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IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

2019 JUN 28 A 6:55

JUSTICE COURT
Case No. 18F15424X
NEVADA
BY [Signature]
DEPUTY

STATE OF NEVADA,
Plaintiff,
vs.
PHILLIP SEMPER,
Defendant.

REPORTER'S TRANSCRIPT
OF
EVIDENTIARY HEARING
VOLUME 4

BEFORE THE HONORABLE DIANA L. SULLIVAN
JUSTICE OF THE PEACE

TAKEN ON MONDAY, APRIL 22, 2019
AT 9:30 A.M.

APPEARANCES:

For the State: DANIELLE K. PIEPER
Deputy District Attorney
For the Defendant: SARAH HAWKINS
Deputy Public Defender

Reported by: Gerri De Luca, C.C.R. #82
Official Court Reporter

protection against unreasonable searches and seizures applies to hotel rooms. In the instant case law enforcements warrantless entry into the hotel room was unlawful for the following reasons:

There was no consent given before the Metropolitan Police Department entered the hotel room. There was no emergency or exigency or reasonable safety concern for anyone inside or outside the room that would warrant an exception to the warrant requirement of entry into the room.

There was also no probable cause of a crime, which I will get to later, but even if there was probable cause for a crime, there would still be no reason to forcefully enter the hotel suite without first obtaining a warrant from a judge unless of course an exception existed and no exception existed.

Body cam video Exhibit F shows security saying to the occupant who opened the door, there's a noise complaint, everyone has to leave. The guest at the door, Cory Bass, disagreed and questioned the decision, but was not being belligerent or aggressive at all.

Within seconds Metro forcefully entered the room and immediately detained Cory Bass

LAS VEGAS, NEVADA, MONDAY, APRIL 22, 2019

* * * * *

THE COURT: This is the date and time for my decision on Phillip Semper, 18F15424.

For the record, this is the defense's motion to suppress evidence. I received a motion, I received an opposition, I received obviously a lot of evidence in this case both by way of body cam footage, which I will refer to as BCV, if you will, body cam video, and live witness testimony.

I've heard arguments of counsel and I'm ready to make my decision. I'm going to take my decision in parts, basically in sections of what I believe the defense's motion is because they have several arguments in their motion.

So I'm going to take them one at a time and basically in chronological order, not necessarily the order that the defense put into their motion. So I'm going to first tackle the issue of the Metropolitan Police Department's entry into the hotel room.

Both parties agree in their respective briefs that the Fourth Amendment

and Carlos Bass, searched them and cuffed them.

It does not appear from the body cam footage nor from testimony that they found any guns on Cory Bass or Carlos Bass, and supposedly one of them was their actual gang target.

Thus the Court finds that law enforcement's entry into the room was unlawful; however, this Court does not rest its decision on this particular privacy right violation because the warrantless entry into the hotel suite was not the triggering or precipitating factor of finding the evidence in this case; to-wit: Weapons on Mr. Semper's person.

Even if there had been no entry into the hotel room whatsoever and Metro had stayed in the hallway to assist in the so-called eviction, Metro could have decided and given the circumstances of this case probably would have decided to still detain and weapons frisk everyone as they exited the room and thus they would have still found the firearms on Semper's person.

In sum the Court does not believe that there is a direct nexus between Metro's entry into the hotel suite and its detention of Semper during which they found the firearms.

18F15424X
RTP
Transcript of Proceedings
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1 As for the temporary detention
2 issue, NRS 171.123 provides that any peace officer
3 may detain any person whom the officer encounters
4 under circumstances which reasonably indicate that
5 the person has committed, is committing, or is about
6 to commit a crime. The officer may detain the person
7 to ascertain the person's identity and the suspicious
8 circumstances surrounding the person's presence
9 abroad. And that's a quote from the statute.

10 A person must not be detained
11 longer than is reasonably necessary to effect the
12 purposes of this statute and in no event longer than
13 60 minutes. The language in this statute even so
14 slight as the word the is compelling.

15 Pursuant to the plain reading of
16 this statute for every person that an officer
17 detains, the officer must have in essence reasonable
18 suspicion that a crime has been committed or is afoot
19 by that particular person.

20 We know from all of the witness
21 testimony as well as the body cam video that every
22 guest in the room, more than 40 of them, were at
23 least temporarily detained and were not free to leave
24 until Metro released them, yet there was no
25 reasonable suspicion of any crime afoot by any one

7
1 guests continually says, you got to have PC to search
2 someone and this is an illegal search, they were met
3 with officer's instructions to shut up.

4 For body cam footage Exhibit G,
5 minutes 5:50, an outspoken guest references search
6 and seizure rights and they are told to keep your
7 mouths shut.

8 Officer Kaur tried to say that
9 they were trespassing, but clearly that was not the
10 motive or crime being investigated. That's not what
11 security testified to and at no time does Metro or
12 security ever mention trespass to the guests.

13 There was also reference by
14 officers and security that there was loud music and
15 that is why they went to the room. Loud music is not
16 a crime or at least a reason to detain everyone. At
17 Exhibit I, minute 11 and 20 seconds, the officer is
18 arguing with a guest that he doesn't need PC to
19 detain someone, only reasonable suspicion of a noise
20 complaint.

21 There was also reference that they
22 were violating the hotel rules for various reasons,
23 but violation of the hotel rules is not a crime. In
24 fact, in body cam footage Exhibit F at nine minutes
25 and 30 seconds to 11 minutes, one outspoken guest

5
1 person and certainly not by each and every one of the
2 guests.

3 As for the accusation that or the
4 explanation that an eviction was going on at the
5 time, eviction is not a crime. Sergeant Bauman and
6 Officer Kaur testified that they went from keeping
7 the peace to assisting security with a forceful
8 eviction.

9 On body cam video Exhibit F an
10 officer says, you are being evicted for a noise
11 complaint, your party is over, yet nobody is allowed
12 to leave and eviction is not a crime.

13 On body cam video Exhibit G at two
14 minutes 10 seconds an officer states, you're being
15 evicted for a noise complaint per management. And at
16 three minutes and 40 seconds an officer states,
17 security has to do their own protocol for eviction.

18 At two minutes and 40 seconds a
19 woman trying to leave, the officer states, ma'am, you
20 got to line up. The female guest says, for what, and
21 the officer says, everyone has to line up. The
22 female guest says, can't we just go, and the officer
23 says, no, you have to line up.

24 At body cam video Exhibit G, four
25 minutes and 15 seconds, when one of the outspoken

6
1 continually asked, why are you doing this because we
2 are being evicted.

3 The response was, we are going to
4 get this solved and then we will let you all know
5 what is going on. The Court's question is get what
6 solved. What nefarious activity was going on at that
7 point. The guest continued to ask why they were
8 being detained and were continually told, we will let
9 you know.

10 There was a continual reference in
11 both security and namely Metro's testimony to a gang
12 party. And I put that in quotes because that's what
13 it was continually referred to as, a gang party.

14 The Court has several questions
15 regarding -- in my mind regarding this reference.
16 How is having a gang party in and of itself even a
17 crime. There was no specific or credible evidence of
18 any specific criminal gang activity. And what
19 constitutes a gang party. What qualifies. Is it one
20 gang member present out of a hundred people, is it
21 three gang members out of 40. It's completely
22 unclear. And being in a gang in and of itself, the
23 Court doesn't even know if that's a crime.

24 The guests -- there was also
25 reference about the guests smoking marijuana in

1 public and that was the crime that was, depending on
2 which Officer you asked, was the crime that was being
3 investigated.

4 So let's discuss smoking marijuana
5 in public for a moment. Nevada law is clear and
6 concise that a person who smokes or consumes
7 marijuana in a public place is guilty of a
8 misdemeanor. That's NRS 453D.400 section 2.

9 Under 453D.030 entitled
10 Definitions, that statute specifically defines a
11 public place as an area to which the public is
12 invited or in which the public is permitted
13 regardless of age.

14 I have no idea who would
15 reasonably think that a hotel room that a guest has
16 reserved and in essence leased and paid for that is a
17 locked unit with only the guest and hotel employees
18 having access to, unless of course the guest allows
19 people in, could be considered a public place.

20 The public is not permitted or
21 invited to be in a hotel room that has been reserved
22 and rented by a particular guest. It's just not so.
23 I don't even have to get to what I believe the
24 legislative history provides or what the gaming
25 resolutions provide because the definitional section

1 in the statute is clear as to the definition of a
2 public place. And I find as a matter of law that the
3 public is not invited or permitted into a rented
4 hotel room without permission of the guest.

5 As far as the Rio property
6 generally is concerned, it might be that marijuana is
7 disallowed on the entire property, but that would be
8 a hotel policy not a law. It could also be
9 interpreted that the common areas of the Rio are
10 considered a public place in the eyes of the law;
11 however, there's no reasonable interpretation that a
12 private hotel room is a public place.

13 So now that I have determined that
14 smoking marijuana in the private suite is not a
15 crime, again Metro cannot point to any potential
16 crime by anyone yet alone everyone in the suite that
17 they were investigating, still everyone in the entire
18 suite was systematically, and that word was used by
19 Metro in the body cam footage, not me, and
20 indiscriminately detained by law enforcement.

21 This is the bottom line. Metro
22 had some sort of the vague information on three
23 specific individuals. Sergeant Bauman testified to
24 that. Yet at best only one of those individuals was
25 at the party.

1 So Metro's information certainly
2 was not very credible to begin with and instead of
3 asking about these three specific individuals that
4 they were interested in at the entrance to the room,
5 law enforcement made the decision to invalidly enter
6 the room, detain and weapons frisk everyone at the
7 party.

8 And even if these three
9 individuals would have all been there, I'm still not
10 clear after several hours of testimony from several
11 witnesses what exact crime was being investigated
12 that would allow law enforcement to detain and
13 weapons frisk all 40 guests at the party.

14 Sergeant Bauman testified that
15 when he told them to line up the vast majority of
16 them complied. He testified that once security said,
17 we need your help to evict them, we will lawfully
18 detain them for a minute, two minutes, as long as it
19 take to do a records check to see if they have any
20 warrants.

21 This is not a valid detention
22 because again an eviction is not a crime. Law
23 enforcement had no right to the detain these 40 plus
24 guests and check them for warrants even if for a
25 minute or two even though the overwhelming evidence

1 indicates that they were all detained for much longer
2 than a minute or two and many people were temporarily
3 detained even more than the 60 minute detention limit
4 allowed by statute.

5 When questioned by the Court as to
6 why everyone was detained Sergeant Bauman launched
7 into an explanation of Metro's party crasher protocol
8 which frankly has nothing to do with the case at
9 hand.

10 Sergeant Bauman testified that in
11 fact everyone in the room was detained for varying
12 amounts of time. He then basically went on to say
13 that this is how Metro handles party calls. They
14 indiscriminately crash a party and then detain and
15 identify everyone before letting them leave.

16 Upon attempts to clarify his
17 testimony upon redirect by the State Sergeant Bauman
18 testified that he believed smoking marijuana in a
19 hotel room is illegal. Again I find that smoking
20 marijuana in a private hotel room is not a crime.

21 Further, Metro apparently did not
22 arrest or cite anyone for smoking marijuana in the
23 room, and marijuana was never mentioned to any of the
24 guests as the potential crime being investigated on
25 the body cam footage, which would support the logic

13
1 that such activity is not illegal.

2 Sergeant Bauman testified that the
3 smell of marijuana and the darting of people back
4 into the room led him to think that, quote, something
5 was going on in the room, unquote. He said, quote,
6 there's obviously some sort of nefarious activities
7 going on in this room, unquote, but sheer guesswork
8 as to something going in the room does not equate to
9 the reasonable suspicion of a crime.

10 Based upon the testimony at the
11 hearing as well as the body cam video it is clear to
12 me that Metro had no reasonable belief that it was
13 investigating each and every one of these guests for
14 the perpetration of a crime, but yet they detained
15 each and every one of these guests and then proceeded
16 to weapons frisk each and every one of them.

17 As to Semper's temporary detention
18 specifically, because the evidence is unclear how
19 long Semper was actually temporarily detained before
20 being arrested, I cannot specifically determine that
21 Semper was detained more than 60 minutes before his
22 arrest, but I do not even need to get to that timing
23 issue because I find that there was no reasonable
24 suspicion or other valid reason to detain Mr. Semper
25 at all for any amount of time.

15
1 officer or another, the peace officer may search such
2 person to the extent reasonably necessary to
3 ascertain the presence of such weapon. If the search
4 discloses a weapon or any evidence of a crime, such
5 weapon or evidence may be seized.

6 The statute further says that
7 nothing seized by a peace officer in any such search
8 is admissible in any proceeding unless the search
9 which disclosed the existence of such evidence is
10 authorized by and conducted in compliance with this
11 statute. It says section, but it's statute.

12 This is what the Court refers to
13 herein as a, quote, weapons frisk, unquote. A
14 weapons frisk is only allowable first of all when
15 there is a proper detention of an individual pursuant
16 to 171.123.

17 I have already ruled that the
18 detention of Mr. Semper was not proper; therefore,
19 the accompanying weapons frisk was not proper;
20 however, even if Mr. Semper had been properly
21 temporarily detained, the Court finds that the
22 officers had no reasonable belief that Semper
23 specifically was armed and dangerous.

24 The officers chose to take the
25 information that they had on three specific

14
1 As a side note I find it
2 completely inconsistent that the officers contend
3 that they were there to help evict people, and in
4 fact can be heard on the body cam video yelling,
5 everyone has to leave and your party's over, but yet
6 they were not letting anyone leave.

7 Instead everyone had to line up,
8 be systematically frisked, handcuffed, sat down on
9 the floor in the hallway, and then held for as
10 Sergeant Bauman put it, quote, various amounts of
11 time, unquote, to be checked for warrants, all
12 without any reasonable suspicion that any crime was
13 afoot.

14 And when guests asked why they
15 were being detained and frisked and why they couldn't
16 just leave, the officers considered those questions
17 argumentative, uncooperative, and responded with
18 phrases such as, shut up and we will explain
19 everything to you later.

20 As for the weapons frisk of
21 Mr. Semper, NRS 171.1232 provides that if any peace
22 officer reasonably believes that any person whom the
23 peace officer has detained or is about to detain
24 pursuant to NRS 171.123 is armed with a dangerous
25 weapon and is a threat to the safety of the peace

15
1 individuals and indiscriminately apply it to everyone
2 at the party, which is not reasonable. Other than
3 the three individuals they believed were present,
4 they had no information whatsoever on the remaining
5 37 or more partygoers, and certainly no adverse
6 information on Mr. Semper specifically without
7 knowing anything about Mr. Semper.

8 The evidence to support these
9 findings include but are not limited to Officer
10 Kravetz' testimony on pages 96 through 97, on
11 Sergeant Bauman's testimony on page 116 and 117, and
12 Officer Kaur's testimony on page 26, that law
13 enforcement had no information on Semper, if he was
14 armed and dangerous.

15 Officer Kravetz testified that he
16 did not know if Semper had a criminal record at all.
17 Officer Kaur testified that the photo of the gang
18 members did not include Mr. Semper. Officer Kravetz
19 testified that Mr. Semper made no furtive movements
20 that would have concerned officers.

21 Sergeant Bauman testified that
22 Semper was not one of the persons that, quote, darted
23 back into the room, unquote, when Metro entered. And
24 Sergeant Bauman and Officer Kaur testified that
25 Mr. Semper did not reach into his waistband nor --

17
1 and Officer Kaur testified that he did not reach into
2 his pockets. Officer Kaur testified that Semper
3 simply did nothing that would make them think he was
4 armed and dangerous.

5 Sergeant Bauman testified that the
6 so-called marijuana use does not equate to someone
7 being armed and dangerous. Officer Kravetz testified
8 that Semper became argumentative and that is why they
9 searched him. He said, we made the decision to
10 search him and implied that it was because Semper
11 became argumentative.

12 That is simply not true and the
13 body cam video speaks for itself. Semper was not
14 argumentative. He might have asked a question, but
15 was not argumentative. And we know from their
16 testimony that they were going to search Mr. Semper
17 anyway. They were searching everyone.

18 Sergeant Bauman seemed to
19 insinuate on page 117, 135, and 137 that as Semper
20 exited the room Mr. Semper offered the information
21 that he had a gun and that is why they frisked him.
22 That is simply not the case. This is clearly
23 contrary to the body cam video, Exhibit F at three
24 minutes 35 seconds as Semper is told to exit the
25 suite. He is the sixth person out of the room. That

19
1 I find that the temporary
2 detention of Mr. Semper even if for a minute or two
3 was not warranted and unlawful pursuant to NRS
4 171.123.

5 I find that the weapons frisk of
6 Mr. Semper was unlawful pursuant to 173.1232 section
7 1, not only because his temporary detention was
8 unlawful, but because there was no reasonable belief
9 that he was armed and dangerous.

10 As such pursuant to NRS 171.1232
11 section 2, the guns found on Mr. Semper are
12 inadmissible in this proceeding. Because the only
13 two charges are carrying a concealed weapon for each
14 of the guns, the weapons are inadmissible and the
15 case is dismissed.

16 MS. FIEFER: Can I get a copy of that?

17 THE COURT REPORTER: Yes.

18 MS. FIEFER: Thank you.

19 THE COURT: Does he have a bond? He
20 doesn't, right?

21 MS. HAWKINS: No, he doesn't.

22 THE COURT: Thank you.

23 ---000---

18
1 includes Cory and Carlos Bass, that includes two
2 women that came out, and a fifth male that came out.

3 Mr. Semper was put up against the
4 wall. Someone said, quote, hook him up, unquote.
5 The officers put his hands behind his back and at
6 that time Mr. Semper says, I have two guns on me. So
7 they did not detain and search him because he had
8 guns. They detained and searched him before he said
9 that he had guns and they were detaining and
10 searching everyone.

11 In conclusion I listened to
12 several hours of testimony, I watched various body
13 cam videos, and still to this moment I have no idea
14 what crime Metro was investigating and who exactly in
15 the suite was the target of the purported
16 investigation.

17 What I understand the evidence to
18 be is that instead of just breaking up a party for
19 whatever reason they chose to do so in conjunction
20 with security, instead they systematically and
21 indiscriminately detained and weapons frisked
22 everyone at the party and detained everyone for more
23 than a minute or two. Dozens of guests were sat down
24 in the hallway, handcuffed and detained with frankly
25 no valid reason to do so.

20
1 ATTEST: Full, true and accurate transcript of
2 proceedings.

3 /s/GERRI DE LUCCA
4 GERRI DE LUCCA, C.C.R. NO. 82

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

PHILLIP SEMPER,

Defendant.

Case No. 18F15424X

ATTEST RE: NRS 239B.030

STATE OF NEVADA }
COUNTY OF CLARK } SS

I, Gerri De Lucca, a Certified Shorthand Reporter within and for the County of Clark and the State of Nevada, do hereby certify:

That REPORTER'S TRANSCRIPT OF PROCEEDINGS was reported in open court pursuant to NRS 3.360 regarding the above proceedings in Las Vegas Justice Court, 200 Lewis Avenue, Las Vegas, Nevada.

That said TRANSCRIPT:

X Does not contain the Social Security number of any person.

Contains the Social Security number of a person.

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ATTEST: I further certify that I am not interested in the events of this action.

/s/GERRI DE LUCCA
GERRI DE LUCCA, C.C.R. NO. 82