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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000066-MR

DAVID RABE

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE ANTHONY W. FROLICH , JUDGE
ACTION NO. 13-CR-00117

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, JONES AND MAZE, JUDGES.

JONES, JUDGE: David Rabe appeals from the December 11, 2013, final judgment and sentence of the Boone Circuit Court. That judgment accepted Rabe's guilty plea to one count of trafficking in marijuana, more than five pounds, and sentenced him to five-years' imprisonment. We affirm.

On December 22, 2012, Rabe rented studio room 127 at Value Place extended stay hotel for the minimum stay period of one week, to begin on December 24, 2012. In order to effectuate the rental transaction, Rabe signed an Occupancy Agreement, which included the following, relevant, provisions: “[o]perator reserves the right to conduct random inspections of each studio, regardless of whether an occupant is present for any such inspection;” and “I acknowledge and agree that I am a transient occupant of this lodging establishment, and this Occupancy Agreement does not establish a permanent residence, household[,] or dwelling unit.”

On December 28, 2012, John S. Cox, Jr., who was employed by Value Place as a maintenance worker, was performing inspections of rooms. The inspections had been ordered by corporate headquarters, which was planning renovations. The purpose of the inspections was to determine which rooms needed painting; flooring; and/or cabinet door, appliance, or furniture replacement. Cox testified that he made every inspection with a corporate-issued checklist which required a detailed inspection of the interiors in order to report any fire issues. After inspecting approximately fifteen rooms, Cox arrived at room 127, which was unoccupied, for an inspection. Cox testified that the bedspread had had been removed from the bed and placed over a duffel bag on the floor, but that the sheets had not been disturbed. Two closed plastic storage bins were stacked on the floor and a garbage bag had been left in the kitchen sink. In order to complete his inspection, Cox opened drawers, cabinets, and appliances, wherein he discovered

numerous large sealed bags of marijuana. Cox photographed his findings with his phone's camera and left the room, leaving the drawers and cabinets open. Cox then notified Alisha Flowers, the assistant manager, and the two returned to the room. Flowers entered the room and recognized the packages to contain compressed marijuana. Flowers closed the drawers and cabinets, left the room, and shut the door.

Flowers placed calls to the Cincinnati area manager, the Florence location property manager, and the police. Sergeant Greg Rehkamp responded to Flowers's call. He placed an officer outside of room 127 and then interviewed Cox and Flowers. Sergeant Rehkamp submitted the information obtained from Cox and Flowers, including the photographs taken by Cox, along with an affidavit and application for a search warrant for room 127. The warrant was obtained and executed, and Sergeant Rehkamp and an accompanying detective discovered forty-five pounds of marijuana.

As a result, Rabe was indicted for trafficking in marijuana, more than five pounds. He filed a motion to suppress the evidence of the seizure of the marijuana, which was denied by the trial court on June 10, 2013. Thereafter, Rabe entered into a conditional guilty plea, in which he reserved his right to appeal from the denial of his suppression motion. A final judgment and sentence was entered on December 11, 2013, in which Rabe was found guilty of one count of trafficking in marijuana, more than five pounds; and sentenced to five-years' imprisonment. This appeal followed.

Rabe's sole argument on appeal is that the search of his room was unlawful and that the evidence resulting from that search should have been suppressed. Rabe maintains that Cox and Flowers were acting as agents of the government when they conducted the search of his room. He further argues that he did not waive his right to unreasonable searches and seizures of his room when he signed the Value Place contract, because those provisions violated landlord/tenant law. We disagree with Rabe's argument in its entirety.

When reviewing a trial court's ruling on a suppression motion, we apply a *de novo* standard of review to conclusions of law and review factual findings for clear error. *See, e.g. Jackson v. Commonwealth*, 187 S.W.3d 300 (Ky. 2006). It is well established that searches conducted without a warrant are unreasonable unless they fall within "a few specifically established and well-delineated exceptions." *Blades v. Commonwealth*, 339 S.W.3d 450, 453 (Ky. 2011), *quoting Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). With respect to hotel rooms, guests are entitled to a reasonable expectation of privacy akin to that enjoyed within their private residences. *Id.* In the case at hand, however, a warrant was clearly obtained before officers conducted a search of Rabe's hotel room. In order to appropriately obtain a warrant, officers must present "probable cause supported by oath or affirmation." Ky. Const. § 10. Rabe's argument is essentially that the evidence which created the probable cause herein was improperly acquired by Cox and Flowers. However, the protection against unlawful searches and seizures only applies to public officers

and not private individuals. *Chapman v. Commonwealth*, 267 S.W. 181 (Ky.App. 1924). “[T]he fact that one merely assumes to be such officer cannot change his status so as to effect the competency of the evidence disclosed.” *Id.* at 182.

Although Rabe argues that Cox was acting as a public officer, the factual findings of the trial court indicated that Cox was performing a work-related search of room 127 when he discovered the marijuana. These factual findings are supported by the evidence presented at the suppression hearing. Any speculation that Cox was searching room 127 as an agent of the police is a theory that the trial court chose not to adopt, and the rejection of that theory is well within the trial court’s discretion. Accordingly, we find no error with the trial court’s denial of Rabe’s motion to suppress. In addition, any civil claim Rabe may have against Value Place with regard to its policy and practice of entering guest’s rooms is irrelevant herein.

For the foregoing reasons, the December 11, 2013, final judgment and sentence of the Boone Circuit Court is affirmed.

ALL CONCUR.

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