





DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 269 July 13, 2003

GUESTS' EXPECTATION OF PRIVACY IN A HOTEL ROOM

Reference: Samuel K. Carter

v.

State of Alaska

Alaska Court of Appeals

Opinion No. 1887

_____P.2d___ July 3, 2003

FACTS:

Carter and three other people occupied a room at the Fairbanks Comfort Inn. The three others in the room were Pamela Fain; her adult daughter, Amy Fain; and Amy's minor child. The room had originally been rented for one night, but was extended on a day-to-day basis for a total of four nights. The established check-out time at the Comfort Inn was 1:00 p.m. It was not, however, the Comfort Inn's customary practice to immediately assert its right of possession against guests who missed the 1:00 p.m. check-out time. To the contrary, the Comfort Inn routinely granted guests a certain amount of leeway whenever the check-out time was missed.

Fairbanks police were investigating a report that Carter had threatened Amy Fain with a gun; they were also aware that Carter had a history of using narcotics. Police were conducting a surveillance of the room. One of the officers contacted the manager of the Comfort Inn to seek permission to search Carter's room after the occupants had checked out and before the housekeeping staff cleaned the room. The officer was told that he could search the room after the occupants checked out. The officer was also informed that the normal check-out time was 1:00 p.m. and the occupants had not indicated wanting to extend their stay.

At approximately 12:45 p.m., several Alaska State Troopers arrived at the Comfort Inn to take Amy Fain into custody on a citizen's arrest complaint. The Fairbanks officers conducting the surveillance decided to assist the troopers with the arrest. Following the arrest, Pamela Fain took Amy's child and left the room, leaving Carter with the officers still in the room. It was slightly after 1:00 p.m. when a police officer ordered Carter to gather his belongings and vacate the room. The officer later testified that he believed he had the authority to order Carter to leave because (a) the room had not been rented in Carter's name; (b) no one had paid for another night; and (c) it was now past the hotel's 1:00 p.m. check-out time.

While Carter was gathering his belongings, he opened a nightstand drawer. The officer observed crack pipes and syringes inside the drawer. Carter was arrested and convicted of fourth-degree controlled substance misconduct.

ISSUE:

Did police have the authority to (1) remain in Carter's hotel room, and (2) order Carter to gather his belongings and leave the hotel room?

<u>HELD:</u> No--hotel management did not give police this authority.

REASONING:

- $\underline{1.}$ The right to enter the room upon the termination of the guests' tenancy belongs to the hotel management, not the police.
- <u>2.</u> A guest who fails to meet the check-out deadline set by the hotel does not loose all expectation of privacy in the room; rather, a guest suffers a diminution of their expectation of privacy with respect to the <u>right of the</u> hotel management to enter the room. (emphasis added)
- $\underline{3.}$ Carter's expectation of privacy in the hotel room did not come to an abrupt end at 1:00 p.m. If police had any

authority to remain in Carter's room and order him to vacate the room, that authority had to be derived from the express consent of the hotel management.

- $\underline{4.}$ Hotel management declared they did not authorize police to force Carter to vacate the room at 1:00 p.m., but did authorize police to search the room \underline{after} Carter and the other guests $\underline{voluntarily}$ vacated the room. (emphasis added)
- <u>5.</u> Carter was faced with the choice of either (a) leaving his possessions behind while officers prepared to unlawfully search his room, or (2) gathering up his possessions under the scrutiny of the officers—a scrutiny not legally authorized, since officers were not entitled to remain in Carter's room nor to order him to leave.
- <u>6.</u> The officer's observations of the crack pipes and syringes was the fruit of their unlawful presence in the room and their unlawful demand that Carter vacate the room.
- $\overline{7.}$ It is true that the officers had independent authority to enter the room to assist the State Troopers in arresting Amy Fain; but once this task was completed, the police had no authority to remain in the room.

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