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ONE MINUTE BRIEF

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NUMBER: 2020-04 **DATE:** 02-11-20 **BY:** Devallis Rutledge **TOPIC:** Motel Room Entry & Search

ISSUE: When can police enter and search a hotel or motel room without violating the guest's Fourth Amendment rights?

Crooks like to use hotel and motel rooms because they provide a “*particularly attractive site for criminal activity ranging from drug dealing and prostitution to human trafficking.*” *Los Angeles v. Patel* (2015) 135 S.Ct. 2443, 2457, Scalia, dissenting. But a hotel or motel guest has the **same Fourth Amendment rights** in a rented room as in his or her own home. *Stoner v. California* (1964) 376 US 483, 490. This means that as long as the guest is entitled to occupy the room, law enforcement officers may only enter with a search or arrest warrant, consent of an occupant, probation/parole/PRCS search term, or exigency. See 1MB 2018-16.

What kinds of circumstances might **extinguish** a person's Fourth Amendment rights in a hotel or motel room where evidence of criminal activity might be located?

- **Abandonment.** Once the guest has vacated the room, the clerk may consent to entry and search, and evidence left behind by the guest may be seized:

- *Abel v. US* (1960) 362 US 217, 241 (papers left in the wastebasket of vacated room).

- *People v. Raine* (1967) 250 Cal.App.2d 517, 521 (entry OK after occupants were arrested without having paid for their room, even though they left belongings behind, and even though before normal checkout time).

- *People v. Parson* (2008) 44 Cal.3d 332, 348 (room abandoned after guest fled out the back window, leaving possessions behind, and failed to return before checkout time or pay for additional days, even though the motel had not tried to terminate his occupancy, because “*the question of abandonment should not necessarily turn on whether a motel's management elects to repossess.*”).

- **Fraudulent Occupancy.** A person who has “stolen” the use of a motel room by paying with stolen or forged credit cards, for example, should have no greater **legitimate** expectation of privacy there than in a stolen car:

- *People v. Satz* (1998) 61 Cal.App.4th 322, 326 (suspect who paid with a stolen credit card “has no legitimate expectation of privacy in the room, or an expectation that society is prepared to recognize as reasonable.”).

- *US v. Cunag* (9th Cir. 2004) 386 F.3d 888, 894 (suspect who fraudulently used a decedent’s credit card “procured this room through deliberate and calculated fraud. Like the driver of a stolen car, Cunag was not a lawful occupant.”).

However, as the *Cunag* decision points out at p. 895, “**in the Ninth Circuit**, the rule is that even if the occupant of a hotel room has procured that room by fraud, the occupant’s protected Fourth Amendment expectation of privacy is not finally extinguished until the hotel justifiably takes **affirmative steps** to repossess the room.” (Locking out guests and calling the police were found to be sufficient “affirmative steps.”)

See also, *US v. Dorais* (9th Cir. 2001) 241 F.3d 1124, 1129, finding that hotel management’s practice of allowing holdovers to remain in rooms after checkout time extends the guest’s legitimate expectation of privacy.

See also, *US v. Young* (9th Cir. 2009) 573 F.3d 711, 716, ruling (in contradictory terms) that even though the guest had procured the room through fraud, he “**maintained a reasonable (although fraudulent) expectation of privacy**” because of inaction by the hotel.

See also, *People v. Munoz* (2008) 167 Cal.App.4th 126, 132, ruling that since there was no proof a guest was **aware** she was paying with a counterfeit bill, she could contest entry.

- Because Ninth Circuit rulings control evidence admissibility and civil liability in **federal** cases, officers should consult civil legal advisors as to proper precautions under the Ninth Circuit rules regarding warrantless entry into hotel and motel rooms.

BOTTOM LINE: A person who has **abandoned** a rented room no longer has Fourth Amendment protection there; a person who **fraudulently** obtains a room cannot assert Fourth Amendment protection there in California courts, but may be able to do so in federal courts if the management has not taken “**affirmative steps**” to reclaim the room.

(Emphases added in quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.