

964 F.3d 1034

United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff - Appellee,

v.

Wali Ebbin Rashee ROSS, a.k.a. Wali Ibn Ross, a.k.a. Wal Ebbin Rashee Ross,
Defendant - Appellant.

No. 18-11679

|

(July 7, 2020)

Synopsis

Background: Following denial of motion to suppress,  [2017 WL 5162819](#), defendant pled guilty in the United States District Court for the Northern District of Florida, No. 3:17cr86–MCR, [Margaret C. Rodgers](#), J., to possession of firearm and ammunition by convicted felon and possession with intent to distribute heroin. Defendant appealed. The Court of Appeals,  [941 F.3d 1058](#), affirmed. Defendant petitioned for rehearing en banc. On rehearing en banc, the Court of Appeals, [2020 WL 3445818](#), remanded.

Holdings: The Court of Appeals, [Newsom](#), Circuit Judge, held that:

- [\[1\]](#) government waived on appeal argument that defendant abandoned any reasonable expectation of privacy in his motel room when he fled;
- [\[2\]](#) police officers' entry into motel room to execute arrest warrants was lawful;
- [\[3\]](#) officers' limited protective sweep of motel room was lawful;
- [\[4\]](#) officers' seizure of gun, which they found in plain view, was lawful; and
- [\[5\]](#) defendant did not have reasonable expectation of privacy in motel room after checkout time.

Affirmed.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion.

West Headnotes (21)

[1] Criminal Law 🔑 Questions of law or fact

Ruling on a motion to suppress presents a mixed question of law and fact.

[2] Criminal Law 🔑 Review De Novo
Criminal Law 🔑 Evidence wrongfully obtained

On appeal from ruling on motion to suppress, appellate court reviews the district court's findings of fact for clear error and its legal conclusions de novo.

[3] Criminal Law 🔑 Reception of evidence

On appeal from ruling on motion to suppress, all facts are construed in the light most favorable to the party prevailing below.

[4] Searches and Seizures 🔑 Expectation of privacy

Fourth Amendment's protections extend to any thing or place with respect to which a person has a reasonable expectation of privacy, including a hotel room. [U.S. Const. Amend. 4](#).

[5] Searches and Seizures🔑Expectation of privacy

Individual's Fourth Amendment rights are not infringed, or even implicated, by a search of a thing or place in which he has no reasonable expectation of privacy. [U.S. Const. Amend. 4](#).

[6] Criminal Law🔑Persons entitled to object
Searches and Seizures🔑Standing to Object

Unlike Article III standing, which constrains the federal judicial power and constitutes a nonwaivable jurisdictional limitation, Fourth Amendment "standing" is an ordinary, and waivable, aspect of the merits of a defendant's constitutional challenge. [U.S. Const. Amend. 4](#); [U.S. Const. art. 3, § 1](#).

[7] Criminal Law🔑In Preliminary Proceedings

Government waived on appeal argument that defendant abandoned any reasonable expectation of privacy in his motel room when he fled motel with no intention of returning and, thus, lacked Fourth Amendment standing to challenge either initial entry and ensuing protective sweep or subsequent search, where government failed to raise argument in district court. [U.S. Const. Amend. 4](#).

[8] Arrest🔑Entry with warrant

For Fourth Amendment purposes, an 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 a reason to believe the suspect is within. [U.S. Const. Amend. 4](#).

[9] Arrest🔑Entry with warrant

In order to enter a hotel room to execute an arrest warrant, a law enforcement officer must have a reasonable belief both (1) that the room is in fact the suspect's and (2) that the suspect is inside. [U.S. Const. Amend. 4](#).

[10] Arrest🔑Entry with warrant

In undertaking inquiry into whether officer could enter residence to execute arrest warrant, court considers the totality of the circumstances known to the officer at the time the warrant is executed and is guided by common sense factors. [U.S. Const. Amend. 4](#).

[11] Arrest🔑Entry with warrant

Officers need not be absolutely certain that a suspect is inside residence before entering to execute an arrest warrant; rather, they may make reasonable inferences and presumptions based on the time of day or observations at the scene, for instance, that a person is there when his vehicle is parked outside. [U.S. Const. Amend. 4](#).

[12] Arrest🔑Entry with warrant

If, based on rational deductions, officers executing arrest warrant have a reasonable belief that a suspect is inside residence, they may search for him until he is found. [U.S. Const. Amend. 4](#).

[13] Arrest🔑Particular places or objects

In order to protect their safety while making, and after, an arrest, officers executing arrest warrant by entering residence may perform a protective sweep of the premises. [U.S. Const. Amend. 4](#).

[14] Arrest🔑Scope of Search

While inside residence during execution of arrest warrant, the officers are permitted to seize any contraband in plain view. [U.S. Const. Amend. 4](#).

[15] Arrest🔑Entry with warrant

Police officers' entry into defendant's motel room to execute arrest warrants was lawful; officers reasonably believed defendant was in room, as they had watched him walk out door, approach truck in parking lot, return to room, and then reemerge, and defendant had left his truck in motel's parking lot. [U.S. Const. Amend. 4](#).

[16] Arrest ➡ Particular places or objects

Police officers' limited protective sweep of defendant's motel room to ensure that no one inside posed danger to them was lawful, where officers lawfully entered room to execute arrest warrants. [U.S. Const. Amend. 4](#).

[17] Arrest ➡ Particular places or objects

Police officers' seizure of gun, which they found in plain view, was lawful, where officers lawfully entered defendant's motel room to execute arrest warrant. [U.S. Const. Amend. 4](#).

[18] Searches and Seizures ➡ Particular concrete applications

Defendant, a short-term motel guest, did not have reasonable expectation of privacy in motel room after checkout time and, thus, did not have standing to object to police officers' search of motel room conducted with consent of hotel management after checkout time had passed. [U.S. Const. Amend. 4](#).

[19] Searches and Seizures ➡ Abandoned, surrendered, or disclaimed items
Searches and Seizures ➡ Private persons

After checkout time, even if a guest has not completely vacated his room, the motel manager has the right to enter and examine the room as if it had been relinquished, because the guest no longer has sufficient control over the premises to establish a right to privacy therein. [U.S. Const. Amend. 4](#).

[20] Searches and Seizures🔑Abandoned, surrendered, or disclaimed items
Searches and Seizures🔑Hotels and motels

Hotel guest loses his reasonable expectation of privacy in his room following checkout time, and hotel management can validly consent to a search of the room at that point. [U.S. Const. Amend. 4](#).

[21] Searches and Seizures🔑Expectation of privacy

If a hotel guest asks for and receives a late checkout, then, for Fourth Amendment purposes, he retains his reasonable expectation of privacy until the arrival of the mutually agreed upon time. [U.S. Const. Amend. 4](#).

Attorneys and Law Firms

***1036** Alicia Forbes, [Robert G. Davies](#), U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, Pensacola, FL, Jordane E. Learn, U.S. Attorney's Office, Karen E. Rhew-Miller, Tallahassee, FL, for Plaintiff-Appellee.

[Thomas S. Keith](#), Federal Public Defender's Office, Pensacola, FL, [Richard Michael Summa](#), [Randolph Patterson Murrell](#), Federal Public Defender's Office, Tallahassee, FL, for Defendant-Appellant.

Ashwin Pradyumna Phatak, Constitutional Accountability Center, Washington, DC, for Amicus Curiae.

Appeal from the United States District Court for the Northern District of Florida, D.C. Docket

No. 3:17-cr-00086-MCR-1

Before [WILSON](#) and [NEWSOM](#), Circuit Judges, and PROCTOR,* District Judge.

Opinion

[NEWSOM](#), Circuit Judge:

This case is back before us on remand from the en banc court. In [United States v. Ross](#), No. 18-11679, 963 F.3d 1056 (11th Cir. June 24, 2020) (en banc), the full court unanimously overruled  [United States v. Sparks](#), 806 F.3d 1323 (11th Cir. 2015), and held “that a suspect’s alleged abandonment [of his privacy or possessory interest in the object of a search or seizure] implicates only the merits of his Fourth Amendment challenge—not his Article III standing—and, accordingly, that if the government fails to argue abandonment, it waives the issue.” [Ross](#), 963 F.3d at 1057. Applying that holding here—and free from our allegiance to  [Sparks](#)—we conclude that the government waived its abandonment argument by failing to raise it in the district court. We reaffirm the balance of our earlier decision.

* * *

This appeal arises out of the denial of a defendant’s motion to suppress evidence found in two separate, warrantless searches of his motel room—the first ***1037** turned up a gun; the second, drugs and associated paraphernalia. On appeal, the defendant, Wali Ross, challenges the constitutionality of both searches. The government responds by defending the searches on the merits and by disputing Ross’s Fourth Amendment “standing” to contest them. With respect to the standing issue, the government argues—for the first time on appeal—that Ross “abandoned” his room, and any privacy interest therein, when, after seeing police officers staked out in the parking lot, he fled the motel on foot. Accordingly, the government says, Ross lacks Fourth Amendment standing to challenge either of the two subsequent searches. Moreover, and in any event, the government contends that any reasonable expectation of privacy that Ross might have had in the room expired at the motel’s standard 11:00 a.m. checkout time, and that he therefore lacks standing, at the very least, to challenge the second of the two searches.

We hold as follows: In the circumstances of this case, the government waived its abandonment argument by failing to raise it before the district court. Nevertheless, Ross’s constitutional challenge to the officers’ initial entry and sweep fails on the merits. As to the second search, which officers carried out with the consent of hotel management shortly after 11:00 a.m., we hold that Ross lost any reasonable expectation of privacy in his room at checkout time—and with it, his Fourth Amendment standing to contest the search.

I

A

The following took place between [approximately] 8:00 a.m. and 12:00 p.m. on July 21, 2017.

Early that morning, a joint state-federal task force gathered outside a Pensacola motel to arrest Wali Ross on three outstanding felony warrants—for trafficking hydrocodone, failure to appear on a battery charge, and failure to appear on a controlled-substances charge. Although the officers had information that Ross was staying at the motel, he wasn't a registered guest, so they set up surveillance around the building and waited for him to make an appearance. The officers knew that Ross was a fugitive who had a history of violence and drug crimes.

Sometime between 9:00 and 9:30 a.m., Special Agent Jeremy England saw Ross leave Room 113, head for a truck, return to his room briefly, and then approach the truck again. When Ross spotted the officers, he made a break for it, scaling a chain-link fence and running toward the adjacent Interstate 10. The officers went after Ross, but when they reached the opposite side of the interstate to intercept him, he wasn't there. In the meantime, it dawned on Agent England that none of the officers had stayed behind at the motel, and he feared that Ross might have doubled back to the room unnoticed. So, about ten minutes after the chase began, Agent England and Detective William Wheeler returned to the motel to see if Ross had snuck back into his room. The door to Room 113 was closed, and Ross's truck remained in the parking lot.

Detective Wheeler obtained a room key and a copy of the room's registration from the front desk—the latter showed that Room 113 was rented for one night to a woman named Donicia Wilson. (Although the name meant nothing to the officers at the time, they later learned that Ross was “a friend of a friend” of Wilson's husband; she had rented the room after she and her husband refused Ross's request to spend the night at their home because they had ***1038** children and didn't know him very well.) Using the key, Agent England and Detective Wheeler entered Room 113 to execute the warrants and arrest Ross; they entered without knocking, as they believed that someone inside—Ross, a third party, or both—might pose a threat to them. Agent England testified that because Ross had a history of violence it was “just protocol” to operate on the premise that there would “possibly [be] someone [in the motel room] to hurt” them—in light of that risk, he said, the officers “made a tactical entry into the room.” Once

inside, they conducted a quick protective sweep, and on their way out Agent England saw in plain view a grocery bag in which the outline of a firearm was clearly visible. Agent England seized the gun, touched nothing else, and left.

Deputy U.S. Marshal Nicole Dugan notified ATF about the gun while Agent England and Detective Wheeler continued to surveil the motel. ATF Special Agent Kimberly Suhi arrived at the motel around 10:45 a.m. to retrieve the firearm. The motel's manager, Karen Nelson, told Agent Suhi that she could search Room 113 after the motel's standard 11:00 a.m. checkout time; up until that point, Suhi testified, Nelson "st[ood] in the doorway of the room" to "mak[e] sure no one was entering."¹ Nelson explained that if it looked like a guest was still using his room at checkout time, she might place a courtesy call to ask if he wanted to stay longer; otherwise, she said, motel management assumed that every guest had departed by 11:00 a.m., at which point housekeepers would enter the room to clean it. Nelson also explained that it was the motel's policy to inventory and store any items that guests left in their rooms and to notify law enforcement if they found any weapons or contraband.

At 11:00 a.m., Agent Suhi again sought and received Nelson's permission to search Room 113. When ATF agents entered the room, they found a cell phone and a Crown Royal bag filled with packets of different controlled substances—including around 12 grams of a heroin-laced mixture—cigars, and a digital scale.

B

Ross was charged with one count of being a felon in possession of a firearm and ammunition, one count of knowingly possessing heroin with intent to distribute, one count of firearms-related forfeiture, and one count of forfeiture related to the property and proceeds obtained by a controlled-substances violation. He moved to suppress the evidence found in both searches of Room 113. In his motion, Ross argued that the officers' initial entry—and the ensuing protective sweep, which turned up the gun—violated the Fourth Amendment "because there were no grounds for them to believe that a dangerous individual (or anyone) was inside the room." He asserted that "it would have been unrealistic for the officers to believe that [he] had returned to the room and was inside at that time (after fleeing from them)." Accordingly, he said, the officers didn't have the requisite reasonable belief either to enter the room or to conduct the sweep. Ross also argued that the second search—which was conducted with Nelson's permission just after 11:00 a.m., and in which the drugs were discovered—violated the Fourth Amendment "regardless of the alleged consent of the hotel management because it would not have occurred absent the illegal first search." According *1039 to Ross, "[t]he illegal seizure of

the firearm ... directly [led] to the agents' desire to conduct the second search and their discussion with management to try to get its consent."

With respect to the initial entry and the protective sweep, the government responded (1) that because the officers couldn't find Ross near the interstate, they had reason to believe that he had returned to his motel room; (2) that Ross's multiple drug- and violence-related felony arrest warrants led the officers to conclude that he could be armed and dangerous; and (3) in addition, that exigent circumstances justified the entry, as "there was a definite likelihood that further delay could cause the escape of the defendant" and "jeopardize the safety of the officers and the public." With respect to the second search, the government argued that Ross didn't have Fourth Amendment "standing" to challenge it, as he had no reasonable expectation of privacy in Room 113 after the 11:00 a.m. checkout time and that, in any event, the search was valid because the officers reasonably believed that Nelson had the authority to consent to the search. The government further contended that even if the second search was tainted, motel staff would inevitably have entered the room after checkout time and alerted police when they found the gun in plain view.

The district court denied Ross's motion to suppress. With respect to the initial entry and sweep, the court found that "[t]he arrest warrant granted officers a limited ability to enter to effectuate the arrest on [their] reasonable belief that Ross was in the room." Moreover, the court observed, the fact that Room 113 was not registered in Ross's name gave the officers "reason to be concerned that someone else might be in the room as well." Finally, the court held that "the chase and the fact that the officers lost sight of Ross presented exigent circumstances" that further justified the sweep—because the officers were in hot pursuit of a suspect with a history of violent activity for whom they had an arrest warrant, and who reasonably could have returned to the room, the first search was lawful.

With respect to the second search, the district court concluded that after checkout time, Ross—who hadn't requested a late checkout or paid for an additional day—had no protectible privacy interest in the room. The court separately held that even if the initial entry and sweep were unlawful, Nelson's consent provided ample authority for the officers' post-checkout search. Finally, the court found that the inevitable-discovery and independent-source doctrines applied—either motel employees would have found the incriminating evidence when cleaning Room 113 after checkout time, or the task-force officers would have eventually searched the room.

[1] [2] [3] Ross pleaded guilty to possession of a firearm and ammunition by a convicted felon and possession with intent to distribute heroin, reserving the right to appeal the denial of his motion to suppress.²

II

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” *1040 U.S. Const. amend. IV. As already explained, this case involves two separate searches of Ross’s motel room. We will consider them in turn.

A

Ross first challenges the officers’ initial entry and the ensuing protective sweep, which they conducted roughly 10 minutes after Ross fled the motel on foot and shortly after they lost sight of him during the chase. The government not only defends the entry and sweep on the merits but also contends—for the first time on appeal—that Ross “abandoned” his motel room when he ran and, therefore, that he lacks Fourth Amendment “standing” to complain.

1

[4] [5] [6] The Fourth Amendment’s protections extend to any thing or place with respect to which a person has a “reasonable expectation of privacy,”  *California v. Ciraolo*, 476 U.S. 207, 211, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986) (quotation omitted)—including a hotel room, *see, e.g.*,  *Stoner v. California*, 376 U.S. 483, 490, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964). By contrast, an individual’s Fourth Amendment rights are *not* infringed—or even implicated—by a search of a thing or place in which he has no reasonable expectation of privacy. *See, e.g.*,  *United States v. Brazel*, 102 F.3d 1120, 1147 (11th Cir. 1997). This issue—whether an individual has a reasonable expectation of privacy in the object of the challenged search—has come to be known as Fourth Amendment “standing.” To be clear, though, as we took pains to emphasize in our recent en banc decision, Fourth Amendment “standing” and traditional Article III standing are *not* the same thing. Unlike Article III standing—which constrains the federal “judicial Power” and constitutes a nonwaivable jurisdictional limitation—Fourth Amendment “standing” is an ordinary, and waivable, aspect of the merits of a defendant’s constitutional challenge. U.S. Const. art. III, § 1; *see Ross*, 963 F.3d at 1061-62.

[7] The government argues here—again, for the first time on appeal—that Ross “abandoned” any

reasonable expectation of privacy in his room when he fled the motel with no intention of returning. Accordingly, the government says, Ross lacks Fourth Amendment standing to challenge either the initial entry and the ensuing protective sweep—which occurred after the officers’ ill-fated pursuit of Ross toward I-10, and in which they discovered the gun—or the subsequent search—which occurred shortly after 11:00 a.m., and in which officers discovered the drug-related evidence.³ We needn’t address the merits of the government’s new abandonment argument, however, because it waived the issue by failing to raise it in the district court. See [Ross](#), 963 F.3d at 1057-58.

We assume for purposes of this appeal, therefore, that Ross has the requisite Fourth Amendment standing to challenge the officers’ initial entry and protective sweep on the merits.

*1041 2

That, for Ross, is the good news. The bad: We hold that the task-force officers’ initial entry and accompanying protective sweep of Ross’s room complied with the Fourth Amendment.

^[8]As already explained, when the officers arrived at the motel on the morning of July 21, 2017, their objective was to arrest Ross on several outstanding warrants. “[F]or Fourth Amendment purposes, an 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 a reason to believe the suspect is within.” [United States v. Williams](#), 871 F.3d 1197, 1201 (11th Cir. 2017) (alteration in original) (quotation omitted). We can assume for present purposes that a person’s hotel room counts as a “dwelling,” see [United States v. Forker](#), 928 F.2d 365, 370 (11th Cir. 1991), and, therefore, that the rules we have articulated for in-home arrests pursuant to valid warrants apply here, as well.

^[9] ^[10] ^[11] ^[12] ^[13] ^[14]In particular, in order to enter a hotel room to execute an arrest warrant, a law enforcement officer “must have a reasonable belief” both (1) that the room is in fact the suspect’s and (2) that the suspect is inside. See [Williams](#), 871 F.3d at 1201. “In undertaking this two-part inquiry, we consider the totality of the circumstances known to the officer at the time the warrant is executed and are guided by ‘common sense factors.’ ” [Id.](#) (quotations omitted). Officers need not be “absolutely certain” that a suspect is inside before entering “to execute an arrest warrant.” [United States v. Magluta](#), 44 F.3d 1530, 1538 (11th Cir. 1995). Rather, they “may make reasonable inferences and presumptions based on the time of day or observations at the scene”—for instance, “that a person is [there] when his vehicle is parked outside.” [Williams](#), 871 F.3d at 1201. If, based on such rational deductions, the officers have

a reasonable belief that a suspect is inside, they may search for him “until [he] is found.”  *Id.* Moreover, in order “[t]o protect their safety while making, and after, an arrest, [the] officers may also perform a ‘protective sweep’ ” of the premises.  *Id.* (quotation omitted). And finally, while inside, the officers “are permitted to seize any contraband in plain view.”  *Id.*

^[15] Here, the officers clearly knew that Ross was staying in Room 113—they had watched him walk out the door, approach a truck in the parking lot, return to the room, and then reemerge. The facts also support the conclusion that the officers had the requisite “reasonable belief”—based on “common sense factors” and permissible “inferences and presumptions”—that Ross had returned to the room following his flight toward I-10. The officers knew, for instance, not only that Ross had been in Room 113 but also that he had left his truck in the motel’s parking lot. They also knew that after chasing Ross, they had lost sight of him and that no one had thought to stay behind to surveil the motel. Finally, they knew that when they returned, Ross’s truck was still in the motel’s parking lot, eliminating the possibility that he had driven away and (on balance) increasing the probability that he was back inside the room. Particularly given that the officers’ ill-fated pursuit of Ross had lasted no more than 10 minutes, we think it was eminently reasonable for them to conclude that Ross had doubled back to the motel and taken refuge in his room.

^[16] ^[17] Because the officers reasonably believed that Ross was in Room 113, they had authority (1) to enter the room to execute the arrest warrants, (2) to conduct a limited protective sweep of the room to ***1042** ensure that no one inside posed a danger to them,⁴ and (3) to seize the gun, which they found in plain view. See  *Williams*, 871 F.3d at 1201. The officers’ entry, sweep, and seizure, therefore, complied with the Fourth Amendment. We affirm the district court’s denial of Ross’s motion to suppress the gun.

B

We turn, then, to the second search, which the officers conducted with motel management’s consent shortly after 11:00 a.m. and in which they discovered drug-related evidence. Once again, we begin—and this time find that we can end—with the government’s contention that Ross lacks Fourth Amendment standing. The government’s standing argument concerning the second search—which it clearly made, and thus preserved, in the district court—is slightly different from its argument concerning the initial entry. With regard to the second search, the government contends that Ross’s reasonable expectation of privacy in his motel room expired—lapsed—as of the motel’s standard 11:00 a.m. checkout time. For the reasons that follow, we agree.

While our existing precedent provides a few hints, it doesn't squarely answer what we'll call the "checkout time" question. In [United States v. Savage](#), for instance, we stated in a footnote that the defendant there had "automatically relinquished possession of [his room] ... at 11 a.m., the motel's checkout time." [564 F.2d 728, 730 n.5 \(5th Cir. 1977\)](#). In that case, though, the defendant "had turned in his key the night before," thereby clearly evidencing an affirmative intent to quit the room. [Id.](#) In a later decision, [United States v. Ramos](#), we clarified that "[m]ore evidence than mere possession of a key" after checkout time "is necessary to satisfy a claimant's burden of establishing a legitimate expectation of privacy." [12 F.3d 1019, 1024 \(11th Cir. 1994\)](#) (citation omitted). There, we concluded that because the defendant had a two-month rental agreement for a specific condominium unit and still had a key to the unit when the lease expired, he had a "far more 'regular or personal' " connection to the premises than a short-term hotel guest like the one in [Savage](#). [Id.](#) As a result, we held that the defendant retained an expectation of privacy in a locked briefcase that he had failed to remove from the condo before the mandatory moveout time. [Id.](#) at 1025–26.

Neither [Savage](#) nor [Ramos](#) is precisely on point here. Like the defendant in [Ramos](#)—and unlike the defendant in [Savage](#)—Ross apparently kept the key to his room beyond the motel's standard 11:00 a.m. checkout time. (There's certainly no evidence that he returned it early.) But [Ramos](#) teaches that one's post-checkout possession of a room key isn't conclusive, and its holding, in any event, ultimately concerned only the defendant's expectation of privacy in a locked briefcase left in a room—not the room itself.⁵ Moreover, unlike [*1043](#) the defendant in [Ramos](#), Ross had no long-term interest in Room 113. Quite the contrary, in fact; like the defendant in [Savage](#), Ross was an overnight guest in an ordinary motel room—and even further attenuating Ross's interest, "his" room was rented in someone else's name. Accordingly, Ross's connection to Room 113 was not remotely (in the words of [Ramos](#)) "regular or personal."

^[18]We hold, with one minor caveat explained below, that a short-term hotel guest like Ross has no reasonable expectation of privacy in his room after checkout time, and thus no standing to object to a room search that police conduct with the consent of hotel management after checkout time has passed. What, one might ask, is the magic of checkout time? After all, even before then, during a hotel guest's tenure, hotel employees may enter the guest's room—say, to make the bed or restock toiletries. It's about control. Those sorts of fleeting, pre-checkout entries don't fundamentally compromise a guest's reasonable expectation of privacy in his room because as long as the guest is lawfully in the room, he has at least a qualified right to exclude others, including hotel staff—see, e.g., the "DO NOT DISTURB" doorhanger. Unsurprisingly, therefore, the Supreme Court has held that hotel employees may not validly consent to a search of an occupied hotel room without the guest's permission—during his authorized tenancy, he has a right to privacy in the space that the hotel cannot pierce. See, e.g., [Stoner, 376 U.S. at 489–90, 84 S.Ct. 889](#).

^[19]At checkout time, everything changes. At that point the housekeeping crew will need to—and has the authority to—access the room to clean and prepare it for the next registered guest, often on a very tight turnaround. A guest’s doorhanger no longer bars entry. Accordingly, as the Second Circuit has held, after checkout time, even if a guest “ha[s] not completely vacated [his] room, the motel manager ha[s] the right to enter and examine the room as if it had been relinquished,” because the guest no longer has “sufficient control over the premises to establish a right to privacy therein.”  [United States v. Parizo](#), 514 F.2d 52, 55 (2d Cir. 1975); see also [United States v. Akin](#), 562 F.2d 459, 464 (7th Cir. 1977) (holding that “[s]ince the record supports the district court’s conclusion that the rental period ended at the 1:00 [p.m.] check-out time rather than at 6:00 [p.m.] when an individual would be billed for an additional day, ... the authorized representative of the hotel had the authority to consent to the search of the room” after 1:00 p.m.).

^[20] ^[21]We hold, therefore, that a hotel guest loses his reasonable expectation of privacy in his room following checkout time, and that hotel management can validly consent to a search of the room at that point.⁶ Because Ross had no cognizable ***1044** privacy interest in Room 113 after 11:00 a.m., he has no Fourth Amendment standing to challenge the second, post-checkout-time search of the room.⁷ On that basis—and without considering the constitutionality of the second, consent-based search on the merits—we affirm the district court’s denial of Ross’s motion to suppress the drug-related evidence found during the post-checkout-time search.

III

In sum, we hold as follows:

1. The government waived its abandonment argument by failing to raise it in the district court. Accordingly, we assume for purposes of our decision that Ross has Fourth Amendment standing to challenge the entry and sweep, which resulted in the seizure of the gun.
2. Ross’s challenge to the initial entry and sweep fails on the merits. Because the officers had reason to believe that Ross was in Room 113, they had authority to enter the room to execute their arrest warrants, to conduct a protective sweep to ensure their safety, and to seize the gun, which they found in plain view.
3. Ross forfeited any reasonable expectation of privacy in Room 113 following the 11:00 a.m. checkout time, at which point the motel’s management had the authority to consent to a search;

accordingly, he has no Fourth Amendment standing to challenge the ensuing search, during which *1045 officers discovered the drug-related evidence.

AFFIRMED.

All Citations

964 F.3d 1034, 28 Fla. L. Weekly Fed. C 1378

Footnotes

- * Honorable R. David Proctor, United States District Judge for the Northern District of Alabama, sitting by designation.
- ¹ Nelson testified that she had arrived at work after Ross fled from police, that she hadn't seen anyone enter the room, and that she had no knowledge of the officers' earlier entry and sweep.
- ² "A ruling on a motion to suppress presents a mixed question of law and fact. We review the district court's findings of fact for clear error and its legal conclusions *de novo*."  [United States v. Johnson](#), 777 F.3d 1270, 1273–74 (11th Cir. 2015) (quotation omitted). "All facts are construed in the light most favorable to the party prevailing below"—here, the government.  [Id.](#) at 1274 (quotation omitted).
- ³ In a footnote in its brief, the government seems to suggest, separately, that because Ross's name wasn't on the hotel registration, he never "established a legitimate expectation of privacy in Room 113 such that he had standing to contest either search [even] absent any abandonment." It's an interesting question—whether an individual who stays alone overnight in a hotel room rented by someone else has a protectible privacy interest in that room. But because the parties didn't brief that issue, and it wasn't raised before the district court, we won't address it here.
- ⁴ Recall that before they entered, the officers knew that Room 113 was rented in someone else's name, which increased the risk that a second person, in addition to Ross, might also be inside. Cf.  [United States v. Standridge](#), 810 F.2d 1034, 1037 n.2 (11th Cir. 1987) (holding that a protective sweep of a hotel room was permissible where "the police had not followed [the defendant] when he went to the motel and the room had not been constantly watched," and "thus, the police could not know whether [the defendant] was alone").
- ⁵ We note that Ross argues here only that he retained an expectation of privacy in Room 113

itself; he does not assert a separate privacy interest in any closed containers inside the room—say, for instance, the Crown Royal bag full of drugs. That might—or might not, we needn’t decide—have presented a different issue. Cf. [United States v. Owens](#), 782 F.2d 146, 150 (10th Cir. 1986) (holding that even if an individual “did not retain a protected privacy interest in his [motel] room” after checkout time, “it certainly would have been reasonable for him to expect that the contents of closed containers he kept in his room would not be exposed to scrutiny by the police or motel personnel”).

⁶ We add the following commonsense caveat: If a guest asks for and receives a late checkout—say, from the standard 11:00 a.m. to 12:00 noon—then he retains his reasonable expectation of privacy until the arrival of the mutually agreed upon time. Because Ross neither sought nor received permission to extend his stay, we needn’t explore our caveat’s application here. To the extent, though, that some courts have held, more generally—and even absent express agreement between management and guest—that a hotel’s “policies,” “patterns,” or “practices” can extend a guest’s expectation of privacy beyond checkout time, see, e.g., [United States v. Dorais](#), 241 F.3d 1124, 1129 (9th Cir. 2001); [United States v. Kitchens](#), 114 F.3d 29, 32 (4th Cir. 1997), we disagree. As the Sixth Circuit has explained, “[j]ust because a hotel does not change keycards at 11:00 a.m. [every day], or does not charge guests for an extra night every time they have not removed all of their personal items by 11:00 a.m., does not mean that the guest, as opposed to the hotel, retains control over the room.” [United States v. Lanier](#), 636 F.3d 228, 233 (6th Cir. 2011). “What the hotel may voluntarily give as a general matter it can take away in an individual instance, at least where the guest has not secured a promise from the hotel that he may stay late.” [Id.](#) For the good of citizens and police alike, courts have long preferred clear Fourth Amendment rules, and extending a guest’s reasonable expectation of privacy based on an uncommunicated and ethereal policy, pattern, or practice would only obscure matters.

⁷ There is one loose end. Ross argues that he had a continuing possessory interest in Room 113 due to the motel’s failure to honor Fla. Stat. § 509.141(1), which states that “[t]he operator of any public lodging establishment ... may remove ... in the manner hereinafter provided, any guest of the establishment ... who ... fails to check out by the time agreed upon in writing by the guest and public lodging establishment at check-in unless an extension of time is agreed to ... prior to checkout.” The statute requires a hotel “operator [to] ... notify such guest that the establishment no longer desires to entertain the guest and shall request that such guest immediately depart from the establishment”—if the guest doesn’t comply, he is guilty of a second-degree misdemeanor. [Id.](#) § 509.141(2)–(3). Ross contends that because the motel didn’t provide such notice to vacate before the search of his room, he still “had a continuing possessory interest in Room 113 ... [and] hotel management did not possess the legal authority to consent to the search.” Reply Br. of Appellant at 10.

We agree with the government that nothing in § 509.141 justifies the conclusion that Ross

continued to enjoy an exclusive right to occupy an unpaid-for room absent formal notice. Rather, the hotel's noncompliance with the statute simply means that Ross couldn't be charged with misdemeanor trespassing for his holdover. *See, e.g., Brown v. State*, 891 So. 2d 1120, 1122 (Fla. Dist. Ct. App. 2004). Under Ross's expansive reading of the statute, an individual could maintain an indefinite possessory interest—and a reasonable expectation of privacy for Fourth Amendment purposes—in a hotel room as long as the hotel doesn't explicitly tell him to vacate. We don't think the statute can be read so broadly.