

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
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)
 v.) I.D. No. 0808020862
)
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 KENYOTTA E. MANUEL,)
)
)
 Defendant.)

MEMORANDUM OPINION

Submitted: April 23, 2009
Decided: May 5, 2009

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Attorney for the State

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Delaware, Attorney for the Defendant

In the early morning hours of August 19, 2008 members of the Governor's Task Force, without a warrant,¹ entered a motel room in which defendant was visiting. The Task Force seized substantial amounts of heroin and other drug paraphernalia, and the defendant has now moved to suppress the evidence which was seized. For the reasons which follow, the Court concludes that defendant Manuel had no reasonable expectation of privacy in the motel room he was visiting and therefore cannot avail himself of the protections of the Fourth Amendment.

Background

Shortly after midnight on August 19, 2008 Delaware State Police Detective John Dudzinski and his partner Officer Graham were parked at a Shell service station located near the intersections of Route 273 and Harmony Road in New Castle County. The police officers, who were both assigned to the Governor's Task Force were checking the license plate numbers of persons making gasoline purchases in order to determine whether any of the owners of those vehicles were wanted on outstanding warrants.

Around 12:30 a.m. Detective Dudzinski observed an individual, later identified as Damon Stigars, crossing Route 273, which is a four lane road divided by a raised median barrier in the vicinity of the Shell

¹ The police justified their warrantless search and seizure on the basis of exigent circumstances. Because of the Court's resolution of this matter, it need not consider whether, under the circumstances of this case, that justification is valid.

station. Although Stigars was “dancing” while crossing Route 273, Detective Dudzinski did not think much of it. Stigars entered the Shell station and briefly remained there. Detective Dudzinski became more concerned about Stigars’ behavior when he left the Shell station and proceeded back across Route 273, as Stigars now appeared to be seeing how close he could get to oncoming cars without being hit. Because of this odd behavior Detective Dudzinski decided to speak with Stigars. He drove west on 273 just past the point where he had seen Stigars crossing the road, made a u-turn at the first available break in the median barrier and drove eastbound toward where Stigars had crossed the road, at which point the detective saw Stigars enter room 105 of the Econolodge motel located on Route 273.

Dudzinski pulled into the motel parking lot, and Officer Graham approached the door to room 105 while Detective Dudzinski went to the motel manager’s office. Detective Dudzinski learned from the manager that one Joshua Likens had registered as a guest in room 105. Mr. Likens had a guest with him who was not identified by name on the motel registration sheet.

Dudzinski returned to the front of the motel room where he noticed a two-inch gap in the curtain covering the front window of the motel. He peered inside and saw three persons, later identified to be Stigars, Jan White and Richard Long. There also appeared to be several items in the room including a cardboard box, a blue duffel bag and a red plastic Nike

bag. As Detective Dudzinski watched through the opening in the drapes, Officer Graham knocked on the front door. Immediately the individuals inside the room began to scurry around. Jan White grabbed the red plastic bag at which time a cardboard box fell out of the bag; small light glassine packages came out of the box as it tumbled from the bag. Dudzinski also observed Stigars grab the blue duffel bag and an individual, later identified as Kenyotta Manuel, grab a bag off of the bed and disappear. Having observed the glassine bags, Detective Dudzinski concluded there was probably heroin in the room.

As Officer Graham continued to knock on the door, other officers from the Governor's Task Force, including Detective Simpler, Officer Kelly and Probation and Parole Officer Mark Lewis, arrived at the scene. Detective Simpler went to the manager's office to get a key, while Detective Dudzinski continued to observe the interior of the room through the gap in the drapes. At this time he saw Stigars and White remove linens from the bed and disappear from view. When detective Simpler returned with the key the officers tried to open the door. Likens, the registered guest, pushed back on the door and attempted to chain it, but the officers managed to push the door open. Upon entering the room the officers handcuffed the occupants except for Stigars who resisted. One of the officers deployed a Taser at which time Stigars attempted to remove the probe. A second cycle on the Taser subdued Stigars and the officers were able to handcuff him.

The officers noticed large amounts of water flowing from the bathroom. It was obvious that the linens, which Dudzinski had previously seen Stigars and White remove from the bed, were being used to mop up an overflowing toilet in the bathroom. By this time it was apparent to Detective Dudzinski that the individuals in the room had attempted to dispose of something -- most likely heroin -- by flushing it down the toilet. Dudzinski went to the manager's office to explain what was happening and to obtain the manager's permission to remove the toilet. The manager telephoned a superior who in turn gave permission to the detective to remove the toilet. After the toilet was removed the officers fashioned a coat hanger into a probe and inserted it into the discharge pipe. The improvised probe soon ran into an obstruction whereupon one of the officers reached into the pipe and found 546 bags of heroin.

Detective Dudzinski observed grains of rice in one of the cardboard boxes found in the room. According to the detective, rice grains are often used to keep heroin dry and free from clumping. He also noticed a rubber stamp on a nightstand -- the type of stamp drug dealers frequently use to imprint their "trademark" on the glassine packages of heroin they distribute. In the red plastic Nike bag, which was found in the trash can, there were additional boxes containing glassine bags and a hypodermic syringe. The police officers also found a coffee grinder, which is commonly used to grind material which can be mixed with the heroin so as to dilute the heroin and increase the seller's profit. Finally, the officers

found a heat sealer in a duffel bag located on a counter across from the bathroom door. Officer Dudzinski testified that heat sealers are used by heroin dealers to seal the glassine packages containing heroin.

The police arrested the occupants of the motel room. After being given his *Miranda* rights, Likens² told the police that along with Long³ he came to Delaware from New York to visit defendant Manuel who was a friend. Likens, Long and Manuel had lunch together after which Manuel parted ways with them to visit someone else. In the meantime Likens and Long went to the Econolodge to rent a room. According to Likens, he and Long received a visit from Manuel, White and Stigars who arrived sometime between 11:00 p.m. and midnight. Shortly thereafter the police arrived.

Analysis

Both the State and Manuel couched submissions in terms of defendant's "standing" to assert the Fourth Amendment's protection against unreasonable search and seizure. More than thirty years ago the United States Supreme Court expressly abandoned "standing" terminology in its Fourth Amendment vocabulary, holding that the determination whether a defendant is asserting his own Fourth Amendment right (as opposed to one belonging to another person) is "more properly placed within the purview of substantive Fourth

² Likens has pled guilty to Hindering Prosecution.

³ Long was not charged with any crime.

Amendment law than within that of standing.”⁴ The appropriate inquiry is whether the defendant “personally has an expectation of privacy in the place searched, and that his expectation is reasonable.”⁵ Lower courts, however, still find the use of the term “standing” a useful shorthand when discussing the “reasonable expectation of privacy” analysis, and this Court will use that term with the understanding that it connotes the aforementioned substantive issue.⁶

The burden is on Manuel to show he has standing to avail himself of the protections of the Fourth Amendment. “The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search and seizure.”⁷ Defendant asserts, citing *Katz v. United States*,⁸ that the Fourth Amendment protects people not places. While it is true that every perpetrator of an illegal act hopes for privacy,⁹ this does little to advance the analysis. Rather the expectation must be one “which the law recognizes as legitimate.”¹⁰ Thus, although the Fourth Amendment may

⁴ *Rakas v. Illinois*, 439 U.S. 128, 140 (1978); see also *United States v. Nerber*, 222 F.3d 597,599 n.1 (9th Cir. 2000) (“the Supreme Court has repeatedly cautioned against invoking this concept [of standing]”).

⁵ *Minnesota v. Carter*, 525 U.S. 83, 88 (1998).

⁶ *United States v. Fields*, 113 F.3d 313,320 (2d Cir. 1997) (using “standing” as shorthand terminology while recognizing the analysis is separate from traditional standing doctrine).

⁷ *Rakas*, 439 U.S. at 131, n.1; *United States v. Conway*, 73 F.3d 975, 979 (10th Cir. 1995); see also *State v. Mobley*, 2001 WL 392459 (Del. Super., April 5, 2001).

⁸ 389 U.S. 347, 351 (1967).

⁹ *United States v. Gray*, 491 F.3d 138, 145 (4th Cir. 2007) (“of course, every perpetrator of an unlawful act hopes for privacy in the sense of not getting discovered or caught”).

¹⁰ *Rakas*, 439 U.S. at 144, n.12.

protect people and not places, “the extent to which the Fourth Amendment protects people may depend upon where those people are.”¹¹

The Fourth Amendment guarantees “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated...”¹² The text of the amendment as well as the founding era materials indicate that this protection extended only to citizens in their *respective* homes, and not to the homes of others.¹³ This guarantee protects homeowners,¹⁴ boarders¹⁵ and tenants.¹⁶ Indeed the protection extends to travelers who have rented a hotel or motel room to spend the night.¹⁷ On the other hand, persons who are only briefly in someone else’s home with the owner’s permission (such as a pizza delivery person) have no legitimate expectation of privacy.¹⁸ And the expectation of privacy in a commercial premise, “is different from, and indeed less than a similar expectation in an individual’s home.”¹⁹

Perhaps the farthest reach of the Fourth Amendment protection can be found in the Supreme Court’s opinion in *Minnesota v. Olson*.²⁰ Justice Scalia later characterized *Olson* as “the absolute limit of what

¹¹ *Carter*, 525 U.S. at 88.

¹² *U.S. Const.*, amend. IV.

¹³ *Carter*, 525 U.S. at 93-96 (Scalia, J., concurring).

¹⁴ *Aguello v. United States*, 269 U.S. 20, 33 (1925).

¹⁵ *McDonald v. United States*, 335 U.S. 451 (1948).

¹⁶ *Chapman v. United States*, 365 U.S. 610 (1961).

¹⁷ *See, e.g., Johnson v. United States*, 335 U.S. 10 (1948).

¹⁸ *United States v. Gray*, 491 F.3d 138,144 (4th Cir. 2007).

¹⁹ *New York v. Burger*, 482 U.S. 691, 700 (1987).

²⁰ 495 U.S. 91 (1990).

text and tradition [of the Fourth Amendment] permit.²¹ In *Olson* the Supreme Court held that an overnight guest in another's home had the sort of expectation the Fourth Amendment protects. The Court reasoned:

“To hold that an overnight guest has a legitimate expectation of privacy in his host's home merely recognized the every day expectations of privacy that we all share. Staying overnight in another's home is a longstanding social custom that serves functions recognized as valuable by society. We stay in others' homes when we travel to a strange city for business or pleasure, when we visit our parents, children, or more distant relatives out of town, when we are in between jobs or homes, or when we house-sit for a friend

“From the overnight guest's perspective, he seeks shelter in another's home precisely because it provides him with privacy, a place where he and his possessions will not be disturbed by anyone but his host and those his host allows inside. We are at our most vulnerable when we are asleep because we cannot monitor our own safety or the security of our belongings. It is for this reason that, although we may spend all day in public places, when we cannot sleep in our own home we seek out another private place to sleep, whether it be a hotel room, or the home of a friend.”²²

The Supreme Court again clarified the parameters of a reasonable expectation of privacy in *Minnesota v. Carter*,²³ wherein it held that a visitor to an apartment who was present there to conduct drug activity did not have a reasonable expectation of privacy. Two principles lie at the core of the *Carter* Court's reasoning: First, a visitor usually lacks a reasonable expectation of privacy unless the visitor stays overnight.²⁴

²¹ *Carter*, 525 U.S. at 477 (Scalia, J., concurring).

²² *Olson*, 495 U.S. at 98-9.

²³ 525 U.S. 83 (1998).

²⁴ 525 U.S. at 89-91.

Second, a visitor to another person's home for commercial purposes retains only a limited expectation of privacy.²⁵

In *Carter* a police officer looked through a gap in a blind of an apartment window and observed two persons bagging cocaine. Police later learned that two of the occupants had never been to the apartment before, had been there for only 2 ½ hours and were there for the sole purpose of bagging cocaine. The Supreme Court held that the occupants (other than the tenants of the apartment) could not avail themselves of the protections of the Fourth Amendment:

But the purely commercial nature of the transaction engaged in here, the relatively short period of time on the premises, and the lack of any previous connection between respondents and the householder, all lead us to conclude that respondents' situation is closer to that of one simply permitted on the premises. We therefore hold that any search which may have occurred did not violate their Fourth Amendment rights.²⁶

Not surprisingly lower courts, when confronted with facts similar to those at bar, have found on the basis of *Carter* that mere visitors to a motel room who are there for the purpose of conducting drug activity do not have standing to assert the protections of the Fourth Amendment.²⁷

There is, therefore, a spectrum of cases ranging from the homeowner (who has standing), through the overnight guest (who also has standing), through the visitor whose purpose is to conduct a drug

²⁵ *Id.* at 90.

²⁶ *Id.* at 91.

²⁷ *United States v. Williams*, 521 F.3d 902, 906 (8th Cir. 2008) (“Mere visitors to someone else’s motel room do not have a reasonable expectation of privacy”); *United States v. Flores*, 172 F.3d 695, 699 (9th Cir. 1999) (“Flores, who was only present in Apartment 820 to conduct a brief drug transaction has no standing to object to the admission of evidence seized from Apartment 820”).

transaction (who does not have standing). The question before this Court is where on that spectrum does this case lie? It is not a difficult one to answer. The evidence requires the conclusion that this case is nearly identical to *Carter* and lies well outside the range of cases affording the protection of the Fourth Amendment:

- The motel room was rented by Likens. The motel's policy was to allow only one overnight guest, and that guest was Liken's travelling companion, Long.
- Manuel failed to introduce any evidence that he was an overnight guest in the room.
- Manuel, White and Stigars were in the room only briefly, arriving some time between 11 p.m. and midnight.
- The purpose of Manuel's visit was a commercial one -- conducting drug activity.

There is no meaningful distinction between the case at bar and that in *Carter*. It is true that in *Carter* the visitor to the apartment did not know the owner, whereas Manuel and Likens were acquainted. There is also evidence that Manuel paid for the room rented by Likens, but there is no evidence that Manuel intended to occupy the room.²⁸ But even with these differences the instant case remains far outside the parameters of a reasonable expectation of privacy.

²⁸ *United States v. Gordon*, 168 F.3d 1222, 1227 (10th Cir. 1999) (defendant who paid for motel room lacked standing when there was no evidence he intended to occupy it).

For the foregoing reasons, the Court concludes that defendant Manuel lacked any reasonable expectation of privacy in room 105 and therefore his motion to suppress is **DENIED**.²⁹

John A. Parkins, Jr.

cc: Prothonotary

²⁹ Defendant argues that he has standing because he has been charged with maintaining a dwelling, in this case the motel room. That argument has been considered and rejected by the Delaware Supreme Court: “The Superior Court ruled that the State ‘cannot get a conviction on maintaining a dwelling under the circumstances,’ i.e., where it asserts that a defendant lacks standing to contest a search or seizure at the dwelling. This was error. It is possible for a defendant ‘to maintain’ a dwelling, without having a level of reasonable expectation of privacy in the premises sufficient to attack a search warrant.” *Nave v. State*, 1993 WL 65099 (Del. Supr., March 8, 1993).