

SUPREME COURT OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

People v. Hardy¹
(decided August 8, 2010)

Joseph Hardy pled guilty to drug possession after the police seized illegal contraband from his hotel room.² This was after the police, with the assistance of the hotel management, entered the defendant's hotel room and confiscated illegal contraband.³ The police entry came after the hotel received complaints and the hotel management personally heard loud noises and smelled marijuana emanating from the defendant's room.⁴ On appeal, Hardy challenged the search of his hotel room on the grounds that it violated his privacy rights under the United States and New York Constitutions.⁵ While the appellate court disagreed with the trial court on the issue of whether Hardy had standing to contest the seizure, the court nonetheless affirmed the trial court's holding because the hotel's justifiable ejection extinguished Hardy's reasonable expectation of privacy.⁶

On February 13, 2007, Hardy checked into a hotel room and paid for one night of accommodations, with the understanding that he would check out by 11:00 a.m. the next morning.⁷ However, on February 14, 2007, Hardy neither checked out nor paid for another

¹ 907 N.Y.S.2d 244 (App. Div. 2d Dep't 2010).

² *Id.* at 246- 48. The police officers "seized a bag containing 85 pills of methylenemethamphetamine (MDMA or Ecstasy) and a bag of cocaine, both found in a Kleenex holder in the bathroom, a small bag of marijuana, found in a pocket of a pair of pants on the floor, and burnt marijuana cigarettes in an ashtray." *Id.* at 246. While the defendant pled guilty, he maintained his right to appeal from the judgment. *Id.* at 248.

³ *Id.* at 246.

⁴ *Hardy*, 907 N.Y.S.2d at 246.

⁵ *Id.* at 245. The Fourth Amendment to the United States Constitution states, in pertinent part, that "people . . . [shall] be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *See also* N.Y. CONST. art. I, § 12.

⁶ *Hardy*, 907 N.Y.S.2d at 250.

⁷ *Id.* at 246.

night's stay, "but was nevertheless permitted to stay in his room."⁸ Furthermore, on February 15, 2007, Hardy paid the room charge for the previous night and the night of February 15, 2007.⁹ On February 16, 2007, when Hardy again failed to pay or check-out in accordance with the hotel's policy, the hotel's management called Hardy throughout the day to ask him for his payment.¹⁰ While the hotel's policy stated that guests "must prepay their room charge by 11:00 a.m. for the following day, . . . [hotel management] would let non-payment 'slide' the first time 'with some guests,' but a second occurrence would [require management] to 'take further action.'"¹¹

Throughout Hardy's stay, the hotel manager received complaints from other guests about disturbances from Hardy's room.¹² Further, on February 17, 2007, while Kelly Gillespie was conducting standard security rounds, she personally heard loud noises and "smelled the odor of marijuana emanating from . . . [Hardy's hotel] room."¹³ Consequently, Gillespie decided to evict Hardy, with the assistance of law enforcement.¹⁴

As the state troopers and Gillespie proceeded to Hardy's room, they immediately smelled the odor of marijuana which intensified as they got closer to Hardy's room.¹⁵ After knocking several times, Hardy eventually opened the door but attempted to close it when he noticed that law enforcement was outside.¹⁶ Once "inside the doorway" and while the hotel management was instructing Hardy to leave, one of the state troopers noticed in plain view a black scale with white powder and a few bundles of money.¹⁷ Hardy also admitted to smoking marijuana in his hotel room.¹⁸ Subsequently, the police seized ecstasy pills, a bag of cocaine, and remnants of smoked burnt marijuana from Hardy's hotel room.¹⁹ The defendant was tak-

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Hardy*, 907 N.Y.S.2d at 246.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Hardy*, 907 N.Y.S.2d at 246.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

en to the police station, read his *Miranda* rights,²⁰ and agreed to speak to the police without the presence of an attorney.²¹

At the end of trial, the judge entertained arguments from both parties on the issue of standing and Hardy's motion to suppress the recovered evidence.²² Hardy argued that he retained a reasonable expectation of privacy in his hotel room because the rental period had not expired by the time the state troopers entered and seized the contraband.²³ While Hardy had not yet paid for his February 16th hotel night, he thought he could maintain the same payment arrangement which allowed him to "pay for the previous night on the following morning."²⁴ As further evidence that the hotel did not have a strict payment policy, Hardy's "key card was not deactivated" and his accumulated phone balance had not been paid.²⁵

The prosecution argued that law enforcement's warrantless search and seizure was reasonable because Hardy extinguished any reasonable expectation of privacy he possessed in his room when he did not previously pay for the night.²⁶ Finally, the prosecution asserted that because the state troopers were faced with an emergency situation, a warrant was not required to search Hardy's room.²⁷ Agreeing with the People, the trial court denied the defendant's motion to suppress the evidence.²⁸

On appeal, the court held that Hardy retained a reasonable expectation of privacy because "the evidence clearly established that the hotel allowed him to continue his occupancy."²⁹ Despite the hotel's "one-day grace period," the prosecution never presented evidence that Hardy was aware of this policy.³⁰ Furthermore, the hotel did not take affirmative action to evict Hardy until the early morning of February 17, 2007.³¹ The hotel had not deactivated the defen-

²⁰ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

²¹ *Hardy*, 907 N.Y.S.2d at 247.

²² *Id.*

²³ *Id.*

²⁴ *Id.* Hardy represented himself in his own defense. *Id.*

²⁵ *Hardy*, 907 N.Y.S.2d at 247.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 248.

³⁰ *Hardy*, 907 N.Y.S.2d at 248.

³¹ *Id.*

dant's key card and "took no action until nearly [nineteen] hours after check-out time, demonstrat[ing to Hardy] that [he was] allow[ed] to stay the night."³² Therefore, the trial court erred in holding that Hardy lacked a reasonable expectation of privacy in his hotel room solely because he previously failed to pay for his stay.³³

However, "just as the expiration of the rental period will extinguish a hotel guest's reasonable expectation of privacy in his or her room, so, too, will a justifiable ejection."³⁴ Here, the hotel had "good cause to eject the defendant from his room" due to the noise complaints and the smell of marijuana emanating from it.³⁵ The court reasoned that while Hardy had a reasonable expectation of privacy in the room, it was nonetheless extinguished once the hotel "took the affirmative step of contacting the police for their assistance in physically evicting the defendant."³⁶ The hotel "had the authority to consent to the police entering into the room to evict the defendant physically."³⁷ During the eviction, the police observed the drug paraphernalia and controlled substances, "which justified a more extensive search of the room and its contents."³⁸ Accordingly, the defendant lacked standing to challenge the search because he was justifiably ejected from his hotel room.³⁹

Under federal law, "[a] hotel room can clearly be the object of Fourth Amendment protection as much as a home or an office"⁴⁰ because the Fourth Amendment protects individuals from "forcible intrusions into . . . constitutionally protected areas."⁴¹ To claim Fourth Amendment protection, an individual "must have a legitimate expectation of privacy in the place searched" and that manifested expecta-

³² *Id.*

³³ *See id.* at 249.

³⁴ *Id.*

³⁵ *Hardy*, 907 N.Y.S.2d at 249.

³⁶ *Id.*

³⁷ *Id.* at 250.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *United States v. Hoffa*, 385 U.S. 293, 301 (1966); *United States v. Jeffers*, 342 U.S. 48, 51 (1951) (holding that while a hotel room is protected by the Fourth Amendment, "[t]he law does not prohibit every entry without a warrant into a hotel room"). *See also Minnesota v. Carter*, 525 U.S. 83, 90 (1988) ("[A]n overnight guest may claim protection of the Fourth Amendment, but one who is merely present with consent of the householder may not.").

⁴¹ *Hoffa*, 385 U.S. at 301.

tion must be one that society deems is reasonable.⁴² If the defendant's expectation is misplaced or unreasonable, the guest will not have Fourth Amendment protection.⁴³

In *United States v. Hoffa*,⁴⁴ for example, the United States Supreme Court held that there was no Fourth Amendment violation because the defendant had not relied on the security of his hotel suite.⁴⁵ During the defendant's bribery trial, the government relied heavily on the incriminating statements he made in the presence of a witness.⁴⁶ The statements, which occurred in the hotel lobby, the courthouse, and elsewhere, disclosed the defendant's plan to bribe the members of the jury in his previous trial.⁴⁷ The conviction was affirmed on appeal and the Supreme Court granted certiorari on the sole issue of whether the government violated the defendant's constitutional rights by using evidence supplied by a government informant.⁴⁸

The defendant argued that "only by violating . . . [his] rights under the Fourth Amendment" was the government able to hear the "incriminating statements in the hotel suite."⁴⁹ The defendants alleged that the witness' "failure to disclose his role as a government informer vitiated . . . [his] consent" to repeat the statements made in the hotel room.⁵⁰ The Supreme Court held that the defendant did not have a legitimate interest protected by the Constitution when he made incriminating statements in the hotel room because he "was not relying on the security of his hotel suite"; rather, he had "misplaced [his] confidence that [the informant] would not reveal his wrongdoing."⁵¹ The Court held that his expectation was not reasonable and that the police did not violate the defendant's Fourth Amendment rights.⁵²

⁴² *Hardy*, 907 N.Y.S.2d at 248. See *Minnesota*, 525 U.S. at 88 (holding that for a defendant to assert Fourth Amendment protection, he or she "must demonstrate that he [or she] personally has an expectation of privacy in the place searched, and that the expectation is reasonable").

⁴³ *Hoffa*, 385 U.S. at 302.

⁴⁴ *Id.* at 293.

⁴⁵ *Id.*

⁴⁶ *Id.* at 295.

⁴⁷ *Id.* at 296.

⁴⁸ *Hoffa*, 385 U.S. at 299.

⁴⁹ *Id.* at 300.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Hoffa*, 385 U.S. at 303.

While the Fourth Amendment guards against “guileful as well as by forcible intrusions into [any] constitutionally protected area,”⁵³ a hotel guest’s Fourth Amendment protection is not unlimited and may extinguish pursuant to a justifiable exception or termination of the rental period.⁵⁴ Whether the hotel has taken affirmative action to repossess a guest’s hotel room will affect whether a guest retains a reasonable expectation of privacy in his or her hotel room.⁵⁵ If the hotel has taken affirmative action to evict a hotel guest and the rental period has expired, that guest does not have standing to contest a search or seizure of the property.⁵⁶ Once there is a valid ejection, either voluntarily by the hotel guest or involuntarily by the hotel management, control of the hotel room reverts back to hotel management “and the former occupant ha[s] no continuing right to privacy in the room.”⁵⁷

In *United States v. Dorais*,⁵⁸ the court of appeals reaffirmed the settled premise that a “defendant has no reasonable expectation of privacy in a hotel room when the rental period has expired and the hotel has taken affirmative steps to repossess the room.”⁵⁹ In *Dorais*, the court held that while the defendant had a reasonable expectation of privacy in his hotel room, that expectation expired before the police entered the room.⁶⁰ First, the hotel informed the defendant about the check-out time and reminded him of the policy a few hours before check-out.⁶¹ Secondly, while the defendant communicated to the hotel staff that he wanted to stay past the check-out time, that extension

⁵³ *Id.*

⁵⁴ *United States v. Kitchens*, 114 F.3d 29, 31 (4th Cir. 1997). *See Stoner v. California*, 376 U.S. 483, 490 (1964) (stating that “a guest in a hotel room” is not different from a tenant in a house and “is entitled to constitutional protection against unreasonable searches and seizures” (citation omitted)).

⁵⁵ *United States v. Dorais*, 241 F.3d 1124, 1128 (9th Cir. 2001).

⁵⁶ *See United States v. Huffhines*, 967 F.2d 314, 318 (9th Cir. 1992) (holding that the defendant lacked a reasonable expectation of privacy in his hotel room even though he wanted to renew his rental agreement).

⁵⁷ *United States v. Haddad*, 558 F.2d 968, 975 (9th Cir. 1977).

⁵⁸ 241 F.3d 1124.

⁵⁹ 241 F.3d at 1128. *See Huffhines*, 967 F.2d at 318 (holding that the defendant no longer possessed a reasonable expectation of privacy once his rental period expired and the hotel would not allow the renewal of the rental agreement). *But see Kitchens*, 114 F.3d at 32 (holding that a hotel guest may retain a reasonable expectation of privacy after checkout if the hotel has relaxed practices in enforcing the checkout time).

⁶⁰ *See Dorais*, 241 F.3d at 1128.

⁶¹ *Id.* at 1130.

had expired before the police entered the hotel room.⁶² Thus, the court of appeals affirmed the lower court's ruling that the defendant lacked standing to challenge the police entry because it occurred after his rental period had expired.⁶³

A justifiable ejection is similar to a termination of the rental period, as the guest loses any rights to the room he or she previously held.⁶⁴ For example, a defendant retains an expectation of privacy in his or her hotel room unless that expectation is revoked pursuant to a recognized exception to the Fourth Amendment warrant requirement.⁶⁵ In *United States v. Owens*,⁶⁶ the defendant, Merle Ellis Owens, was convicted of "possessing cocaine with the intent to distribute in violation of 21 U.S.C. § 841(a)(1)."⁶⁷ During Owens' stay, hotel management observed a high level of calls to the defendant's room and a lot of traffic coming in and out of the defendant's hotel room.⁶⁸ Upon investigation, the security guard enlisted the help of a police officer who discovered that the car in the defendant's possession was stolen.⁶⁹ Subsequently, the security guard, also a police officer, devised a plan to get the defendant out of the room so they could investigate inside the motel room.⁷⁰ Despite being told by Owens not to enter the motel room because his girlfriend was asleep, the officer nonetheless entered and scanned Owens' room.⁷¹ There, the police officer found evidence of marijuana, "white powder and drug paraphernalia in plain view."⁷² While the defendant was still a guest, the police officers entered his motel room and seized the cocaine.⁷³ The prosecution argued, and the trial court agreed, that the

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Haddad*, 558 F.2d at 975.

⁶⁵ *United States v. Owens*, 782 F.2d 146, 151 (10th Cir. 1986) (holding that the defendant's expectation of privacy was not justifiably revoked by the protective exception). The protective sweep exception to the warrant requirement is "a quick and cursory viewing to check" for others who may present a security risk." *Id.* (citing *United States v. Blake*, 484 F.2d 50, 57 (8th Cir. 1973).

⁶⁶ *Id.* at 146.

⁶⁷ *Id.* at 147 (citing 21 U.S.C.A. § 841(a)(1) (West 1982)).

⁶⁸ *Id.* at 148.

⁶⁹ *Owens*, 782 F.2d at 148.

⁷⁰ *Id.*

⁷¹ *Id.* at 149.

⁷² *Id.*

⁷³ *Id.* at 150.

police had “exigent circumstances that justified entry of Owens’ room . . . to neutralize the possibility of harm to the police” from the defendant’s girlfriend who was present in the Owens’ hotel room.⁷⁴

On appeal, the defendant argued that he had a reasonable expectation of privacy in his hotel room because, despite his expired check-out time, he made arrangements with the hotel to stay for a longer period.⁷⁵ Notification to the contrary was never communicated to the defendant and he remained in the hotel.⁷⁶ The court of appeals agreed with the defendant and reversed the district court’s decision based on three factors.⁷⁷ First, a few days earlier, the defendant was permitted to stay past check-out time and merely “pay for the additional term of occupancy.”⁷⁸ Second, “it was not the motel’s policy to evict guests who were staying past check-out time for brief periods.”⁷⁹ “Third, the defendant had given a large cash deposit, which may have led him to believe that he was paid up through the rest of the week.”⁸⁰

Further, the court held that the protective sweep exception was not applicable to justify law enforcement entering the defendant’s room without a warrant.⁸¹ The protective sweep exception permits police officers to enter a defendant’s room following an arrest to secure the area.⁸² Protective sweeps are only available when police officers “reasonably perceive an immediate danger to their safety.”⁸³ “A protective sweep is not a thorough search . . . [but is] merely a quick and cursory viewing to check for other persons who might present a security risk.”⁸⁴

The court in *Owens* held that the “instant facts fail to justify applying the protective sweep exception to the warrant requirement”⁸⁵ because after the defendant’s arrest, the officers “had re-

⁷⁴ *Owens*, 782 F.2d at 149.

⁷⁵ *Id.* at 147-48.

⁷⁶ *Id.* at 148. Owens testified that he was assured that his deposit and initial payment secured his weekly stay. *Id.*

⁷⁷ *Dorais*, 241 F.3d at 1129.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Owens*, 782 F.2d at 151.

⁸² *See id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

treated to a safe position, from which they were able to watch Owens' room with no danger to themselves or others."⁸⁶ Further, the officer's objective of securing an arrest was not sufficient to justify as an emergency situation.⁸⁷

However, a guest may retain a reasonable expectation of privacy even after the termination of his or her rental period if the hotel's "practice or pattern . . . would make that expectation reasonable."⁸⁸ In *United States v. Watson*,⁸⁹ the court rejected the argument that the defendant no longer possessed a reasonable expectation of privacy in his hotel room because he had not paid for his room by the hotel's deadline.⁹⁰ The hotel's lax check-out policy and the defendant's prior payment history gave the defendant a reasonable expectation that the room was still in his possession.⁹¹

After its analysis under federal law, the court in *Hardy* turned to the New York State law regarding search and seizure. Similar to federal law, to challenge a search or seizure, the defendant must "demonstrate that he [or she] possessed a reasonable expectation of privacy in the hotel room at the time it was searched."⁹² However, due to the "transitory nature of hotel tenancies, mere nonpayment of rent terminates any reasonable expectation of privacy in a hotel room."⁹³ It is commonly understood that individuals who operate hotels or other similar establishments are "interested in maximum paying occupancy and thus could be expected to promptly clear the room of a guest who has overstayed so that another guest may be given the room."⁹⁴ Consequently, after the rental period has expired, "society does not recognize the guest's asserted subjective expectations of privacy to be reasonable."⁹⁵ Thus, a hotel employee may consent to a search of the room because the control of the room has reverted back

⁸⁶ *Owens*, 782 F.2d at 151.

⁸⁷ *Id.*

⁸⁸ *Kitchens*, 114 F.3d at 32 (citing *United States v. Watson*, 783 F. Supp. 258, 263 (E.D. Va. 1992) (holding that the hotel's lax check-out policy justified defendant's reasonable expectation of privacy in his hotel room).

⁸⁹ 783 F. Supp. 258.

⁹⁰ *Id.* at 263.

⁹¹ *Id.*

⁹² *People v. Lerhinan*, 455 N.Y.S.2d 822, 824 (App. Div. 2d Dep't 1982). *See also* N.Y. CONST. art. I, § 12.

⁹³ *Hardy*, 907 N.Y.S.2d at 248; *Lerhinan*, 455 N.Y.S.2d at 825.

⁹⁴ *Lerhinan*, 455 N.Y.S.2d at 826 (citation omitted).

⁹⁵ *Id.*

to the hotel and the guest no longer has a reasonable expectation of privacy.⁹⁶

For example, in *People v. Lerhinan*,⁹⁷ the defendant no longer had a reasonable expectation of privacy in his hotel room because at the time of the entry, he “was two weeks in arrears on rent which was payable in advance weekly.”⁹⁸ There was no previous arrangement between the guest and the hotel management that extended his stay without full payment of the room and the hotel manager “had not seen the defendant for several weeks.”⁹⁹ When the hotel manager entered the room for the purpose of collecting the rent and the defendant was not there, the hotel manager’s intentions of re-renting the room was justified because the defendant no longer possessed a reasonable expectation of privacy in the hotel room.¹⁰⁰

Further, just as the expiration of a rental period can terminate an individual’s reasonable expectation of privacy, “so too, will a justifiable ejection.”¹⁰¹ In *De Wolf v. Ford*,¹⁰² the court held that

[A]n innkeeper should have the right to make and enforce such reasonable rules as may be designed to prevent immorality, drunkenness, or any form of misconduct that may be offensive to other guests, or that may bring his inn into disrepute, or that may be radically inconsistent with the generally recognized properties of life.¹⁰³

While the guest must submit to this rule, a hotel management’s entry must be in good faith and in a manner “consistent with the rights of the guest.”¹⁰⁴

Similarly, in *People v. Goldstein*,¹⁰⁵ the appellate division held that the warrantless search of the defendant’s hotel room was not

⁹⁶ See generally *id.* at 824 (stating that “a hotel employee may not effectively consent to a search . . . during the rental period” because the guest has an expectation that is reasonable).

⁹⁷ *Id.* at 822.

⁹⁸ *Id.* at 823.

⁹⁹ *Lerhinan*, 455 N.Y.S.2d at 826.

¹⁰⁰ *Id.*

¹⁰¹ *Hardy*, 907 N.Y.S.2d at 249; *De Wolf v. Ford*, 86 N.E. 527, 530 (N.Y. 1908).

¹⁰² 86 N.E. 527.

¹⁰³ *Id.* at 530.

¹⁰⁴ See *id.* The court held that the defendants violated the duty owed to the plaintiffs when the innkeeper entered the guest’s room. *Id.* at 531.

¹⁰⁵ 497 N.Y.S.2d 727 (App. Div. 2d Dep’t 1986).

justified by “exigent circumstances . . . [that] necessitated an immediate entry into the room.”¹⁰⁶ “Warrantless searches are per se unreasonable unless an exception to the warrant requirement is shown to exist”¹⁰⁷ and the court found no such exception because “the police had been conducting a stakeout of the hotel” and the “arrest itself occurred in the hallway.”¹⁰⁸ Finally, the warrantless search was not “necessary to insure the safety of the arresting officer or to prevent the destruction or secretion of evidence.”¹⁰⁹

The case law is clear that while hotel guests have an expectation of privacy in a hotel room, that privacy right is not absolute and can be extinguished by mere nonpayment or a justified ejection by the hotel.¹¹⁰ The appellate court properly held that Hardy had standing to challenge the search and seizure because his rental period had not expired.¹¹¹ Hardy was “one day in arrears on his rental charge [and] the evidence clearly established that the hotel allowed him to continue his occupancy.”¹¹² The hotel’s lenient check-out policy, as evidenced by the Hardy’s active keycard, created an exception to the general rule that nonpayment extinguished his privacy rights.¹¹³

However “[t]he extension and duration of that expectation depend on the facts and circumstances of each case.”¹¹⁴ Hardy’s expectation of privacy terminated when the hotel management took affirmative steps to evict him.¹¹⁵ The complaints from other guests in the hotel “and the odor of marijuana emanating from the defendant’s room gave the hotel good cause to eject the defendant from his room.”¹¹⁶ Hardy no longer had Fourth Amendment protection be-

¹⁰⁶ *Id.* at 728.

¹⁰⁷ *Id.* See U.S. CONST. amend. IV.

¹⁰⁸ *Goldstein*, 497 N.Y.S.2d at 728.

¹⁰⁹ *Id.* See *People v. Gokey*, 457 N.E.2d 723, 724-25 (N.Y. 1983).

¹¹⁰ *Hoffa*, 385 U.S. at 301; *Lerihnan*, 455 N.Y.S.2d at 826.

¹¹¹ *Hardy*, 907 N.Y.S.2d at 249.

¹¹² *Id.* at 248.

¹¹³ *Id.* at 247-49.

¹¹⁴ *Id.* at 249. See *Owens*, 782 F.2d at 150; *Washington v. Davis*, 937 P.2d 1110, 1114 (Wash. Ct. App. 1997) (holding that there is a subjective and objective analysis with respect to the Fourth Amendment and the facts and circumstances of a case dictate if an individual retains an expectation of privacy after the rental period has expired); *Colorado v. Montoya*, 914 P.2d 491, 492-93 (Colo. App. 1995) (holding that based on the court’s findings, the defendant lacked standing to challenge the entry to the hotel room).

¹¹⁵ *Hardy*, 907 N.Y.S.2d at 249.

¹¹⁶ *Id.*

cause he no longer had a legitimate expectation of privacy in his hotel room.¹¹⁷ Hardy's conduct, "objectively viewed in light of the totality of circumstances, 'mandates the conclusion that any expectation of privacy [] was unreasonable.'"¹¹⁸ Essentially, when Hardy engaged in conduct that raised suspicion by the hotel management, he no longer possessed Fourth Amendment protection.¹¹⁹ The excessive noise and Hardy's drug use effectively waived his right to constitutional protection because his behavior was radically inconsistent with the practices of the hotel. Further, once the hotel management took affirmative steps to evict Hardy, his "expectation of privacy in the room was extinguished."¹²⁰ "As a result, control over the room reverted back to the hotel, and the hotel then had the authority to consent to the police entering into the room in order to evict the defendant physically."¹²¹ Thus, Hardy lacked standing to challenge the search of the room because he was justifiably evicted.¹²²

In conclusion, the court in *Hardy* held that while a hotel guest possesses a reasonable expectation of privacy, that expectation can be extinguished due to nonpayment and affirmative action by hotel management.¹²³ Courts must look at the totality of the circumstances to first determine if there was an expectation of privacy and if the expectation is reasonable under the situation.¹²⁴ Hardy's conduct resulted in a waiver of any reasonable expectation he possessed and the hotel management acted with good cause to evict him with the assistance of police.¹²⁵ Further, hotel guests must submit to the rules and policies set out by a hotel or be subject to eviction by hotel manage-

¹¹⁷ See *Minnesota v. Perkins*, 588 N.W.2d 491, 493 (Minn. 1999).

¹¹⁸ *Id.* at 493 (quoting *Minnesota v. Tungland*, 281 N.W.2d 646, 650 (Minn. 1979)).

¹¹⁹ See *Perkins*, 588, N.W.2d at 493.

¹²⁰ *Hardy*, 907 N.Y.S.2d at 249; *United States v. Cunag*, 386 F.3d 888, 895 (9th Cir. 2004) (holding that a hotel guest's Fourth Amendment protection is not extinguished until the hotel takes affirmative steps to repossess the room). Cf. *Dorais*, 241 F.3d at 1128 (holding that when a hotel has not yet determined if the hotel guests has been evicted, the guest's Fourth Amendment protection has not been extinguished).

¹²¹ *Hardy*, 907 N.Y.S.2d at 250. "During the . . . eviction, the police observed in plain view a scale and white powder on top of an opened suitcase, which justified a more extensive search of the room and its contents." *Id.*

¹²² *Id.*

¹²³ See *id.* at 249.

¹²⁴ *Id.*

¹²⁵ See *Hardy*, 907 N.Y.S.2d at 249.

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ment.¹²⁶ While the lower court erred in finding that Hardy did not have a reasonable expectation of privacy due to nonpayment, the error was harmless because that reasonable expectation was voluntarily waived by the defendant when he engaged in prohibited acts.¹²⁷ This rationale is supported by both federal and New York case law.

*Whitney Montgomery**

¹²⁶ See *Ford*, 86 N.E. at 530.

¹²⁷ See *Hardy*, 907 N.Y.S.2d at 250.

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