

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT LEROY NICHOLS,

No. 35050

Appellant,

FILED

vs.

FEB 07 2001

THE STATE OF NEVADA,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

Respondent.

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction by jury verdict of two counts of drug trafficking in a controlled substance, sentencing to two consecutive terms of life in prison with the possibility of parole after ten years.

Factual background

On August 31, 1998, Nichols purchased thirty-nine bottles of ephedrine from a convenience store in West Wendover. Rebecca Morley, the store clerk, knowing that ephedrine could be used to manufacture methamphetamine, called the West Wendover police. The police asked her to call them back in the event Nichols returned.

On September 2, 1998, Nichols returned to the convenience store. This time, he purchased twenty-two bottles of ephedrine, and Morley again called the police. Sergeant David Wiskerchen and Patrolman Henry Boyd responded to the call. Nichols had since left the store, so Morley showed the officers surveillance tape footage of Nichols and described the automobile that Nichols drove.

Officers Wiskerchen and Boyd went looking for Nichols' vehicle. They discovered the car parked at the Rainbow Casino Hotel and observed Nichols entering the casino. The officers approached Nichols inside and asked to see identification. Nichols consented. Sergeant Wiskerchen returned to the patrol car and radioed dispatch, requesting a

warrants-check on Nichols. When dispatch responded that Nichols had an outstanding warrant for a probation violation, the officers reentered the casino and promptly arrested Nichols. As the officers brought Nichols to the patrol car, a woman approached and asked what Nichols was being arrested for and where he was going. The woman was later identified as Shawna Wilder.

Officers Wiskerchen and Boyd transported Nichols to the West Wendover Police Department. Sergeant Wiskerchen briefed the arrest to Officer Gerald Cook and Detective Sandra Gunter, who then sought to locate the hotel where Nichols had been staying. At the Rainbow Hotel, the officers discovered that a room had been registered to a "Lisa Nichols." The registration information indicated that Lisa Nichols had the same Salt Lake City address as Scott Nichols.

Rick Portella, an employee of the hotel, told the officers that Lisa Nichols had checked out at approximately 10:00 a.m.. He was unsure, however, whether Lisa had left the room yet. It was now just past 11:00 a.m., the hotel room checkout time. Portella indicated to the officers that they could inspect Nichols' room, and he accompanied them to the room door.

Portella then knocked at the door and announced himself as part of the management. When there was no response from inside, he attempted to open the door with a master key. At this moment, Wilder opened the door from the inside. Cook later testified to smelling a pungent odor that was similar to the smell of cleaning fluids. Wilder told the officers that Lisa Nichols had left the room earlier. Wilder admitted that she knew Scott Nichols and had stayed in the room with him.

The officers informed Wilder that they were sealing the room and that they intended to procure a search warrant.

After searching Wilder's purse, they permitted her to leave. After obtaining a warrant, the officers searched the hotel room and discovered a number of containers containing marijuana, methamphetamine and drug paraphernalia. Ultimately, the police recovered over forty-seven grams of methamphetamine.

The search warrant also authorized the officers to search Nichols' automobile. The police found additional drug paraphernalia in the car's trunk, including a propane torch.

Scott Nichols was charged with two counts of trafficking in over an ounce (twenty-eight grams) of a controlled substance, which is a class A felony, punishable by life imprisonment with eligibility for parole after ten years.¹ (The State dropped a third charge of marijuana possession.) Finding probable cause, the Elko Justice Court bound Nichols over on the trafficking charges.

Nichols filed a motion to suppress all evidence, arguing that it was the result of an illegal seizure. On August 27, 1999, a hearing was held on the motion to suppress, and the district court denied the motion on the bases that the officers properly stopped Nichols in the casino and that Wilder had no expectation of privacy in the room after checkout time. Following trial, the jury convicted Nichols of two counts of drug trafficking. He was sentenced to two consecutive life terms.

Suppression of all evidence

Nichols first contends that the district court erred in not excluding all evidence at the August 27, 1999, suppression hearing. Nichols maintains that officers Wiskerchen and Boyd had no reasonable suspicion to detain him at the Rainbow Casino. Nichols argues that this purported

¹See NRS 453.3385.

seizure violated the Fourth Amendment of the United States Constitution and tainted all of the evidence subsequently obtained.² We disagree.

A person is "seized" within the meaning of the Fourth Amendment only if, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."³ Here, Nichols sat at a slot machine on the public floor of a casino. Officers Wiskerchen and Boyd told Nichols, "Excuse me, sir," and asked him "may I see some identification." Nichols consented and produced his identification, and officers Wiskerchen copied the information and returned the identification. The entire encounter lasted approximately two minutes.

Given the totality of circumstances, we conclude that Nichols reasonably would have believed that he had no obligation to give his identification to the police. He was not detained. Rather, his actions were voluntary. Accordingly, we conclude that officers Wiskerchen and Boyd did not seize Nichols in violation of the Fourth Amendment. Hence, the district court properly denied Nichols' motion to suppress.

Police entry of hotel room

Nichols next argues that the district court erred in not excluding the evidence of methamphetamine production that police discovered in the hotel room. Nichols argues that the entry into the hotel room was unsupported by probable cause, thereby tainting the subsequent seizures by police of evidence

²See Wong Sun v. United States, 371 U.S. 471 (1963).

³Rowbottom v. State, 105 Nev. 472, 480, 779 P.2d 934, 939 (1989) (quoting United States v. Mendenhall, 446 U.S. 544, 554 (1980)).

from the room and the search of Wilder's purse. We conclude that this contention is without merit.

We agree with Nichols that, in light of the fact that hotel employee Portella acted as an agent of the police when he attempted to open the room door, the entrance into the room was State action. We do not agree, however, that Nichols has standing to challenge this action as a violation of the Fourth Amendment, because he had no objective or subjective expectation of privacy in the hotel room.⁴ When, as here, the rental period of a hotel guest has expired, the guest "loses his reasonable expectation of privacy and consequently any standing to object to [a police] 'search of the [room].'"⁵ Because Nichols has no standing to assert that the State has violated his Fourth Amendment rights, we conclude that the district court properly declined to suppress the evidence of methamphetamine production discovered in the hotel room.

The search of Wilder's purse

Nichols next contends that because they searched Wilder's purse immediately after entering the hotel room, the police conducted an illegal search prior to obtaining a search warrant. We disagree.

The district court found that the police search of the room did not begin with Wilder's purse, because Wilder consented to the search of her purse. This finding was supported by the testimony of Officer Cook. Consensual searches are undoubtedly reasonable; they do not violate the Fourth Amendment.⁶ Because the search of the purse was legal,

⁴See State v. Taylor, 114 Nev. 1071, 1078-79, 968 P.2d 315, 320 (1998).

⁵See Obermeyer v. State, 97 Nev. 158, 160, 625 P.2d 95, 96 (1981) (quoting United States v. Jackson, 585 F.2d 653, 658 (4th Cir. 1978) (quoting United States v. Parizo, 514 F.2d 52, 54-55 (2d Cir. 1975)).

⁶See Florida v. Jimeno, 500 U.S. 248, 250-251 (1991).

no search warrant was required. Accordingly, we conclude that Wilder's contention to the contrary is without merit.

The hotel room search warrant

Nichols contends that the hotel room search warrant was unsupported by probable cause, and, therefore, the district court erred in denying the motion to suppress the evidence discovered pursuant to the warrant. This contention is without merit.

As noted earlier, our case law makes clear that Nichols had no reasonable expectation of privacy in the hotel room, and, accordingly, the Fourth Amendment did not require the officers to obtain a search warrant in this case.⁷

But even if a search warrant had been required here, we conclude that probable cause supported the issuance of the warrant. A witness observed Nichols purchasing large quantities of ephedrine. Although Lisa Nichols rented the room, the address on the hotel registration card was identical to Nichols' Salt Lake City address. This indicated that Nichols occupied the room. Finally, Officer Cook smelled a chemical aroma emanating from the room. We conclude that these facts gave rise to a reasonable probability that incriminating evidence existed in the hotel room.⁸ For these reasons, we conclude that the district court's denial of Nichols' motion to suppress the evidence of narcotics production was proper.

The automobile search warrant

Nichols maintains that the issuance of the automobile search warrant was unsupported by probable cause, and, therefore, the district court should have suppressed the

⁷See Obermeyer, 97 Nev. at 160, 625 P.2d at 96.

⁸See Brinegar v. United States, 338 U.S. 160 (1949).

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J. Hoop
CLERK OF THE COURT
DEPUTY CLERK

ORDER

Cause appearing, oral argument will not be scheduled and this appeal shall stand submitted for decision to the Southern Nevada Panel as of the date of this order on the briefs filed herein. See NRAP 34(f)(1).

It is so ORDERED.

Rau

_____, C.J.

cc: Attorney General
Elko County District Attorney
Elko County Public Defender