office, Tacoma, WA, for Respondent.

Douglas B. Klunder, Attorney at Law, Seattle, WA,

for Amicus Curiae on behalf of American Civil Liberties Union of Washington, Amicus Curiae on behalf of Pacific Hospitality Investment, Inc.

BRIDGE, J.

***123** ¶ 1 Timothy Jordan appeals his conviction for unlawful possession of cocaine. On March 15, 2003, a Pierce County deputy sheriff conducted a random warrant check of the Golden Lion Motel's guests via the guest registry and discovered Jordan's presence at the Lakewood motel as well as the fact of two outstanding warrants for Jordan's arrest. Deputy sheriffs then entered Jordan's motel room in order to arrest him for the outstanding warrants. Upon entering the room, officers saw cocaine in plain view. Jordan contends that the random check of the motel registry revealing his whereabouts constitutes a violation of his privacy rights under article I, section 7 of the Washington State Constitution. We agree and reverse both the Court of Appeals decision and Jordan's conviction.

I

Facts and Procedural History

¶ 2 The Pierce County Sheriff's Department takes part in the "Lakewood Crime-Free Hotel Motel Program." 1 Verbatim***124** Report of Proceedings (VRP) at 11. The program offers assistance to motels and hotels that have a history of significant criminal activity, providing training on methods of crime reduction. The program also encourages officers to review the guest registries of hotels and motels on a random basis and without individualized or particularized suspicion. ****895** ^{FN1} Officers often conduct random criminal checks of the names in guest registries at motels with reputations for frequent criminal activity. When checking into a participating motel, guests are advised that a valid identification is required for check-in and that the identification information is kept on file, but the guests

are not told of the possibility for random, suspicionless searches of the registry by law enforcement.

FN1. The program is voluntary in so far as motels will not receive crime prevention training if they are not enrolled in the program. But because the Ninth Circuit allows random registry checks under *United States v. Cormier*, 220 F.3d 1103, 1108 (9th Cir.2000), testimony at trial indicated that an officer may review a hotel's registry without the hotel's consent. Thus, while participation in certain aspects of the crime-prevention program is voluntary, the practice of random registry checks may occur whether or not a motel invites such a search. While the Golden Lion welcomes the random checks, the practice gives rise to the concern voiced by amicus Pacific Hospitality Investment, Inc., a hotel group, that unwanted random checks discourage the business of lawful patrons at motels, interfere with business operations, and compromise the "duty and responsibility of a hotel operator to protect its guests against privacy violations." Mem. of Amici Curiae in Support of Pet. for Review at 1.

¶ 3 On March 15, 2003, Deputy Reynaldo Punzalan conducted a random check of the guest registry at the Golden Lion. Punzalan testified that he visited the motel that day as part of a routine check of the motel. He also testified that because of the motel's high volume of criminal incidents, it was not unusual for officers to visit the Golden Lion once per shift of their own accord. When Punzalan ran the name of guest Timothy Jordan through the mobile data computer in his vehicle, he found there were outstanding felony warrants for Jordan. Punzalan called for backup and confirmed Jordan's room number using motel records. When backup arrived, Punzalan and his fellow officers knocked at Jordan's door. After a couple of minutes, the door

was answered by a female occupant. Deputy Punzalan immediately*125 removed the woman from the doorway and entered the room, whereupon an unclothed Jordan was discovered in the bed. Drug paraphernalia and a tin containing a substance later identified as crack cocaine were on a table nearby. Jordan was arrested and charged with unlawful possession of a controlled substance.

¶ 4 Prior to trial, Jordan moved to suppress evidence of the drugs and drug paraphernalia, arguing it was based on an illegal search. Jordan argued that Deputy Punzalan's search of the motel registry violated Jordan's privacy rights under the state and federal constitutions, though Jordan's argument primarily focused on the federal constitution. After considering federal case law, testimony from Deputy Punzalan on the practices surrounding the random registry checks, and argument from both parties, the trial court denied the motion. Evidence of the drugs and drug paraphernalia was introduced at trial. Jordan was convicted and sentenced to 22 months in prison for unlawful possession of a controlled substance.

¶ 5 Jordan appealed, arguing that although the random registry check does not violate federal constitutional protections, it does violate state constitutional protections. The Court of Appeals concluded that the act of checking into a motel and the information required to do so—the same information found on a driver's license—does not constitute a private affair protected by article I, section 7. *State v. Jordan*, 126 Wash.App. 70, 74, 107 P.3d 130 (2005). Jordan filed a petition for review, which was granted.^{FN2}

FN2. Acting as amici curiae, the American Civil Liberties Union and Pacific Hospitality Investment, Inc., owner of two hotels in Fife, Washington, filed a memorandum in support of the petition for review, arguing that the random registry check violates article I, section 7.

II

Analysis

[1] ¶ 6 Article I, section 7 of the Washington Constitution provides that “[n]o person shall be disturbed in his private *126 affairs, or his home invaded, without authority of law.” “[I]t is well established that article I, section 7 qualitatively differs from the Fourth Amendment and in some areas provides greater protections than does the federal constitution.” *State v. Surge*, 160 Wash.2d 65, at 70, 156 P.3d 208 (2007). We **896 must therefore determine “whether article I, section 7 affords enhanced protection in the particular context.” *Id.* Accordingly, we must determine whether that heightened protection is available in these circumstances to Jorden.

[2] ¶ 7 Article I, section 7 protects against warrantless searches of a citizen's private affairs. Therefore, a warrantless search is per se unreasonable unless it falls under one of Washington's recognized exceptions. *State v. Hendrickson*, 129 Wash.2d 61, 70-71, 917 P.2d 563 (1996). Here, the State does not argue the motel registry review falls into one of the exceptions, but argues that the information in the registry is not a private affair and thus there was no search triggering article I, section 7 protection.

[3][4] ¶ 8 Private affairs are those “ ‘interests which citizens of this state have held, and should be entitled to hold, safe from government trespass.’ ” *In re Pers. Restraint of Maxfield*, 133 Wash.2d 332, 339, 945 P.2d 196 (1997) (plurality opinion) (quoting *State v. Myrick*, 102 Wash.2d 506, 511, 688 P.2d 151 (1984)). In determining whether a certain interest is a private affair deserving article I, section 7 protection, a central consideration is the nature of the information sought—that is, whether the information obtained via the governmental trespass reveals intimate or discrete details of a person's life. See *State v. Jackson*, 150 Wash.2d 251, 262, 76 P.3d 217 (2003); *State v. McKinney*, 148

Wash.2d 20, 29, 60 P.3d 46 (2002); *Maxfield*, 133 Wash.2d at 341, 354, 945 P.2d 196; ^{FN3} *State v. Young*, 123 Wash.2d 173, 183-84, 867 P.2d *127 593 (1994); *State v. Boland*, 115 Wash.2d 571, 578, 800 P.2d 1112 (1990).

FN3. A majority of the *Maxfield* court failed to agree that a review of power records constituted an impermissible intrusion into one's private affairs. But a majority did consider the extent to which such records reveal details about an individual's life. The plurality noted that electrical consumption “pervad[es] every aspect of an individual's business and personal life,” *Maxfield*, 133 Wash.2d at 341, 945 P.2d 196, while the dissent believed that such records do not disclose “discrete information about an individual's activities.” *Id.* at 354, 945 P.2d 196 (Guy, J., dissenting).

¶ 9 In addition, this court has also considered whether there are historical protections afforded to the perceived interest. *McKinney*, 148 Wash.2d at 27, 60 P.3d 46. And, where the perceived interest involves the gathering of personal information by the government, this court has also considered the purpose for which the information sought is kept, and by whom it is kept. *Id.* at 32, 60 P.3d 46.

¶ 10 Finally, this court has consistently expressed displeasure with random and suspicionless searches, reasoning that they amount to nothing more than an impermissible fishing expedition. See *Maxfield*, 133 Wash.2d at 341, 945 P.2d 196; *Jackson*, 150 Wash.2d at 267, 76 P.3d 217; *Young*, 123 Wash.2d at 186-87, 867 P.2d 593 (expressing concern over an investigatory technique that “eviscerate[d] the traditional requirement that police identify a particular suspect prior to initiating a search”); *City of Seattle v. Mesiani*, 110 Wash.2d 454, 455 n. 1, 755 P.2d 775 (1988) (program involving random sobriety checkpoints invalidated under article I, section 7 because it lacked particularized and individualized suspicion).

¶ 11 Setting aside for a moment the question of the nature of the information sought, *i.e.*, whether motel guest registries reveal intimate details about one's life, we first evaluate the historical protections surrounding motel registries and the purpose for which such information is gathered. Although individuals have a privacy interest in their motel rooms, *Stoner v. California*, 376 U.S. 483, 490, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964), historical data does not suggest whether Washington's citizens have held, or should be entitled to hold, motel guest registries safe from suspicionless government trespass. The State offers common law authority that includes the use of guest registries in relation to the prosecution of a criminal suspect. Br. of Resp't at 8. But in each of the cases cited, law enforcement had a particularized and individualized suspicion about the *128 suspect that *preceded* review of the registry. *See, e.g., State v. Gunwall*, 106 Wash.2d 54, 56, 720 P.2d 808 (1986) (police reviewed hotel register to confirm aspects of informant's**897 tip about suspected cocaine dealer); *State v. Tharp*, 96 Wash.2d 591, 593, 637 P.2d 961 (1981) (prosecution entered motel registration slip into evidence to show defendant registered with stolen car at motel); *State v. Tweedy*, 165 Wash. 281, 283, 5 P.2d 335 (1931) (guest register entered into evidence to show defendant charged with giving intoxicating liquor to minors invited into his hotel room).^{FN4} Here, there was no particularized and individualized suspicion of Jordan preceding review of the registry. Thus, an historical inquiry does not resolve this question.

FN4. Moreover, of the cases cited by the State, only *Gunwall* concerned an article I, section 7 question, and there the use of a hotel register was not at all related to the privacy question. 106 Wash.2d at 55-57, 720 P.2d 808.

[5] ¶ 12 As to the purpose for which such information is kept, and by whom, RCW 19.48.020 requires hotels and motels to keep record of a guest's arrival and departure for one year. RCW 19.48.020 is

found within a title that sets forth various miscellaneous business regulations and within a chapter regulating lodging houses and restaurants. There is no indication that RCW 19.48.020 was intended to require lodging records for law enforcement purposes. *See McKinney*, 148 Wash.2d at 27-29, 32, 60 P.3d 46 (citizens are not entitled to expect Department of Licensing (DOL) records are private and protected from disclosure because the records are gathered by a government agency for law enforcement purposes, and several Washington statutes attest to this fact). Moreover, the motel records are not compiled by a government agency. *See id.*^{FN5} Thus, state law does not resolve the question.

FN5. At oral argument, the State referenced municipal codes that allow law enforcement to review motel registries, suggesting the codes evinced Washington citizens have not held such information free from governmental trespass. However, neither party cited the codes in briefing. Amici's memorandum in support of petition for review did cite the codes as evidence supporting the necessity of granting review in this case, but amici did not cite the codes in connection with the argument first put forth by the State during oral argument. Even if amici had made such an argument, we are not bound to consider argument raised only by amici. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wash.2d 568, 629 n. 30, 90 P.3d 659 (2004).

*129 ¶ 13 Our most important inquiry then becomes whether a random and suspicionless search of a guest registry reveals intimate details of one's life. We first consider that here there is more information at stake than simply a guest's registration information: an individual's very presence in a motel or hotel may in itself be a sensitive piece of information. There are a variety of lawful reasons why an individual may not wish to reveal his or her presence at a motel. As the amicus American Civil

Liberties Union (ACLU) points out, couples engaging in extramarital affairs may not wish to share their presence at the hotel with others, just as a closeted same-sex couple forced to meet at the motel also would not. Br. of ACLU at 11. The desire for privacy may extend to business people engaged in confidential negotiations, *id.*, or celebrities seeking respite from life in the public eye. One could also imagine a scenario, as Jorden's trial attorney pointed out during the motion to suppress, where a domestic violence victim flees to a hotel in hopes of remaining hidden from an abuser. 1 VRP at 24.

¶ 14 Additionally, we note the sensitivity of the registry information in and of itself. Not only does it reveal one's presence at the motel, it may also reveal co-guests in the room, divulging yet another person's personal or business associates. See *McKinney*, 148 Wash.2d at 30, 60 P.3d 46. Thus, it appears that the information gleaned from random, suspicionless searches of a guest registry may indeed provide "intimate details about a person's activities and associations." *McKinney*, 148 Wash.2d at 30 n. 2, 60 P.3d 46 (holding that DOL records do not reveal such details).^{FN6}

FN6. In *McKinney*, we upheld random checks by law enforcement of plainly visible vehicle license plates. But there, numerous statutes revealed that DOL records are kept for law enforcement purposes, indicating that Washington citizens have not held such records to be free from government trespass. *McKinney*, 148 Wash.2d at 27-28, 60 P.3d 46. In addition, we explained that the information contained in a driver's license record merely reveals one's name, address, and limited physical characteristics, and therefore does not reveal intimate and discrete details about one's life. *Id.* at 30, 60 P.3d 46. We concluded that no search had occurred under article I, section 7. Thus, *McKinney* is clearly distinguishable from this case.

****898** [6][7] ***130** ¶ 15 Therefore, the information contained in a motel registry—including one's whereabouts at the motel—is a private affair under our state constitution, and a government trespass into such information is a search. We hesitate to allow a search of a citizen's private affairs where the government cannot express at least an individualized or particularized suspicion about the search subject or present a valid exception to a warrantless search. A random, suspicionless search is a fishing expedition, and we have indicated displeasure with such practices on many occasions.

[A] major cause for suspecting the petitioner of criminal conduct lay in the fact that petitioner was located in what the police described as a high crime area. It is beyond dispute that many members of our society live, work, and spend their waking hours in high crime areas, a description that can be applied to parts of many of our cities. That does not automatically make those individuals proper subjects for criminal investigation.

State v. Larson, 93 Wash.2d 638, 645, 611 P.2d 771 (1980); see also *Maxfield*, 133 Wash.2d at 341, 945 P.2d 196; *Jackson*, 150 Wash.2d at 267; *Young*, 123 Wash.2d at 186-87, 867 P.2d 593; *Mesiani*, 110 Wash.2d at 455 n. 1, 755 P.2d 775. Consequently, we hold that the practice of checking the names in a motel registry for outstanding warrants without individualized or particularized suspicion violated the defendant's article I, section 7 rights.

¶ 16 We are not insensitive to the difficulties facing law enforcement in ensuring our motels and hotels remain relatively crime-free, but as a practical matter our holding does not unduly restrict the investigative powers of the police. Random, suspicionless registry checks are but one part of the Lakewood Crime-Free Hotel Motel Program. Law enforcement may continue to randomly run checks of the license plates of cars parked at the motels, provide training to motel owners, and encourage motel owners to be watchful of behavior evincing criminal activity. Reports of such observations may en-

gender the requisite individualized*131 suspicion that is notably missing from current program techniques.

III

Conclusion

¶ 17 Information contained in a motel registry constitutes a private affair under article I, section 7 of the Washington State Constitution because it reveals sensitive, discrete, and private information about the motel's guest. Absent a valid exception to the prohibition against warrantless searches, random viewing of a motel registry violates article I, section 7 of the Washington State Constitution. The evidence obtained from the registry of the Golden Lion Motel, which led officers to Jordan's room, was obtained through unlawful means and should have been excluded. Accordingly, we reverse the Court of Appeals.

WE CONCUR: Chief Justice GERRY L. ALEXANDER, Justice TOM CHAMBERS, Justice SUSAN OWENS, Justice MARY E. FAIRHURST and Justice RICHARD B. SANDERS.J.M. JOHNSON, J. (concurring).

¶ 18 I concur with the majority, but write to further explain that a similar program could be easily implemented which would be valid. A hotel owner may constitutionally require that prospective patrons consent at registration to a fully disclosed waiver of their claim to registry privacy as a condition of renting a room. This may be done as part of a cooperative program with police, which will serve to protect all guests. After disclosure of the owner's agreement to make the registry available to the police, any patron may refuse to register. He would then be welcome to find other accommodations. This approach recognizes the interests of hotel owners, other guests, and of law enforcement, while protecting each patron's recognized privacy right to be free of a random suspicionless search. Since there was no **899 such full disclosure of the

program here, I concur.

*132 Analysis

¶ 19 Article I, section 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." The majority has correctly analyzed why a random suspicionless search of registry records in this case should be treated as an invasion of private affairs. However, the majority did not adequately analyze the disclosure element as currently provided by the Lakewood Crime-Free Hotel Motel Program (Crime Free Program) FN1 and alternatives that would easily satisfy the important constitutional concerns, which I share.

FN1. The Crime Free Program rules, which were posted in the Golden Lion Motel, state the following:

Welcome. As a guest of our facility we ask that you read, understand and follow our rules during your stay. These rules help us to make your stay safe and enjoyable. If you have any questions about these rules, please ask a member of our staff. Enjoy your stay.

- All adult guests must be registered with the front desk. To register guests must provide a valid picture [identification]. They must also register the make and license number of their vehicle.
- Quiet hours are from 9:00 PM to 6:00 AM.
- The volume of visitors and telephone calls will be limited to a reasonable number.
- Only registered guest or visitors who are cleared through the night manager will be allowed on the premises during quiet hours.