



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?

**HELD:** No--hotel management did not give police this authority.

**REASONING:**

1. The right to enter the room upon the termination of the guests' tenancy belongs to the hotel management, not the police.

2. A guest who fails to meet the check-out deadline set by the hotel does not lose all expectation of privacy in the room; rather, a guest suffers a diminution of their expectation of privacy with respect to the right of the hotel management to enter the room. (emphasis added)

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.

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 after Carter and the other guests voluntarily vacated the room. (emphasis added)

5. 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.

6. 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.

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.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:**

Add this case to Section B, "Consent," and Section K, "Plain View," of your Contents and Text. File Legal Bulletin No. 269 numerically under Section R of the manual.