IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

ARMAND BENNETT ADAMS,

Respondent.

No. 36999

FILED

DEC 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting respondent Armand Bennett Adams' motion to suppress.

The State first argues that the district court erred in suppressing the marijuana cigarette seized incident to Adams' warrantless arrest occurring in a hallway after officers ordered Adams to step out of the open doorway of his hotel room. Specifically, the State argues that a warrant was not required to arrest Adams while he was standing in the open doorway of his hotel room because he committed a crime in a "public place" when he answered the door with a marijuana cigarette in his hand. Relying on United States v. Vaneaton[1] and United States v. Whitten,[2] the State contends that the warrantless arrest did not violate the Fourth Amendment because Adams voluntarily abandoned his reasonable expectation of privacy afforded while in his home[3] by opening his door and knowingly exposing contraband to public view. We conclude that the State's contention lacks merit.[4]

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[1]49 F.3d 1423 (9th Cir. 1995).

[2]706 F.2d 1000 (9th Cir. 1983).

[3]Although Adams was living in a hotel room, we have held that the protection afforded by the Fourth Amendment extends to hotel rooms, as well as homes. See Edwards v. State, 107 Nev. 150, 154, 808 P.2d 528, 530 (1991).

[4]In so concluding, we recognize that there is a split of authority on this issue. See Jack E. Call, The Constitutionality of Warrantless Doorway Arrests, 19 Miss. C. L. Rev. 333, 334 (Spring 1999) (noting that out of the twenty-two jurisdictions that have considered the issue, twelve jurisdictions concluded that a warrantless routine doorway arrest was

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The district court did not err in refusing to apply the holdings in Vaneaton and Whitten.[5] This court has repeatedly recognized that the Fourth Amendment "prohibits police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine arrest."[6] Moreover, this court has previously held that a defendant standing inside the open doorway of his hotel room was not in a "public place," and therefore could not be subjected to a routine, warrantless arrest absent exigent circumstances.[7] The United States Supreme Court has "drawn a firm line at the entrance to the house [and held that] [a]bsent exigent circumstances that threshold may not be crossed without a warrant."[8] Accordingly, the doorway of a person's home is not a public place, and therefore a police officer may not arrest a person in the open doorway of their home without a warrant or exigent circumstances.

In the instant case, the record reveals that Adams' warrantless arrest violated the Fourth Amendment because the police arrested him in his home without a warrant or a showing of an exigent circumstance.[9] Accordingly, the district court did not err in granting Adams' motion to suppress the marijuana cigarette seized incident to his arrest because it was the fruit of an illegal, warrantless home arrest.[10]

The State next argues that the district court erred in suppressing two small plastic bags of marijuana seized during the

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. . . *continued*
improper, while ten jurisdictions concluded that that such arrests were permissible).

[5]See generally State v. Smith, 99 Nev. 806, 672 P.2d 631 (1983) (this court is not bound by holdings of an intermediate appellate court).

[6]Edwards v. State, 107 Nev. at 153, 808 P.2d at 530 (citing Payton v. New York, 445 U.S. 573 (1980)).

[7]See Edwards, 107 Nev. at 154, 803 P.2d at 531; see also Howe v. State, 112 Nev. 458, 469, 916 P.2d 153, 161 (1996) ("the home is a sanctuary, which the government may not invade without a warrant or exigent circumstances").

[8]Payton v. New York, 445 U.S. 573, 589-90 (1980).

[9]Compare United States v. Santana, 427 U.S. 38, 42-43 (1975) (holding that police cross the threshold into the home and conduct a warrantless arrest when in hot pursuit of a fleeing felon).

[10]See Howe, 112 Nev. at 470, 916 P.2d 161.

warrantless search of Adams' hotel room. Specifically, the State argues that the officers' warrantless entry into Adams' hotel room was permissible because the marijuana was in plain view and there were exigent circumstances involved in that the individual remaining in Adams' room could have destroyed the drugs. We disagree. Notably, there was no evidence presented of an exigency necessitating a search. Neither officer testified that the individual remaining in the room was attempting to destroy the drugs.[11] Further, the plain view exception to the warrant requirement was inapplicable to the search of Adams' hotel room because the law enforcement officers had no lawful right to enter Adams' room without a warrant.[12]

Having considered the State's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Jerry V. Sullivan, District Judge
Attorney General/Carson City
Humboldt County District Attorney
State Public Defender/Carson City
Humboldt County Clerk

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[11]See Howe, 112 Nev. at 466, 916 P.2d at 159 (noting that the State bears the burden of showing specific facts supporting a warrantless intrusion, and that mere apprehension of destruction of evidence is insufficient to justify a warrantless entry into a home).

[12]See Koza v. State, 100 Nev. 245, 253-54, 681 P.2d 44, 49 (1984) (applying the test for the applicability of the plain view doctrine set forth in Coolidge v. New Hampshire, 403 U.S. 443 (1971)).