


IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MAURICE TROUT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53584

FILED

SEP 04 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of ex-felon in possession of a firearm. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

On September 2, 2008, Officer Mike Krupicka received a report of an ex-felon in possession of a firearm at a local motel. The suspect, appellant David Trout, was reportedly staying in room 113. Officer Krupicka arrived at the motel, obtained Trout's driver's license number and date of birth from the desk clerk, and confirmed with dispatch that Trout was an ex-felon. Officer Krupicka then proceeded to room 113, where he found the door to the motel room wide open. From his position outside the room, Officer Krupicka observed Trout sitting on the far bed, and a holstered handgun laying on the nightstand between the beds. Officer Krupicka asked if he could come in, however, Trout did not respond. Instead, Trout came to the doorway. Officer Krupicka instructed Trout to come outside, and Trout complied. Trout provided Officer Krupicka with identification and admitted that he was an ex-felon. Officer Krupicka then entered the motel room and seized the handgun. Once the gun was secured, Officer Krupicka took Trout into custody.

After a preliminary hearing, Trout was bound over to district court. Trout filed a motion to suppress the gun, in which he argued that Officer Krupicka had no legal basis to enter the motel room without a warrant. The State filed an opposition asserting, among other things, that no warrant was required to enter the motel room because Officer Krupicka observed the gun in plain view from outside the room. The district court denied Trout's motion to suppress, ruling that because Officer Krupicka saw the gun in plain view from a position he was legally permitted to be in, the seizure was lawful.

Trout pleaded guilty to one count of ex-felon in possession of a firearm. The guilty plea agreement preserved Trout's right to appeal the denial of the suppression motion. See NRS 174.035(3). The district court sentenced Trout to a prison term of 12 to 36 months, suspended the sentence, and placed Trout on probation for a term of 36 months. This appeal followed.

Trout contends that the district court erred by denying his motion to suppress the gun. Specifically, Trout argues that although the gun was in plain view from outside the room, Officer Krupicka had no legal basis to enter the room in the absence of a warrant. In response, the State contends that: (1) no warrant was required because the gun was in plain view, (2) exigent circumstances justified the warrantless entry, and (3) even if the search was invalid, the inevitable discovery doctrine allowed the gun to be introduced at trial.

### Discussion

The denial of a motion to suppress evidence involves mixed questions of fact and law. See State v. Lisenbee, 116 Nev. 1124, 1127, 13 P.3d 947, 949 (2000). We defer to the district court's factual findings supporting its ruling on the motion to suppress, but review de novo its

determination that suppression was not warranted. Hannon v. State, 125 Nev. \_\_\_, \_\_\_, 207 P.3d 344, 346 (2009).

Plain view

Trout contends that Officer Krupicka's warrantless entry into his motel room and seizure of his gun violated the Fourth Amendment to the United States Constitution and that the gun must therefore be suppressed. The State contends that no warrant was required to enter Trout's motel room and seize the gun because the gun was in plain view from outside the door. We agree with Trout.

Pursuant to the Nevada Constitution and the Fourth Amendment to the United States Constitution, entry into a person's home in the absence of a warrant is per se unreasonable unless justified by a clearly defined exception. Id.; Payton v. New York, 445 U.S. 573, 586-87 (1980). This protection against unreasonable searches and seizures in the home is equally applicable to persons in motel rooms. McMorran v. State, 118 Nev. 379, 382, 46 P.3d 81, 83 (2002). Evidence seized as a result of an unconstitutional search is inadmissible. See, e.g., Wong Sun v. United States, 371 U.S. 471, 484-85 (1963).

"It is well established that under certain circumstances the police may seize evidence in plain view without a warrant." Coolidge v. New Hampshire, 403 U.S. 443, 465 (1971) (plurality opinion). However, "plain view alone is never enough to justify the warrantless seizure of evidence." Id. at 468. The United States Supreme Court has "repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure." Id.; see also Agnello v. United States, 269 U.S. 20, 33 (1925) ("Belief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for a search of that place without a warrant. And such searches are held unlawful

notwithstanding facts unquestionably showing probable cause.”). Accordingly, the warrantless seizure of an item in plain view is only permissible if police have established a justification for the initial intrusion. Coolidge, 403 U.S. at 466 (plurality opinion); see also Washington v. Chrisman, 455 U.S. 1, 12 (1982) (White, J., dissenting).

Here, Officer Krupicka entered Trout’s motel room without a warrant. And, as discussed below, no exception to the warrant requirement applied. Thus, Officer Krupicka was not legally justified in entering Trout’s room, and the plain view doctrine is inapplicable. Accordingly, we conclude that the district court erred in determining that the seizure was justified based on the plain-view doctrine, and by denying the motion to suppress on that basis.

However, this court may affirm a decision of the district court if the court reached the right result, even if for the wrong reason. Lioce v. Cohen, 124 Nev. \_\_\_, \_\_\_ n.42, 174 P.3d 970, 985 n.42 (2008). Thus, we also address the State’s alternative contentions.

#### Exigent circumstances

The State contends that Officer Krupicka’s entry into Trout’s motel room was lawful because exigent circumstances provided an exception to the warrant requirement. Specifically, the State asserts that entry into the room was necessary to protect Officer Krupicka’s safety. We disagree.

As discussed above, entry into a person’s motel room in the absence of a warrant is presumptively unreasonable. However, this presumption can be overcome if the entry is justified by an exception to the warrant requirement, such as consent, Howe v. State, 112 Nev. 458, 463, 916 P.2d 153, 157 (1996) (citing Schneckloth v. Bustamonte, 412 U.S. 218 (1973)), or exigent circumstances, Hannon, 125 Nev. at \_\_\_, 207 P.3d

at 346. This court has defined exigent circumstances as including “circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) [i]s necessary to prevent physical harm to” police officers. Camacho v. State, 119 Nev. 395, 400, 75 P.3d 370, 374 (2003) (internal citations and quotations omitted). “[I]n the absence of a showing, by the State, of a true necessity—that is, an imminent and substantial threat to life, health, or property—the constitutionally guaranteed right to privacy must prevail.” Howe, 112 Nev. at 466, 916 P.2d at 159 (1996) (alteration in original) (quoting Nelson v. State, 96 Nev. 363, 366, 609 P.2d 717, 719 (1980)).

The State argues that the exigency in the instant case was the protection of officer safety. More precisely, the State contends Officer Krupicka was justified in entering Trout’s room because upon approaching the door, the officer saw Trout seated on the bed in close proximity to a gun. However, when Officer Krupicka entered Trout’s room, Trout had already stepped outside the room. And there is no indication in the record that any other person was inside the motel room or that Trout could access the gun. Further, Officer Krupicka testified at the preliminary hearing that he did not think any exigent circumstances were present when he entered the motel room. Thus, the State has failed to demonstrate that circumstances existed to cause a reasonable person to believe that entry into the room was necessary to prevent physical harm to a police officer.

#### Inevitable discovery

The State contends that even if the seizure of the gun was illegal, the district court properly denied Trout’s motion to suppress because police would have inevitably discovered the gun. Specifically, the State asserts that the police would have been able to obtain consent to enter the room from Trout’s roommate. We disagree.

Pursuant to the inevitable discovery rule, unconstitutionally obtained evidence is still admissible at trial if the State proves by a preponderance of the evidence that the item inevitably or ultimately would have been found by legal means. Camacho, 119 Nev. at 402, 75 P.3d at 375. The analysis of a claim of “inevitable discovery involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment.” Nix v Williams, 467 U.S. 431, 445 n.5 (1984).

There is no evidence in the record that police ever asked for or obtained Trout’s roommate’s consent to search or enter the motel room; nor is there sufficient evidence that the roommate would have consented to such a search.<sup>1</sup> Therefore the State’s claim that it could have obtained consent to search Trout’s room is merely speculative.

Moreover, allowing the inevitable discovery doctrine to defend a warrantless search of and/or seizure in a person’s home where police had probable cause, but failed to make any attempt to obtain a warrant or consent to enter would eviscerate the warrant requirement of the Fourth Amendment. Cf. United States v. Young, \_\_\_ F.3d \_\_\_, 2009 WL 2020126, \*11 (9th Cir. 2009) (quoting United States v. Echegoyen, 799 F.2d 1271, 1280 n.7 (9th Cir. 1986) (“[T]o excuse the failure to obtain a warrant merely because the officers had probable cause and could have inevitably obtained a warrant would completely obviate the warrant requirement of

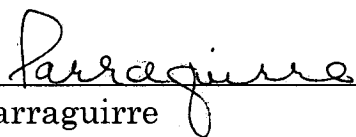
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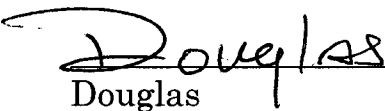
<sup>1</sup>The State contends that because the roommate fully cooperated with police, wrote a voluntary statement and was a former police officer, “he would have allowed Officer Krupicka to enter and remove the weapon.” However, these facts are insufficient to show that the roommate “inevitably” would have consented to a search and do not overcome the lack of evidence showing that police ever asked for his consent.

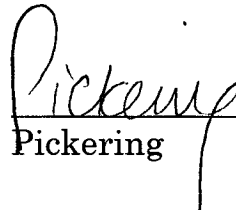
the fourth amendment.”)); accord United States v. Cunningham, 413 F.3d 1199, 1205 (10th Cir. 2005); United States v. Tejada, 524 F.3d 809, 813 (7th Cir. 2008); United States v. Cherry, 759 F.2d 1196, 1206 (5th Cir. 1985). Therefore, we conclude that the gun is not admissible pursuant to the doctrine of inevitable discovery.

For the reasons discussed above, we conclude that the district court erred by denying Trout’s motion to suppress. Accordingly, we

ORDER the judgment of conviction REVERSED and REMAND this case to the district court to allow Trout to withdraw his plea of guilty and for proceedings consistent with this order.

 \_\_\_\_\_, J.  
Parraguirre

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Pickering

cc: Hon. Michael Montero, District Judge  
Humboldt County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk