IN THE SUPREME COURT OF THE STATE OF NEVADA

HINES MASON VON HOLLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38858

FILED

MAY 0 6 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction upon a plea of guilty to robbery. On appeal, Hines Von Hollen makes several arguments. We conclude Von Hollen's arguments lack merit.

FACTS

The alleged female victim went to the Peppermill Casino in West Wendover, Nevada. As she exited her vehicle in the casino parking lot, an armed suspect approached her yelling, "This is an armed robbery, bitch, give me all your money." The victim responded by throwing a five-dollar bill in the direction of the armed robber. Then, she managed to get back into her vehicle and drive toward the casino entrance, despite the suspect's demand to give him "the rest of the money."

The victim described the suspect as a thin, white male, approximately five feet, six inches tall. The suspect had short hair, was possibly bald, and was wearing a big, white T-shirt with baggy black shorts.

Lieutenant Cook of the West Wendover Police Department arrived to investigate. The events depicted on the casino surveillance video led Cook to a black Isuzu Rodeo in the parking lot. Inside the Rodeo, in plain view on the passenger's seat, was a black nylon holster. Cook seized the holster without obtaining a warrant. He then ordered the

vehicle impounded until a search warrant was obtained, approximately thirty to forty-five minutes later. The execution of the search warrant produced several pieces of paper identifying Hines Von Hollen.

Casino security showed the police surveillance video indicating the suspect entered the casino. Specifically, the video depicted the suspect entering room 221. Room 221 was registered to Von Hollen. The video did not show him leaving the hotel room, so police attempted to communicate with him by telephone and knocking on the door.

After receiving no response, police entered room 221 with a passkey. They found Von Hollen inside and restrained him with handcuffs. No further search was conducted until a warrant was obtained approximately thirty minutes after entry. Police detained Von Hollen in the hallway while executing the warrant. Inside the room, police found Von Hollen's identification card and a .380 caliber handgun.

Next, the police conducted a photo lineup of six white males with hair and features similar to Von Hollen. Of the six, Von Hollen was the only one without a shirt. Three of the males wore white T-shirts matching the victim's description. The victim identified Von Hollen as the armed robber she encountered in the parking lot of the Peppermill.

DISCUSSION

First, Von Hollen argues the police illegally seized a gun holster from his vehicle without a search warrant, i.e., that the police had the right to look inside the car but not enter it. Because the police opened the door to the vehicle to seize the holster without a warrant, Von Hollen reasons that the holster and any subsequent evidence should be suppressed. We disagree.

Although warrantless searches are generally unreasonable,[1] there is an exception for automobiles.[2] For the exception to apply, there must be (1) probable cause and (2) exigent circumstances.[3] "[A] variety of exigencies may exist that give rise to the proper dismissal of the warrant requirement—for example . . . substantial threats to life, health, or property; safety concerns; and the necessity to determine whether victims or suspects are on the premises."[4] Exigent circumstances existed allowing police to seize the gun holster plainly visible inside the vehicle.

Second, Von Hollen contends the impounding of his vehicle without a search warrant constituted an illegal seizure. We disagree.

Seizure of a vehicle is permissible if exigent circumstances exist.[5] Police were attempting to identify and subdue an armed robber loose in a public facility with numerous bystanders and customers of the hotel and casino. The threat to the safety of patrons and police officers provided the exigency necessary to allow the warrantless seizure of the vehicle.

Third, Von Hollen maintains the warrantless entry into his hotel room was unconstitutional. We disagree.

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[1]Hughes v. State, 116 Nev. 975, 979, 12 P.3d 948, 951 (2000) (citing Barrios-Lomeli v. State, 113 Nev. 952, 957, 944 P.2d 791, 793 (1997)).

[2]Id. (citing State v. Harnisch, 113 Nev. 214, 222, 931 P.2d 1359, 1365 (1997)).

[3]Id. at 979-80, 12 P.3d at 951.

[4]Fletcher v. State, 115 Nev. 425, 429, 990 P.2d 192, 195 (1999); see also State v. Harnisch, 114 Nev. 225, 228, 954 P.2d 1180, 1182 (1998) (Harnisch II).

[5]Barrios-Lomeli, 113 Nev. at 957, 944 P.2d at 794.

While a hotel room is the equivalent of a home for Fourth Amendment purposes, warrantless entry is permitted if exigent circumstances exist.[6] The threat to public safety of an armed suspect, coupled with the surveillance tape indicating Von Hollen was still in the room, provided police with the exigent circumstances necessary to enter the room without a warrant to subdue Von Hollen.

Fourth, Von Hollen asserts any evidence obtained after his detention outside the hotel room should be suppressed. We disagree.

Detention of a suspect involved in criminal conduct is allowed if the detention is for less than sixty minutes.[7] Here, probable cause existed to believe Von Hollen was involved in criminal conduct. Although police had probable cause to arrest Von Hollen, they chose only to detain him temporarily for his own safety, as well as the safety of police and hotel and casino patrons. Specifically, the police placed Von Hollen in handcuffs upon entry into his room and detained him in the hallway just outside the room. The police then applied for and obtained a search warrant to search the room. This process took approximately one hour, which did not violate NRS 171.123, and Von Hollen did not challenge the validity of this search warrant. Because the detention and the subsequent search were valid, the district court did not err in concluding the evidence seized inside Von Hollen's hotel room was admissible.

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[6]McMorran v. State, 118 Nev. ___, ___, 46 P.3d 81, 83 (2002) (citing Edwards v. State, 107 Nev. 150, 154, 808 P.2d 528, 530-31 (1991)); Alward v. State, 112 Nev. 141, 151, 912 P.2d 243, 249-50 (1996).

[7]NRS 171.123(4).

Fifth, Von Hollen contends the victim's photo lineup identification was unduly suggestive. The photo lineup consisted of six men with five wearing shirts; Von Hollen was shirtless. Additionally, the victim's only other identification of Von Hollen occurred at trial. There, Von Hollen was dressed in a red jailhouse jumpsuit. He was the only person in the courtroom dressed in that manner. Von Hollen argues this identification was also unduly suggestive. We disagree.

A photo identification should be set aside "'only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.'"[8] The identification is admissible if the witness clearly viewed the defendant and defense counsel had an opportunity to cross-examine the witness at trial.[9]

The victim observed Von Hollen with enough clarity to describe him to the police shortly after the incident. Her description accurately detailed his approximate height, weight, hair length, and clothing. Moreover, her description allowed police to recognize Von Hollen on surveillance video. Further, the guidelines set forth in Simmons[10] suggest no tainting of the defendant's identification. Thus, the identification was admissible.

Finally, Von Hollen argues there was insufficient evidence at the preliminary hearing to bind him over for trial. We disagree.

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[8]Cunningham v. State, 113 Nev. 897, 904, 944 P.2d 261, 265 (1997) (quoting Simmons v. United States, 390 U.S. 377, 384 (1968)).

[9]Odoms v. State, 102 Nev. 27, 31, 714 P.2d 568, 570-71 (1986).

[10]390 U.S. at 383-84.

"[A] taking constitutes robbery even if the taking is fully completed without the victim's knowledge, if such knowledge is prevented by the use of force or fear."[11] Moreover, if a victim "was prevented by fear from retaining possession of the money . . . it was, therefore, taken."[12]

We conclude that evidence at the preliminary hearing supported the magistrate's finding of probable cause and thus the "bind over" for trial in district court. The State established that Von Hollen approached the victim, presented a handgun, and uttered verbal threats, i.e., "[t]his is an armed robbery, bitch, give me all your money." According to her preliminary hearing testimony, the victim reached into her car and threw a five-dollar bill in Von Hollen's direction, to which he responded, "Give me the rest, bitch." In short, the State presented adequate proof that force was used to induce the victim to part with her money; thus, the required elements of robbery were shown.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Gibbons

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[11]Sheriff v. Jefferson, 98 Nev. 392, 394, 649 P.2d 1365, 1366-67 (1982) (citing NRS 200.380(1)).

[12]Robertson v. Sheriff, 93 Nev. 300, 302, 565 P.2d 647, 648 (1977).

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk