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SUPREME COURT, U.S.

No. **22-7431** **ORIGINAL**

SUPREME COURT OF THE UNITED STATES

WILLIAM HILL, Jr.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

By William Hill, Jr.,
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QUESTIONS PRESENTED

1. Whether the district court erred in allowing the consideration of evidence that should have been excluded as a result of an illegal search seizure in violation of the fourth amendment of the Constitution?
2. Whether the police improperly created the exigency?

LIST OF PARTIES

All parties appear in the caption on the cover page.

TABLE OF CONTENTS

QUESTION PRESENTED

TABLE OF AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

STATEMENT OF THE CASE

REASONS TO GRANT THE WRIT

CONCLUSION

INDEX TO APPENDICES

APPENDIX A Sixth Circuit Opinion dated January 11, 2023,
affirming Petitioner's convictions and sentence

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page(s)</u>
BRINGER v. United States, 338 U.S. 160 (1949)	18
Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971)	15
Groh v. Ramirez, 540 U.S. 551, 559 (2004)	16
Johnson v. United States, 333 U.S. 10 (1947)	17, 20
Payton v. New York, 445 U.S. 573, 589, 590 (1980)	14, 19
People v. Hardy, 77 A.D. 3d 133, 907 N.Y.S. 2d 244, 248 (N.Y. App Div 2010)	11
Silverman v. United States, 365 U.S. 505, 511 (1961)	19
Stargald v. United States, 451 U.S. 204, 211, 101, S. Ct. 1042, 68 L. Ed. 2d 38 (1981)	14
Stoner v. State of California 316 U.S. 483, 490, 84 S. Ct. 889, 11 L. Ed. 2d 856 (1964)	14, 15, 17
Terry, 392 U.S. at 20 N.16.	10
United States v. Acosta, 965 F.2d 1248, 1254 (3d Cir. 1992)	19
United States v. Allen, 106 F.3d, 695, 699 (6th Cir. 1997)	10
United States v. Dulchi, 906 F.2d 1278, 1284-85 (8th Cir. 1990)	19, 20
United States v. Dorais, 241 F.3d 1124, 1129-30 (9th Cir. 2001)	11, 12
United States v. Gill, 16 F. App'x 850, 854 (10th Cir. 2001)	11, 12
United States v. George, 883 F.2d 1407, 1412-15 (4th Cir. 1989)	16
United States v. Hoffhines, 967 F.2d 314, 318 (4th Cir. 1992)	11
United States v. Jeffers, 342 U.S. 48 (1951)	16
United States v. Kitchens, 114 F.3d 29, 31-32 (4th Cir. 1997)	11, 12
United States v. Lawler, 636 F.3d 228, 232 (6th Cir. 2011)	13
United States v. LARSON, 760 F.2d 852, 854-55 (8th Cir. 1985)	11, 12
United States v. Owens, 782 F.2d 146, 149-50 (10th Cir. 1986)	11, 12
United States v. Rubin, 474 F.2d 262, 268 (3d Cir. 1973)	14
United States v. Stallings, 28 F.3d 60 (8th Cir. 1994)	14
United States v. Washington, 573 F.3d 279, 285 (6th Cir. 2009)	11
United States v. Watson, 783 F. Supp 258, 263 (E.D. Va 1992)	11, 12
Wong Sun v. United States, 371 U.S. 471 (1963)	18
Welsh v. Wisconsin, 466 U.S. 740, 749-50, 104 S. Ct. 2091, 80 L. Ed. 2d 19	

STATUTES

18 U.S.C. § 2

STATUTES

21 U.S.C. § 841(a)(1)

21 U.S.C. § 846

RULES and REGULATIONS

Fourth Amendment of the United States Constitution

Fifth Amendment of the United States Constitution

PETITION FOR A WRIT OF CERTIORARI

Petitioner William Hill, Jr., petitions this Court for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit resolved this case in an unpublished opinion issued on January 11, 2023, in which it affirmed Petitioner's conviction and sentence. The Sixth Circuit's unpublished opinion is attached to this Petition as Appendix Exhibit A.

JURISDICTION

The Sixth Circuit issued its unpublished opinion in this matter on January 11, 2023. This Petition is filed within ninety days of that date, as required by Rule 13.3 of the Supreme Court Rules. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The following facts were developed at a suppression hearing.

ON January 4, 2018, Tusha Bailey was employed as a breakfast hostess and executive housekeeper at the Country Inn and Suites in Jackson, Tennessee. (See Supp'n Hrg Tr, R. 59, Page ID 172-174, 180.) She was working late when a couple came through the hotel's side door entrance. Id. at Page ID 183. Bailey led them to the front desk to check-in and heard the woman's name was Hailey Sweat. Id. at Page ID 183. Bailey later saw the couple when exiting an elevator and told the couple that their room, 318, was on the third floor. Id. at Page ID 183-84. Bailey recalled that the hotel staff began receiving complaints about smelling marijuana on the third floor. Id. at Page ID 181.

In the late evening / early morning hours of January 4th and 5th, 2018, Mr. Hill arrived from Texas at the Country Inn and Suites in Jackson, Tennessee, with his girlfriend, Ms. Daphne Cook. Id. at Page ID 263, 266. He was invited by Hailey Sweat and James Sneed. Id. at Page ID 263, 266, 293. Sweat and Sneed left in the late evening / early morning hours of January 5th and 6th, 2018. Id. at Page ID 267. They did not pack their clothes because they were suppose to come back. Id. at Page ID 268. Mr. Hill and Ms. Cook remained guests of Sweat and Sneed through January 6, 2018. Id. at Page ID 265.

ON January 6, 2018, Bailey was near the front desk, at the general manager's office, when she saw a woman approach who was having trouble walking steady and spilling things. According to Bailey, the woman said she was Hailey Sweat and that she wanted to pay for room 318 for another night. Id. at Page ID 182-83, 201. The desk clerk either slid the key card the woman had or made her new card because, according to Bailey, the card expired after 12:00 p.m. Id. at Page ID 214. The desk clerk accepted payment, while Bailey turned to her

manager, Jessica Blackwell, and reported that the woman at the counter was not Haley Sweat, the woman who originally checked in. Id. at Page ID 183-84, 204.

Blackwell phoned the police to come and help hotel staff check if Haley Sweat was in the room Id. at Page ID 187, 204-05. Bailey told the officers about the marijuana smell and about the new woman checking into the room. Id. at Page ID 189-90. Blackwell and the desk clerk also spoke with the police. Id. at Page ID 190. The officers told the hotel employees that there really was not much they could do unless the hotel staff wanted to evict the occupants of the room. Id. Blackwell told the officers that she would like to evict the occupants. Id. at Page ID 190, 205.

The officers went up first to knock on the hotel room door and tell the occupants to leave. Id. at Page ID 206. Getting no response, everyone then went up to the room. Id. at Page ID 190.

Bailey knocked on the door, but no one answered. Id. at Page ID 190-91. She then opened the door a crack and shouted "house keeping," with still no answer. Id. at Page ID 191. Bailey could hear a lot of bathroom noise, however, like a toilet was running. Id. She stepped further into the room, which was actually a suite, shouting "house keeping, house keeping," and realized that the noise she was hearing might be the shower. Id. Id. at 191, 207. Bailey went to the bathroom door, still shouting "house keeping." From outside the bathroom door, she could see into the bedroom, where she spotted a methamphetamine ("meth") pipe on the bed. Id. at Page ID 191-92. She stated loudly, "There's a meth pipe and I'm out," and left the room. Id.

As Bailey left the room, she held the door and the two officers entered the room. Id. at Page ID 192. The officers did a "sweep" and pulled two people out of the shower in the bathroom. Id. at Page 192-93, 216. The officers later obtained a search warrant, but Bailey was not present when the warrant was executed. Id. at Page ID 193.

One of the responding officers that day was Dennis

Ballewine of the Jackson Police Department ("JPD"). Id. at Page 10 226-27. He said that the whole investigation started a little before lunch. Id. at Page 10 260. He recalled hotel staff complaining about a lot of foot traffic in and out of the room as well as the odor of marijuana. Id. at Page 10 227. He recalled there was confusion about who was supposed to be in the room versus who was in the room. Id. at Page 10 228. He recalled the hotel staff reporting that the original occupants had not been seen since check-in. Id. Ballewine advised the hotel staff that the matter was a civil one and that they would have to handle the eviction themselves. Id. at Page 10 228, 230. He told them that he did not think that he could justify calling a whole crew of narcotics agents to the hotel to get a warrant simply because someone was smoking a blunt. Id. at Page 10 230. Ballewine said he told the hotel staff he could not enter the hotel room nor could he ask the hotel staff to enter the room. Id. at Page 10 239. He said that the only thing the police could do was stand by to keep the peace while the eviction was underway. Id. at Page 10 228, 230, 239. Ballewine did offer to perform a "knock and talk" with the room's occupants. Id. at Page 10 229. Receiving no answer when he knocked, however, Ballewine returned to the front desk. Id. at Page 10 229, 230. He was told by the hotel staff that they still thought someone was in the room because they had seen "no one" leave. Id. at Page 10 239. Ballewine then accompanied the hotel staff to the room where his partner Sharp remained waiting in the hall. Id. at Page 10 230. From there, Ballewine's staff matches Bailey's as far as how she entered the room, saw the meth pipe and left the room. Id. at Page 10 230-31. Ballewine testified that he held the door open for Bailey to enter so he could watch for her safety. Id. at Page 10 240-241. He could see a suitcase and some clothes in the room, but nothing illegal. Id. at Page 10 241. Ballewine recalled

thinking that it was silly to say there was a meth pipe in the room, when everyone knew that they had been smelling marijuana. Id. at Page 1D 231.

Ballentine testified that he and Schrup entered the room with their weapons drawn to do a protective sweep, make sure no one was in the room, and preserve the evidence at the scene. Id. at Page 1D 231, 233, 243. He also testified that, though he had no evidence that methamphetamine was in the room, he knew he could enter the room because he had smelled marijuana, and marijuana is illegal in Tennessee, along with Bailey's report of a pipe. Id. at Page 1D 244.

Ballentine heard water running in the bathroom and shouted for the occupants to come out with their hands up. Id. at Page 1D 246. Ms. Cook and Mr. Hill came out of the shower. Id. at Page 1D 231, 246. The officers gave them towels and made them exit the room. Id. Once the warrant was obtained, Ballentine helped execute it. Id. at Page 1D 234. The officers recovered an open safe containing marijuana and money, hash oil, some pills, a small amount of powder, and a pound of methamphetamine. Id. at Page 1D 234-35.

Based on the foregoing, a federal grand jury in the Western District of Tennessee charged Mr. Hill with conspiracy to possess with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, as well as aiding and abetting possession with intent to distribute more than 50 grams of actual methamphetamine, in violation of 18 U.S.C. § 2 and 21 U.S.C. § 841(a)(1). (See 3rd Superseding Indictment (Penalty Copy), R. 75, Page 1D 325-27.)

Mr. Hill initially filed a motion to suppress arguing that the officers' warrantless entry into the hotel room was unlawful. (See Mot. Suppress, R. 24, Page 1D 49-52.) He also argued that he had been questioned without the benefit of Miranda warnings. Id. at Page 52-54.

The prosecution responded by arguing in part that Mr. Hill

had no expectation of privacy, or "standing" to challenge the search, because he was not lawfully in the hotel room as a registered guest, he failed to provide any evidence that he had permission to use the room, and he did not provide identification to the hotel. (See Gov't's Am. Resp. Mot. Suppress, R. 30 Page ID 79-82) As for the argument that Mr. Hill was interrogated without Miranda warnings, the government argued that Mr. Hill was not in custody when questioned at the scene, and he was only asked preliminary routine questions. (See Gov't's Am. Resp. Mot. Suppress, R. 35 Page ID 94-95) The government averred that once the search warrant was sought and narcotics found, both Mr. Hill and Ms. Cook were arrested and advised of their Miranda rights. Id. at Page ID 95

At the suppression hearing, the district court addressed the standing question before any testimony. Everyone agreed that Ms. Haley Sweet was the registered guest in the room. (See Supp'n Hrg. Tr. R. 59, Page ID 160, 163-64.) She registered the first night, and Mr. Sneed tendered his credit/debit card the following night for the room and incidentals. Id. at Page ID 158, 272. (See also Gov't's Resp. Mot. Suppress, R. 35, Page ID 91; Order Den. Mot. Suppress, R. 45, Page ID 116.) Sweet and Sneed had thus rented the room through noon on January 6, 2018.

The court asked the government whether it would matter for purposes of standing that Mr. Sweet gave permission for Mr. Hill to be in the room. (See Supp'n Hrg. Tr. R. 59, Page ID 164.) The government replied that the check-out time was noon, and if the lessee of the room had indeed given permission for the occupants to be in the room, there would be standing. Id. at Page ID 164. The government explained that all the events leading to Mr. Hill's charges occurred a little before noon, but Ms. Sweet's reservation expired at noon. Id. The government's position was that Ms. Cook went down to reserve the room an additional day under a false identity, which rendered her a trespasser.

Id. at Page 10167.

The court found the issue very interesting, framing it in terms of permitted guests or trespassers. Id. at Page 10168. The government argued that the fact that Ms. Cook gave a fraudulent name to renew the lease on the room negated any proof that she and Mr. Hill had permission from Ms. Sweat to be in the room. Id. The defense responded that the hotel staff knew before they accepted payment from Ms. Cook that she was not Ms. Sweat, but accepted payment and wrote the receipt in Ms. Sweat's name. Id. at Page 10169-170.

At the close of evidence at the suppression hearing, the defense argued that Mr. Hill had standing to challenge the search of the hotel room, as he was an invited guest of Ms. Sweat and Mr. Sneed. Id. at Page 10272. The defense pointed out that Ms. Sweat had the room booked through NCRN on January 6, 2018, but the search incident happened before NCRN. Id. The defense argued that Mr. Hill was legally in the room. Id.

The defense also observed that the hotel staff accepted payment for the room for one more day from Ms. Cook, despite knowing that she was not Ms. Sweat. Id. This, the defense averred, extended the lease hold one more day. Id. The defense also pointed out that the hearing testimony established that Ms. Cook was seen in the breakfast area by the hotel staff, when she was knocking over and spilling things. Id. at Page 10273. In the defense's view, the implication was that Ms. Cook had been in the hotel the night before, yet no one told her to leave. Id. Thus, the defense reasoned, as an overnight guest of the lease holder, Mr. Hill had standing to challenge the search of the room. Id.

Without consent or warrant, the defense argued, the officers could not have entered the room. Id. at Page 278. The defense noted that Ballentine seemed to be relying on the exigent circumstances exception to enter the room because he wanted to preserve the evidence at the

scene. Id. at Page 10 280. The defense noted that at the point that Bailey said she saw a meth pipe, however, Ballentine only had evidence that marijuana was being used, and Ballentine even questioned Bailey's judgment as to what kind of pipe she may have seen. Id. at Page 10 278-79. The defense averred that there was no need for the officers to enter the room because they had responded to a nonviolent call, and a glass pipe in and of itself is not illegal. Id. The officers only knew at that point that there were maybe some people in the room who maybe were not suppose to be there and that maybe they were smoking marijuana. Id. at Page 10 277.

The court denied the motion, finding that Mr. Hill lacked standing to challenge the search of the hotel room (See Order. Den. Mot. Suppress, 45, Page 10 118-120.) The court had found that Sneed and Sweet, the registered guests, had vacated the room at the end of the occupancy, while Mr. Hill and Mrs. Cook remained in the room as unregistered guests. Id. at Page 10 118. The court found that Cook went to the front desk and paid for another day without informing the hotel staff that the registered occupants had left the room, and she falsely stated that she was one of the registered guests when paying. Id. at Page 10 118-119. The court then addressed the law stating that although a hotel guest has a legitimate and significant privacy interest in the contents of a lawfully occupied room, once the rental period has expired or has been lawfully terminated, the guest has no standing to challenge a hotel manager's consent to search. Id. at Page 10 119. The court concluded that Mr. Hill had presented no evidence that he had the type of interest in the room that would support a finding that he had standing to challenge the entry of the room by the hotel staff and subsequent search by law enforcement officers pursuant to a search warrant.

Id. at Page 10 120.

The court also found that Mr. Hill was not questioned while in custody the day of the search warrant. Id. at Page 10 120. Instead, he was asked only routine, biographical questions. Id. at Page 10 122. The court found that it was after narcotics were found pursuant to the search warrant and Mr. Hill was arrested that he was advised of his Miranda rights and chose to give a statement. Id.

Procedural history related to sentencing

At trial, Mr. Hill was found guilty on both charges. (See Jury Verdict, R. 147, Page 10 529-530.) A presentence Investigation Report ("PSR") was prepared for use at sentencing. (See PSR, R. 171 Page 10 706-731) Mr. Hill base offense level was 32 Id. at Page 10 712. Two levels were added, pursuant to USSC § 2D1.1 (b)(12) because Mr. Hill allegedly maintained the hotel room for the purpose of storing and distributing methamphetamine. Id. at Page 10 712-13. This brought Mr. Hill's total offense level to 34. Id. at Page 10 713. Mr. Hill's criminal history was VI. Id. at Page 10 722-23. With a total offense level of 34 and a criminal history category of VI, Mr. Hill's Guideline range was 262-327 months imprisonment. Id. at Page 10 729.

On January 11, 2023, the Sixth Circuit affirmed Petitioner's convictions.

REASONS TO GRANT THE WRIT

The illegal search in the case before the Court occurred when the officers drew their weapons and walked into the hotel room, searched the room for the guests, opened the bathroom door and escorted the guests out of the shower. The officer testified that he had no evidence that methamphetamine was in the room,

he knew he could enter the room because he had smelled marijuana, and marijuana is illegal in Tennessee, along with the report of a pipe.

Effectively, Mr. Hill and Ms. Cook was under arrest when the officer had his gun pointed at them and made them exit the shower despite the utter lack of probable cause. The officers clearly violated Mr. Hill's clearly established rights by continuing to detain him.

An officer seized a person under the Fourth Amendment when he, "by means of physical force or show of authority, has in some way restrained [his] liberty." Teeny, 392 U.S. at 20 NLR. An officer restrains a person's liberty when his "conduct would have communicated to a reasonable person that [he] was not at liberty to ignore the police presence, and go about [his] business." At the time of Mr. Hill's initial detention, it was clearly established that confining a person constituted a seizure. Accordingly, no reasonable officer who confine an undressed suspect for thirty to forty minutes or more could have believed he was a mere passive observer.

The presence of exigent circumstances is a finding of fact. The possibility of evidence being destroyed existed after the the officers had the door to the room open. Mr. Hill was unaware that hotel staff, or the officers had already knocked on the door, he was unaware that he was a suspect. He had no intentions on leaving (fleeing or likely to take flight); the search was of a hotel room [permanent premises], not of a movable vehicle; and no evidence was threatened with removal or destruction.

Warrantless searches with very similar set of facts

The starting point is that a hotel guest has a periodic right to occupy a room, not a permanent one. "Once a hotel guest's rental period has expired or been lawfully terminated the guest does not have a legitimate expectation of privacy in the hotel room or in any article therein of which the hotel lawfully takes possession." United States v. Allen, 106 F.3d 695

1699 (6th Cir. 1997) (internal quotation omitted). "[A] hotel guest's right to a room is limited to a predetermined period of occupancy," and it is reasonable to presume, as a general matter, "that hotel guests will check out at the designated time, and their right in the premises does not automatically continue for some indefinite period." *United States v. Washington*, 573 F.3d 279, 285 (6th Cir. 2009). Other circuits see it the same way. See *United States v. Hiffmeyer*, 967 F.2d 344, 348 (9th Cir. 1992) ("A guest in a motel has no reasonable expectation of privacy in a room after the rental period has expired."); *United States v. Larson*, 760 F.2d 852, 854-55 (8th Cir. 1985) (same).

Mr. Hill had a check-out time of 12pm (The government explained that all the events leading to Mr. Hill's charges occurred a little before noon, but Ms. Sweet's reservation expired at noon. *Id.* at Page 167 (See, Supp'n Hrg. Tr. R. 59))

Mr. William Hill and Dauphne Cook were guests of James Sneed and Haley Sweet, Ms. Sweet and Mr. Sneed left the room to the Petitioner Mr. Hill and Ms. Cook at the Country Inn and Suites.

A hotel's practices and communications with the guests may modify the general rule. "[T]he policies and practices of a hotel may result in the extension past check out time of a defendant's reasonable expectation of privacy." *United States v. Davis*, 241 F.3d 1124, 1129-30 (4th Cir. 2001); see also *United States v. Gill*, 16 F. App'x 850, 854 (10th Cir. 2001); *United States v. Kitchens*, 114 F.3d 29, 31-32 (4th Cir. 1997); *United States v. Owens*, 782 F.2d 146, 149-50 (10th Cir. 1986); *Larson*, 760 F.2d at 855; *United States v. Watson*, 783 F. Supp. 258, 263 (E.D. Va. 1992); *People v. Hardy*, 17 A.D. 3d 133, 907 N.Y.S. 2d 244, 248 (N.Y. App. Div. 2010). As relevant here, these practices often take two forms: giving a guest permission to stay until a later check-out time, or generally acquiescing when a guest stays until a later check-out time.

Larson, *Gill* and *Davis* illustrate the first form. In each case, the defendant's asked, and received, permission to stay

beyond the check-out time. They therefore had reasonable expectations of privacy in their hotel rooms through the extensions though not when, as turned out in each case, they stayed beyond the new check-out time. Gill, 16 F. App'x at 854; Dorais, 241 F.3d at 1130 and n.4; Larson, 760 F.2d at 855.

Watson, Owens and Kitchens illustrate the second form. In Owens and Watson, the hotels on previous nights had allowed the defendants to stay beyond the check-out time and to pay after check-out time for continued occupancy. Owens, 782 F.2d at 149-50; Watson, 783 F. Supp at 263.

The defendants therefore reasonably believed that the hotels would allow them to do so again, permitting them to remain a privacy interest in their rooms. Owens 782 F.2d at 149-50; Watson, 783 F. Supp at 263; see also Hardy, 907 N.Y.S. 2d at 248-49. In Kitchens, because the defendant had no "pattern or practice of staying past check-out time" that would give rise to an expectation of privacy after the expiration of their rental period, the Fourth Circuit held that they lacked a privacy interest in their rooms after the customary check out time. 114 F.3d at 32.

Petitioner's expectation of privacy

In this instance, the general rule, as well as the exception is applicable to Mr. Hill. The officers arrived at the Country Inn and Suites at 10:52 (according to the officer body camera). The officers entered the room at 11:07 A.M. weapons drawn. Check-out time was 12:00 p.m. Ms. Cook, Mr. Hill's guest extended the stay for an additional day. Mr. Hill and Ms. Cook secured a promise from the Country Inn and Suites when they accepted payment for the additional night. At the time of the arrest the room was still under the original privacy of Mr. Sneed, and had not been lawfully terminated.

Sixth Circuit's opinion rejecting Petitioner's miranda warnings

In its order denying Petitioner's motion to suppress, the district court determined:

That motion raised two issues: the "entry of the hotel room without consent of the defendant or a search warrant was unlawful (i.d. at p. 3), and that Defendant's "5th Amendment rights were violated when he was questioned while in custody without being given Miranda warnings."

A hearing was held on February 8, 2019, and the court denied Defendant's motion on both grounds (ECF No. 45). The court specifically found that "Because the officers asked Defendant only routine and preliminary questions prior to his arrest... his rights under the Fifth Amendment were not violated." (i.d. at p. 8)

Sixth Circuit Court of Appeals Rejecting Petitioner's Fourth Amendment claim

Hill was not a registered guest with a legal right to possess the room, see United States v. Lanier, 636 F.3d 228, 232 (6th Cir. 2011) (explaining that a hotel guest has a limited right to occupy a room during the pre-agreed rental period, has no bearing here).

The officers search of the hotel room was unreasonable. It was possible to secure the room covertly from the outside while they applied for a search warrant. Exigent circumstances will not provide an exception to the warrant requirement where those actions are found to be unreasonable.

Whether the district court erred in allowing the consideration of evidence that should have been excluded as a result of an illegal search and seizure in violation of the fourth amendment of the constitution

No evidence, before the district court indicated that the officers who searched the Petitioner's hotel room on January 6, 2018 had grounds to do so without acquiring a proper search warrant. As such the evidence obtained by the officers should have been suppressed.

Fourth Amendment protection extends to guests staying in hotel rooms. *Storey v. State of Cal.*, 386 U.S. 483, 1490, 84 S. Ct. 889, 11 L. Ed. 2d 856 (1964) ("no less than a tenant of a house... a guest in a hotel room is entitled to constitutional protections against unreasonable search and seizure") (internal citations omitted).

Warrantless searches and seizures inside someone's home (or in this case, a hotel room) are presumptively unreasonable, unless the occupants consent or probable cause and exigent circumstances exist to justify the intrusion. *Stegall v. United States*, 459 U.S. 204, 211, 101 S. Ct. 1642, 68 L. Ed. 2d 38 (1981); *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 63 L. Ed. 2d 630 (1980); see also *United States v. Rubin*, 474 F.2d 262, 268 (3d Cir. 1973) ("Probable cause to believe contraband is present is necessary to justify a warrantless search, but it alone is not sufficient... More probable cause does not provide the exigent circumstances necessary to justify a search without a warrant") The issue here is the manufactured exigent circumstance exception to the warrant requirement.

In the case *United States v. Stallings*, 28 F.3d 60 (8th Cir. 1994), the Eighth Circuit stated that:

"The Supreme Court has enunciated a two part test to determine whether a person has a legitimate expectation of privacy in the place searched or the object seized. A Court must determine: (1) whether the Petitioner has asserted a subjective expectation of privacy, and (2) whether the Petitioner's subjective expectation is objectively reasonable."

Mr. Hill asserted an expectation of privacy when he walked into the hotel with the other party who had invited him and Ms. Cook to stay with them. While in the room, the door was locked. Mr. Hill and Ms. Cook were showering. Mr. Hill and Ms. Cook were showering. Not doing anything out of the ordinary. The officer who had his feet in the door while the hotel staff looked for the guests, drew his weapon without probable cause, without any threat, began searching for the guests. Opened the bathroom door and ordered Mr. Hill and Ms. Cook out of the shower at gun point. The officers had ample time and opportunity to acquire a search warrant in a constitutional manner.

The government argued that the officers' warrantless entry into and protective sweep of the hotel room was justified by exigent circumstances. The Sixth Circuit Court of Appeals agreed.

Exigent circumstances excuse the warrant requirement in certain situations when immediate police action is needed, including when there is the danger of lost evidence. This instance was not one of those situations. The government in this case argued the entry was justified based on the danger of lost evidence. The Court of Appeals determined, "because a common method of drug disposal is flushing it down the toilet or drain, the officers had an objectively reasonable basis to think the destruction of evidence was not just possible, but, in fact occurring while they were standing in the hallway."

The officers' entry into the Petitioner's room at the Country Inn and Suites in Jackson, Tennessee was an egregious violation of the Petitioner's rights of expectation of privacy under the Fourth Amendment. The traditional rule is that warrantless search and seizures are, per se, unreasonable and the burden is on the Government to establish that a search falls within a well-established exception to the warrant requirement. Cardozo v. New Hampshire, 403 U.S. 443, 454-55 (1971); Stoner v. California

376 U.S. 483, 486 (1964). The Court of appeals believed exigent circumstances were present and the officers had to make the illegal entry for the reasons articulated above. In Grob v. Ramirez, 548 U.S. 551, 559 (2004) this Court stated "absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence capable of destruction does not justify warrantless entry where the officers lacked reasonable belief that the suspect knew of, or was about to learn of, his imminent capture. United States v. George, 883 F.2d 1407, 1412-15 (9th Cir. 1989)

Every time this Court has decided the instant issue it has stated that law enforcement cannot enter a hotel room without a warrant and without the consent of the guest-occupier even if given permission by hotel staff and/or management.

Entry of the hotel room without the consent of the Petitioner or a search warrant was unlawful

In United States v. Jeffers, 342 U.S. 48, (1951) two of the defendants aunts were occupying a hotel room. The Defendant contacted the hotel security officer and offered to pay him \$500.00 to let him in the room because he had some stuff stashed in the room. The hotel security officer told the defendant to call back later in the evening and he would see about it. Immediately after that conversation ended the hotel security contacted a local police officer and informed him of the conversation. An officer arrived at the hotel, met with the hotel security officer and they went to the room in question together. They knocked on the door. There was no answer. Because there was no answer they went and retrieved a key from the hotel manager. Once they were given a key they went back to the room without a warrant or the consent of the occupiers. Once

in the room they conducted a search and found illegal narcotics attributed to the Defendant. The Court ruled the items were seized illegally.

In Stoner v. State of California, 376 U.S. 483, (1964) a Budget Town Food Market was robbed. Based on eyewitness statements and evidence found, police believed the armed robber was staying at the Mayfair Hotel. Once at the hotel the officers asked the night clerk if there was a party by the name of Stoner residing at the hotel. The clerk confirmed that there was a guest by the name of Stoner renting a room at the hotel. The clerk informed the officers that he was staying in room 404 but was out at the moment. Officers explained to the clerk that they wanted to arrest the gentleman and that he was possibly armed. The clerk agreed to escort the officers to room 404. Once at room 404 the clerk opened the door and let the officers enter the room. Once in the room, officers found a 45 caliber firearm and other evidence of the underlying crime. The Court ruled that the entry and the search were illegal without a warrant even though they had permission from the hotel clerk. In discussing the case, the Court noted, "it is important to bear in mind that it was the petitioner's constitutional right which was at stake here, and not the night clerk's or hotel's." Id. at 489. The Court also noted, "rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of apparent authority." Id. at 488.

In Johnson v. United States, 333 U.S. 10, (1947) a lieutenant with the Seattle Police Department received an anonymous tip that individuals were smoking opium in a hotel. The lieutenant along with federal narcotic agents went to the hotel and once there could smell a distinct odor of burning opium. The odor led them to room 1. Once at room 1, they knocked on the door. When the occupant opened the door they engaged her in a brief conversation. The lieutenant informed the occupant she could consider herself under arrest so

we can search the room. The search resulted in the officers finding opium and smoking apparatus. The Court ruled the search was illegal as the officers did not have a warrant nor the consent of the room occupier.

The facts in the present case are analogous to the cited cases in that the officers entered the hotel room without a warrant and without the consent of the renter. Therefore, any evidence found as a result of the illegal entry is "fruit of the poisonous tree." Wong Sun v. United States, 371 U.S. 471 (1963), and therefore, must be reversed.

Because this case involves the rule that should be applied to the conduct of a law enforcement officer employed by the Federal Government, Justice Jackson's dissenting opinion in Beinegar v. United States, 338 U.S. 160 (1949), is especially pertinent. He wrote, in part:

"These [Fourth Amendment rights] I protest, are not mere second-class rights but belong in the category of indispensable freedoms. Among deprivations of rights, none is so effective in crushing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government." *Id.*, at 180.

The Court was entirely faithful to the traditions that have been embedded in our law since the adoption of the Bill of Rights when it wrote:

"The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home -- a zone that finds its root clear and specific constitutional terms: 'The right of the people to be secure in their ... houses... shall not be violated.'"

That language unequivocally establishes the proposition that 'at the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.' Silverman v. United States, 365 U.S. 505, 511 [1961]. In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant. "Bailey v. New York, 445 U.S. 573, 589-590 (1980).

Exigent circumstances

Exigent circumstances do not meet Fourth Amendment standards if the government deliberately creates them. United States v. Acosta, 965 F.2d 1248, 1254 (3d Cir. 1992); United States v. Dicki, 906 F.2d 1278, 1284-85 (8th Cir. 1990). The Supreme Court has "emphasized that exceptions to the warrant requirement are 'few in number and carefully delineated, ... and that police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches ...'" Welsh v. Wisconsin, 466 U.S. 740, 749-50, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984) (quoting United States v. United States District Court, 407 U.S. 297, 318, 92 S. Ct. 2125, 32 L. Ed. 2d 752 (1971)).

The District Court found that exigent circumstances -- the possibility of evidence being destroyed -- existed after the officers knocked on the hotel room door walked through the room and pulled Mr. Hill out of the shower at gun point.

WHETHER THE POLICE IMPROPERLY CREATED THE EXIGENCY?

In Johnson v. United States, supra. There, the Supreme Court considered the Fourth Amendment implications of a warrantless search on a very similar set of facts to those presented here. The Supreme Court found that the search violated the Fourth Amendment. The government had offered no reason "for not

obtaining a search warrant except the inconvenience, to the officers and some slight delay necessary to prepare papers and present the evidence, to a magistrate." Id. at 15. The Court noted that the following factors were relevant to its determination: (1) no suspect had been fleeing or likely to take flight; (2) the search of a hotel room [permanent premises], not of a movable vehicle; and (3) no evidence was threatened with removal or destruction. Id. Finally, the Court observed that "if the officers in this case were excused from the constitutional duty of presenting their evidence to a magistrate, it is difficult to think of a case in which it should be required." Id.

Under a fair reading of Johnson as applied here, the police, in the instant case, had no justification for walking in Mr. Hill's hotel room, pulling him and Mr. Cook out of the shower naked, at gun point.

In this case, as in Johnson, no suspect was fleeing and the search was of permanent premises, i.e., Hill's hotel room. More importantly, prior to the police going into the bathroom, no evidence was being destroyed and Hill had no knowledge the police ever came to the room. Whatever exigencies might have arisen after Mr. Hill was taken out of the room cannot excuse their failure to first obtain a search warrant.

Generally exigent circumstances must exist before the police knock and announce themselves at the door. The officers could have easily applied for a search warrant, however, there was no probable cause for the warrant. Exigent circumstances will not provide an exception to the warrant requirement where those actions are found to be unreasonable. Exigent circumstances exception cannot be met "if the police controlled the timing of the encounter giving rise to the search" and requiring "some showing of deliberate conduct on the part of the police evincing an effort intentionally to evade the warrant requirement" United States v. Duch, 906 F.2d 1278, 1284 (8th Cir. 1990).

The record reveals no urgency or need for the officers to take immediate action, prior to the officers decision to walk into the hotel room and force Mr. Hill out of the shower.

The exigency did not arise naturally or from reasonable police investigative tactics. Quite to the contrary, the officer, after the pretextual announcements had failed to gain entry to room 318, the officer went back to the front desk to get the staff to gain access, held the door jank with his foot, then deliberately created the exigency when they walked into the room without a warrant and demanded Mr. Hill and Mr. Cook exit the shower.

Focusing on the reasonableness of the officers' investigative tactics triggering the exigency, it will be concluded that the police impermissibly manufactured the exigency. Mr. Hill ask this Court to grant certiorari so this case can be properly briefed.

IN closing Mr. Hill asserted an expectation of privacy when he came into the hotel with the other parties in plain view of the clerk and was at the very least a guest of the party who rented the room. When in the room, the door was locked, Mr. Hill was in the shower, not doing anything out of the ordinary. The officers however, entered the room guns drawn when they would have had ample opportunity to acquire a warrant in a constitutional manner. The officers all met at the Country Inn and Suites around 11:07 A.M. Check-out time was 12:00 p.m. No indication of efforts to destroy evidence or to flee existed. Nor were there any efforts to secure a search warrant before the officers entered the room. The bottom line is, if the officer had not walked into the room without a warrant, none of the exigent circumstances are relevant.

CONCLUSION

This Court should grant certiorari, set the conviction aside, and remand the case with instructions to dismiss due to the Fourth Amendment violations based on the violations as found in the hearing transcript and reasons articulated above.