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SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,)	Case No.
)	
Plaintiff,)	MEMORANDUM OF AUTHORITIES
)	IN SUPPORT OF
vs.)	DEFENDANT'S MOTION TO
)	SUPPRESS PHYSICAL EVIDENCE
,)	UNDER CrR 3.6
)	
Defendant)	
)	

COMES NOW the Defendant, through his attorney of record, Ryan T. Earl, Attorney at Law, and does hereby file this MEMORANDUM OF AUTHORITIES IN SUPPORT OF DEFENDANT’S MOTION TO SUPRESS PHYSICAL EVIDENCE pursuant to CrR 3.6.

I. FACTUAL BACKGROUND

The Defendant relies upon the documents thus filed to support probable cause and the Declaration in support of Defendant’s Motion to Suppress Physical Evidence. In addition, the Defendant expects to develop facts from the testimony of Moses Lake Police Department Officers and the hotel employee, John Y, who will testify at the CrR 3.6 Hearing scheduled for Wednesday, March 23, 20xx.

In general, the Defendant asserts that consent was inappropriately obtained and that the information provided upon which the probable cause affidavit for the search warrant was based was unreliable and illegally obtained from the Defendants hotel room.

1 **II. ISSUE**

2 1. WHERE A POLICE OFFICER ENTERS A HOTEL ROOM BASED UPON A
3 HOTEL EMPLOYEES’ CONSENT AND AN EQUIVOCAL DECLARATION THAT
4 THE TENANTS HAVE BEEN ASKED TO LEAVE, WHEN THE TENANTS HAVE
5 NOT ACTUALLY BEEN ASKED TO LEAVE, AND THE OFFICER DISCOVERS
6 DRUGS AND PARAPHERNALIA, HAS THE RIGHT TO PRIVACY BEEN
7 VIOLATED, SUFFICIENTLY TO DEFEAT THE PROBABLE CAUSE BASED
8 UPON THE ITEMS OBSERVED IN THE HOTEL ROOM?

9 **III. ANALYSIS**

10 **A. Constitutional Provisions**

11 The Fourth Amendment to the United States Constitution provides:

12 The right of the people to be secure in their persons, houses, paper, and effects, against
13 unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but
14 upon probable cause, supported by oath or affirmation, and particularly describing the
15 place to be searched, and the persons or things to be seized. U. S. Const. Amend. IV.

16 The Fourth Amendment security of one’s privacy against unreasonable searches and
17 seizures is “fundamental to our concept of ordered liberty” and as such applicable to the states
18 through the Due Process Clause of the Fourteenth Amendment. Duncan v. Louisiana, 391 U.S.
19 145, 88 S.Ct. 1444 (1968).

20 Article I, Section 7 of the Washington State Constitution provides: “No person shall be
21 disturbed in his private affairs, or his home invaded, without authority of law.” Wash. Const.
22 Art. 1 Sec. 7. The Washington constitutional equivalent to the Fourth Amendment confers upon
23 a defendant a higher degree of protection than is provided by the federal constitution by clearly
24 recognizing an individual’s right to privacy with no express limitations. State v. Myrick, 102
25 Wash 2d 506, 688 P.2d 151 (1984).

**B. Washington State’s Case Law Broadens the Definition of “Home” and the Right
 to Privacy Therein.**

 An individual who rents a hotel room enjoys the same constitutional protections as an
 owner or renter of a house for the duration of the period of his or her tenancy, both under the

1 Fourth Amendment and the more protective Article I, section 7 of the Washington State
2 Constitution. *State v. Davis*, 86 Wn. App. 414, 419, 937 P.2d 1110 (1997); *State v. Ramirez*, 49
3 Wn. App. 814, 817-18, 746 P.2d 344 (1987) (citing *Hoffs v. United States*, 385 U.S. 293 (1966);
4 *Stoner v. California*, 376 U.S. 483 (1964); *United States v. Rambo*, 789 F.2d 1289, 1295 (8th
5 Cir. 1986); *United States v. Newbern*, 731 F.2d 744, 748 (11th Cir. 1984); *United States v.*
6 *Bulman*, 667 F.2d 1374, 1383 (11th Cir.), *cert. denied sub nom. Howard v. United States*, 456
7 U.S. 1010 (1982); *State v. Dalton*, 43 Wn. App. 279, 283, 716 P.2d 940, *review denied*, 106
8 Wn.2d 1010 (1986); *State v. Bell*, 108 Wn.2d 193, 196, 737 P.2d 254 (1987)).

9 In this case, the State would like to defeat Mr. X's privacy expectations by proving that
10 the search of his room was conducted pursuant to a valid search warrant based on information
11 obtained due to the termination of his rental agreement and consent of the hotel employee. Mr.
12 John Y, the hotel employee stated that he had not quite told the renter, Mr. X that his tenancy
13 was being terminated. Thus, Mr. X did not know that his tenancy was being terminated;
14 consequently, there is no evidence that Mr. X checked out of the hotel room #103. Mr. X did not
15 consent to a search of his room. Nevertheless, the state will argue that termination of the renter's
16 agreement was equivocally stated to the responding officer and the hotel employees implicitly
17 gave their consent to search the room by opening the door to room #103.

18 Neither the Fourth Amendment nor Article I, section 7 of the Washington State
19 Constitution allow for such surrogate consent by hotel staff during the period of the rental.

20
21 *State v. York*, 11 Wn. App. 137, 141, 521 P.2d 950 (1974) (citing *Stoner v. California*, *supra*;
22 *United States v. Jeffers*, 342 U.S. 48 (1951); *Lustig v. United States*, 338 U.S. 74 (1949)).

23 No dispute exists regarding the fact that Mr. X had paid rent for 3 days and had implicitly
24 received approval to stay an additional day; thus, his tenancy was good through December 26,
25 2004, till noon the appointed check out time. Accordingly, his privacy expectations extended

1 through the expiration of that rental period, and it was his consent, and not the motel staff's, that
2 was required to authorize entry into his hotel room #103. Furthermore, Mr. X did not relinquish
3 his privacy rights, nor did the hotel take any steps to inform Mr. X that his tenancy was being
4 terminated. Therefore the entry by the hotel staff and the MLPD without consent of Mr. X or
5 without a search warrant was in direct violation of the Fourth Amendment, Washington State
6 Constitution, Article I, section 7 and Washington State case law. Thus, all fruits of that search
7 must be suppressed.

8 **B. The Affidavit Contains Unreliable Probable Cause.**

9 In State v. Mannhalt, 33 Wash.App 696, 658 P.2d 15 (1983), the Court of Appeals stated
10 that a search warrant is justified if the magistrate can determine the reliability of the information
11 and its sources and good reason for issuing the warrant exists upon considering all the facts and
12 circumstances from the affidavit. Here, the magistrate could not determine the reliability of the
13 information presented by the hotel employee to Officer Jones. As stated above, the affidavit in
14 this case attempts to establish probable cause to search based partly upon information from a
15 hotel employee that officers were asked to help break-up a large party and that the renter had
16 been asked to "leave." The law enforcement officer does not know the hotel employee, and does
17 not interview him prior to the issuance of the search warrant or the entry into room #103. The
18 law enforcement officer therefore has nothing to offer to help the magistrate determine the hotel
19 employee's veracity, or his basis of knowledge, or whether or not the privacy right of the hotel
20
21 room has terminated. The officer does not provide any corroboration of the hotel employee's
22 statements but for entering the room and finding the room unoccupied. The officer does not state
23 that he knows the person to whom the hotel employee refers, or of his involvement in controlled
24 substances.

1 The State will argue that the hotel employee took the appropriate steps to terminate Mr.
2 X's tenancy of room #103. However, the police report, the hotel employee's statements, nor the
3 affidavit for a search warrant refer to any police verification of the tenancy termination or to any
4 written policy or procedure for removal of a renter. Mr. John Y did state that they are required
5 by oral policy to "re-key" the room and do a brief inspection of the room, during which he
6 believes he saw the Marijuana. Mr. Y in his interview also stated that he had not asked the renter
7 of room #103 to leave but was going to. Nevertheless, MLPD undertook no further investigation
8 or verification of Mr. Y's knowledge or reliability as argued above.

9 CONCLUSION

10 Because the search of the Defendant's residence occurred with a warrant, the Defendant
11 bears the burden to prove that the issuing magistrate did not have sufficient probable cause or
12 that probable cause was illegally obtained and included improperly in the affidavit before him to
13 issue the search warrant. The hotel employee did not have authority to give consent to MLPD to
14 enter room #103. Therefore, MLPD should not have entered room #103. Law enforcement
15 officers presented information in the search warrant affidavit illegally obtained by MLPD and
16 information from a hotel employee that was unreliable, because the hotel employee's statements
17 were equivocal, unsubstantiated, and unverified. MLPD had no way of judging the veracity or
18 basis of knowledge of the hotel employee. Therefore, there was insufficient information
19 presented to the issuing judge to determine that probable cause existed to believe that contraband
20 or other evidence of a crime could be found in Mr. X's hotel room. The law enforcement
21
22 agency acted in reckless disregard for the truth and the law by presenting such information.

23 The Defendant respectfully asks the Court to suppress all evidence that the police seized
24 from the Defendant's hotel room #103 and the car pursuant to the improperly issued search
25 warrant.

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DATED this _____ day of _____, 200.

RYAN T. EARL, WSBA No. 34007
ATTORNEY FOR DEFENDANT

DECLARATION OF HAND DELIVERY

Under penalty of perjury under the laws of the State of Washington, the undersigned declares:
That on this day I hand delivered to the Grant County Prosecutor's Office, a copy of the document
to which this declaration is attached.

DATED _____
