

Upon consideration of the motion, the record of the proceeding, the evidence presented for the court's consideration, the oral arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE

On September 2, 2014, Detective Keith Puckett of the Union Township Police Department was notified by Sergeant Jasper that there was a suspect at Mercy Hospital who had allegedly been shot while at the Piccadilly apartment complex. Detective Puckett responded to Mercy Hospital and, upon his arrival, he was notified by a corporal that an individual who identified himself as "Reveal Jones" had been involved in a shooting at Piccadilly.

There were three individuals, two females and one male, who were with "Reveal Jones" at the hospital and Detective Puckett later determined the names those individuals gave him were false. "Reveal Jones" was ultimately discharged from Mercy Hospital and left with the other three individuals in a gold 2000 Dodge Caravan. Detective Puckett was able to get the license plate number of that Dodge Caravan before the individual calling himself "Reveal Jones" left the hospital.

The next day, Detective Puckett set out to determine the identities of all the individuals with whom he spoke while at Mercy Hospital the previous day. He determined that all of the information given to him by those individuals was false. He was able to identify one of the females as Jayla Jewel and, based on that identification, he discovered a person associated with Jayla Jewel named Amante Jackson. Detective

Puckett brought up a photograph of Amante Jackson and he believed him to be the person who identified himself as "Reveal Jones." As a result, Detective Puckett filed an arrest warrant for Amante Jackson on the charge of obstruction of justice.

The Dodge Caravan seen at Mercy Hospital on September 2nd was registered to an owner at 1000 Cook's Crossing. Detective Puckett also found another address in the registration under the emergency contact section, which led him to the grandmother of the registered owner, who then helped him locate the owner. On September 4, 2014, Detective Puckett spoke to the owner of the vehicle who indicated that she had fallen behind on the payments for the vehicle and that she allowed her drug dealer "Tay" to drive it. She indicated that "Tay" was in Room 321 at the AmeriStay near Clermont Mercy Hospital and that the gold Caravan might also be found there.

That same day, an officer was dispatched to the AmeriStay and that officer informed Detective Puckett that he had located the gold Dodge Caravan at that location. Detective Puckett testified that he asked the hotel clerk to pull up the registration to see who rented Room 321 but that he could not recall if they actually saw the registration information before any arrests were made. The registration document shows that the room was rented by Bobby Seabon and that he had no guests.¹ Detective Rodney Combs of the Union Township Police Department testified that he saw the registration document and that he spoke with hotel management.

Detective Puckett received a phone call from Sergeant Blankenship who informed him that he had made contact with a male, who was later identified as Bobby Seabon, who was going to the gold van. Detective Puckett and several other officers, including Detective Combs, went up to Room 321 and knocked on the door.

¹ Defendant's Exhibit 1.

Just second later, Jayla Jewel answered the door, swinging the door all the way open and giving the detectives a clear view of the individuals in the room. Detective Puckett saw the man who had identified himself as "Reveal Jones," who he believed was actually Amante Jackson, standing along the north wall of the room about twenty feet away. Detective Puckett noticed that his right hand was still bandaged and that he had a plastic baggie in his left hand. He also recognized everyone in the room except the defendant as having been at the hospital on September 2nd.

Recognizing the individual he believed to be named "Amante Jackson" as someone who had an active warrant out for his arrest, Detective Puckett said "Police Department - everybody put your hands up." "Amante Jackson" was arrested on the active warrant and he was later identified during booking at the jail to be Zontea Shealy.

The defendant Michael Graves was sitting at the table in the room where it appeared that narcotics were being weighed. There was a digital scale on the corner of the table and the plastic baggie that Zontea Shealy had in his hand was now located on the table as well. Detective Puckett believed this to be drugs and drug paraphernalia based on his training and experience, which includes ten years as a detective dealing with hundreds of cases involving the identification of drugs. Detective Combs also believed the baggie to contain cocaine or heroin based on the way it was packaged and his nine years of training and experience.

The defendant stood up as instructed and Detective Puckett patted him down for weapons. Detective Puckett felt something in the defendant's pocket which the defendant admitted was marijuana. Detective Puckett asked if he could remove it from the defendant's pocket and the defendant agreed.

The defendant and the two other males in the room were taken out into the hallway while the two females remained in the room with the small child who was also present. One of the females, Shawna Rogers, said her ID was in a bag in one of the drawers in the hotel room. She gave Detective Combs permission to look in her bag for the ID, at which time Detective Combs found a significant amount of marijuana in the bag. The detectives also discovered multiple baggies in the room containing drugs.

LEGAL ANALYSIS

"The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures and provides that " * * * no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."² "Pursuant to the exclusionary rule, ' * * * all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."³

In *United States v. Steagald* (1981), 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38, agents entered the defendant's home based on their belief that the subject of an arrest warrant was located in that home.⁴ The subject of the arrest warrant was not found but, while searching the home, the agents discovered what they believed to be

² *State v. O'Connor*, 12th Dist. Butler No. CA2001-08-195, 2002-Ohio-4122, ¶ 11.

³ *Id.*, quoting *Mapp v. Ohio* (1961), 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081.

⁴ *Steagald*, *supra*, 451 U.S. at 206-207.

cocaine.⁵ As a result, the defendant was arrested and indicted on federal drug charges.⁶

The Court noted that, while the arrest warrant for the third party had been issued by a detached and neutral magistrate, that arrest warrant did nothing to protect the defendant's privacy interest in being free from unreasonable searches and seizures in his own home.⁷ "Instead, [the defendant's] only protection from illegal entry and search was the agent's personal determination of probable cause."⁸ The Court stated that "[i]n the absence of exigent circumstances, [the Court has] consistently held that such judicially untested determinations are not reliable enough to justify an entry into a person's home to arrest him without a warrant, or a search of a home in the absence of a search warrant."⁹ The Court held that it saw "no reason to depart from this settled course when the search of a home is for a person rather than an object."¹⁰

The defendant cites *State v. Howard*, 75 Ohio App.3d 760, 600 N.E.2d 809 (4th Dist., 1991), in support of his motion. In that case, the subject of an arrest warrant was seen through a window in the home of a third party.¹¹ The court held that "the fact that the police possess an arrest warrant and are attempting to arrest a suspect does not, standing alone, permit the police to make a nonconsensual, warrantless entry into a third-party's residence to search for the suspect[.]" in the absence of exigent circumstances.¹² The *Howard* court discussed several cases including *United States v.*

⁵ Id. at 206.

⁶ Id. at 207.

⁷ Id. at 213.

⁸ Id.

⁹ Id. at 213-214, citing, *Payton v. New York* (1980), 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639; and *Johnson v. United States* (1948), 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436.

¹⁰ Id. at 214.

¹¹ *Howard*, supra, 75 Ohio App.3d at 763.

¹² Id. at 769.

Harper, 928 F.2d 894 (9th Cir., 1991), in which the court held that “ ‘[i]f the police lack probable cause to believe the suspect is an actual resident, but have probable cause to believe he’s present, they must get a search warrant.’ ”¹³

In *State v. Fisher*, 5th Dist. Fairfield No. 13-CA-35, 2014-Ohio-3029, police entered the apartment of Jonathan Fisher in order to serve an arrest warrant on his brother, Randy Fisher. The court noted that, assuming an arrest warrant did exist for Randy Fisher, “it is axiomatic that for Fourth Amendment purposes, a felony arrest warrant ‘founded on probable cause implicitly carries with it the limited authority to enter a dwelling *in which the suspect lives* when there is reason to believe the suspect is within.’ ”¹⁴ The court found that rule to be inapplicable because Randy Fisher was not a resident of the apartment that was entered and searched.¹⁵ The court then cited and discussed *Steagald* before holding that the police were required to obtain a search warrant prior to entering Jonathan Fisher’s home to execute an arrest warrant for Randy Fisher.¹⁶

Significant to the present case, however, is that the court also distinguished the case of *State v. Pinson*, 2nd Dist. Montgomery No. 20927, 2005-Ohio-4532, which held that an “arrestee’s status in the residence as an overnight guest does not overcome the authority conferred upon law enforcement by the existence of an arrest warrant.”¹⁷ The *Pinson* court held that “[b]ecause Defendant was subject to arrest at any time on the outstanding warrants, he had no reasonable expectation of privacy, anywhere, that protected him from execution of the warrants, and thus no legal foundation for his

¹³ Id. at 770, quoting *United States v. Harper*, supra, 928 F.2d at 896.

¹⁴ *Fisher*, supra, 2014-Ohio-3029 at ¶ 32, quoting *Payton v. New York*, supra, 445 U.S. at 602-603.

¹⁵ Id.

¹⁶ Id. at ¶ 33.

¹⁷ Id. at ¶ 34, discussing *Pinson*, supra, 2005-Ohio-4532 at ¶ 20.

Fourth Amendment claim that police entered the house illegally to arrest him."¹⁸ The *Fisher* court distinguished the *Pinson* case because "the person challenging the entry in that case is the subject of the arrest warrant, not the homeowner."¹⁹

It is important to note that, in the case at bar, the defendant was not the renter of the hotel room at issue. That distinction has been discussed in several Ohio cases, including *State v. Tolbert*, 116 Ohio App.3d 86, 686 N.E.2d 1375 (8th Dist., 1996). The *Tolbert* court stated that the question left unanswered by *Steagald* and *State v. Wilson*, 2 Ohio App.3d 151, 440 N.E.2d 1373 (6th Dist., 1981) is "whether to suppress evidence found without a search warrant when an officer enters a dwelling in order to arrest a person named in the arrest warrant who is not the homeowner."²⁰

In *State v. Brewster*, 157 Ohio App.3d 342, 2004-Ohio-2722, 811 N.E.2d 162 (1st Dist.), police discovered that the defendant and his brother Garry were staying in a hotel room paid for by Garry.²¹ There were open arrest warrants for both the defendant and his brother Garry.²² The court noted that "[t]he occupants of a hotel room have a reasonable expectation of privacy that the Fourth Amendment protects."²³ However, the court held that the arrest warrants "gave the officers authority to arrest both Michael [the defendant] and Garry Brewster wherever they found them."²⁴ Due to the fact that the officers had probable cause to believe the two individuals in the hotel room were the

¹⁸ *Pinson* at ¶ 20.

¹⁹ *Fisher* at ¶ 34.

²⁰ *Tolbert*, supra, 116 Ohio App.3d at 89.

²¹ *Brewster*, supra, 2004-Ohio-2722 at ¶¶ 15-19.

²² *Id.* at ¶ 25.

²³ *Id.* at ¶ 24, citing, e.g., *Storer v. California* (1964), 376 U.S. 483, 490, 84 S.Ct. 889, 11 L.Ed.2d 856.

²⁴ *Id.* at ¶ 25.

subjects of open arrest warrants, the officers had the authority to enter the hotel room to arrest the defendant and his brother.²⁵

The court in *State v. Moore*, 2nd Dist. Montgomery No. 20198, 2004-Ohio-3783, that the defendant did not have an expectation of privacy in a hotel room that society was prepared to recognize as reasonable.²⁶ The court noted that the defendant was not sleeping in the room, had no personal effects with him, had not paid for the room, and did not have a key to the room.²⁷ The court found the case to be analogous to *State v. Coleman*, 118 Ohio App.3d 522, 693 N.E.2d 825 (8th Dist., 1997), in which the court held that “the defendant, who was neither a registered guest of the hotel nor an overnight guest of someone who had registered, had not had a reasonable expectation of privacy in the hotel room.”²⁸

Similarly, in *State v. Draper*, 6th Dist. No. F-04-026, 2005-Ohio-920, the court held that “[a] guest at a party has no expectation of privacy and, therefore, cannot raise a Fourth Amendment claim regarding the search of premises or the seizure of items found therein.”²⁹

Courts outside Ohio have also addressed issues similar to those raised in the case at bar. In *Haller v. State*, 454 N.E.2d 76 (Ind.App., 1983), the court held that the defendant did not have standing to challenge the warrantless entry in a third-party’s hotel room.³⁰ The defendant in that case was “a mere visitor who asserted neither a property nor a possessory interest in” the hotel room.³¹ Likewise, in *U.S. v. Buckner*,

²⁵ Id.

²⁶ *Moore*, supra, 2004-Ohio-3783 at ¶ 13.

²⁷ Id.

²⁸ Id. at ¶ 11.

²⁹ *Draper*, supra, 2005-Ohio-920 at ¶ 10, citing *United States v. Adamo*, 742 F.2d 927, 947-948 (6th Cir. 1984).

³⁰ *Haller*, supra, 454 N.E.2d at 81.

³¹ Id. at 80-81.

717 F.2d 297 (6th Cir.1983), the court held that the defendant, who was found to be in possession of contraband when officers entered his mother's apartment to serve a bench warrant on a third individual, had no legitimate expectation of privacy in his mother's apartment because he did not live there.³² As such, the court held that he did not have standing to challenge the search of his mother's apartment.³³

The court finds based on the case law discussed above, and based particularly on the holdings in *Draper*, *Moore*, and *Coleman*, that the defendant in the case *sub judice* did not have a reasonable expectation of privacy in the hotel room. The court can determine from the evidence before it that the defendant was not an "occupant" of the hotel room given that Bobby Seabon is listed as the renter of the hotel room and that document also indicates that he had no guests. The defendant did not offer any evidence to establish that he was staying in the hotel room as an overnight guest. The court does not know when the defendant arrived at the hotel, nor when he planned to leave. However, based on the evidence in the record, the defendant was merely a visitor to the hotel room. As a visitor to the room, the defendant had no expectation of privacy therein and, consequently, cannot raise a Fourth Amendment claim regarding the search of the premises.

Given that fact, once the detectives entered the hotel room, they found the defendant sitting at a table where there was a digital scale and a baggie of what the detectives suspected to be cocaine or heroin. This was sufficient to arrest the defendant for possession of drugs and, therefore, the pat-down search of the defendant's person was proper as a search incident to arrest. " * * * [T]he search incident to arrest * * *

³² *Buckner*, supra, 717 F.2d at 298 and 300.

³³ *Id.* at 300.

allows officers to conduct a search that includes an arrestee's person and the area within the arrestee's immediate control."³⁴ "This exception 'derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations[;]'"³⁵ and "[t]hese searches need not necessarily be conducted at the moment of arrest."³⁶

The other illegal drugs found in the room were found in plain view and, in the case of the marijuana found in Shawna Rogers's bag, pursuant to a consent search. "The plain view exception authorizes the seizure, without the necessity of a search warrant, of an illegal object or contraband that is immediately recognizable as such when it is in plain view of a law enforcement official."³⁷ "Under [the plain view] doctrine, an officer may seize an item without a warrant if the initial intrusion leading to the item's discovery was lawful and it was 'immediately apparent' that the item was incriminating."³⁸ "Notably, the officer need not know that the items in plain view are contraband or evidence of a crime; it is sufficient that probable cause exist to associate the property with criminal activity."³⁹ Since the court has determined that the initial intrusion into the hotel room was proper, the seizure of the items in plain view that the officers, based on their experience and training, believed to be cocaine and/or heroin and paraphernalia associated therewith was also proper.

³⁴ *State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, 920 N.E.2d 949, ¶ 11, citing *Chimel v. California* (1969), 395 U.S. 752, 762-763, 89 S.Ct. 2034, 23 L.Ed.2d 685.

³⁵ *Id.*, quoting *Arizona v. Gant* (2009), 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485.

³⁶ *Id.* at ¶ 12.

³⁷ *Moore*, *supra*, 2004-Ohio-3783 at ¶ 17, citing, e.g., *Coolidge v. New Hampshire* (1971), 403 U.S. 443, 465-466, 91 S.Ct. 2022, 29 L.Ed.2d 564.

³⁸ *Id.*, quoting *State v. Waddy*, 63 Ohio St.3d 424, 442, 588 N.E.2d 819 (1992).

³⁹ *Id.*, citing *Arizona v. Hicks* (1987), 480 U.S. 321, 326, 107 S.Ct. 1149, 94 L.Ed.2d 347.

CONCLUSION

The defendant's motion to suppress is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED: 1-13-15



Judge Jerry R. McBride