FIRST CIRCUIT FINDS NO REASONABLE EXPECTATION OF PRIVACY IN GUEST OF A GUEST AT A MOTEL ROOM

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On December 18, 2017, the First Circuit Court of Appeals decided the *United States v. Aiken*[i], in which the court examined whether a "guest of guest" at a motel room where drugs were likely being sold possesses a reasonable expectation of privacy in the room. The relevant facts of *Aiken*, taken directly from the case, are as follows:

> On November 7, 2014, two state troopers and members of the Maine Drug Enforcement Agency ("MDEA") received a tip that individuals who were in room 216 at the Super 8 Motel in Lewiston, Maine had with them large bags containing crack, cocaine or heroin. The Super 8 Motel was known to the agents as a common stopover for out-of-state gun and drug traffickers.
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> At approximately 9:00 AM, MDEA agents began knocking on the door to room 216. Although no one from room 216 responded to their repeated knocks, an unidentified man partially opened the door to room 218. Although room 218 smelled of marijuana, the agents informed the man that they were not there for him.
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> After a minute or two, the door to room 218 opened again. A man subsequently identified as Joshua Bonnett ("Bonnett") stood by the door and Aiken stood five to ten feet behind him. Aiken was barefoot and only wearing shorts. The agents noticed "one particular bed look[ed] like the sheets and the comforters were pulled back and the other one liked [sic] like it had just been made." One of the agents recognized Aiken from a relatively recent heroin trafficking arrest. Aiken's presence raised suspicions that "there was possibly more going on inside that room besides marijuana."
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> The agents asked both men to step out of the room. When neither man exited the room, the agents entered, conducted a security sweep and observed what appeared to be a bag containing marijuana on one of the beds and a digital scale dusted with white powder on a nightstand between the two beds. One of the agents opened the top drawer of the

> nightstand and discovered a bag containing one-quarter to one-half kilogram of a substance that appeared to contain cocaine base.
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> The agents subsequently obtained a search warrant, and as a result of the evidence seized in the search, the government charged Aiken and Bonnett with possession with intent to distribute a mixture or substance containing cocaine base, in violation of 21 U.S.C. § 841(a)(1), and aiding and abetting such conduct, in violation of 18 U.S.C. § 2.[ii]

Bonnett and Aiken each filed a motion to suppress and the district court granted their motions, holding that the search of the motel room violated the Fourth Amendment. The district court held that Bonnett was a guest of Browne, the man who had actually rented the room and was living in the room with him. As such, he had a reasonable expectation of privacy. The district court also held that Aiken had a reasonable expectation of privacy in the room because he was a guest of the guest (Bonnett) and "he slept in the room" for "more than a brief period."[iii]

The government appealed the grant of the motion to suppress as it pertained to Aiken and argued that Aiken did not have a reasonable expectation of privacy in the room, thus, he had no standing to contest the legality of the search.

The issue before the court of appeals was whether the "guest of a guest" possesses a reasonable expectation of privacy in a motel room where the only evidence he presents is that he "slept in the room" for "more than a brief period."

The court first noted some legal principles that apply in this case. The court stated

> The Fourth Amendment provides "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "**To prevail on a claim that a search or seizure violated the Fourth Amendment, a defendant must show as a threshold matter that he had a legitimate expectation of privacy in the place or item searched.**" United States v. Battle, 637 F.3d 44, 48 (1st Cir. 2011)(emphasis added)(citing Minnesota v. Olson, 495 U.S. 91, 95 (1990)). "**The burden of proving a reasonable expectation of privacy lies with the defendant."** United States v. Mancini, 8 F.3d 104, 107 (1st Cir. 1993). "**In order to make such a demonstration, the defendant must show both a subjective expectation of privacy and that society accepts that expectation as objectively reasonable**." Id.[iv] [emphasis added]

Next, the court of appeals examined Aiken's status as a "guest." The court noted that Aiken was present at the motel room with Bonnett when the police searched the room at about 9:00am. The court also noted that Bonnett, in his affidavit, never mentioned Aiken. The prosecution did present evidence that Aiken spoke to his mother and told her, among other things, that he had spent the night in the room. The district court then concluded that since he "slept in the room" for "more than a brief period" he had a reasonable expectation of privacy. However, the court of appeals stated

> **An invitation to be present in a location does not automatically confer Fourth Amendment privacy protection**. See Rakas v. Illinois, 439 U.S. 128, 148, (1978)("[T]he fact that they were legitimately on [the] premises . . . is not determinative of whether they

> had a legitimate expectation of privacy.")(alteration in original)(internal citations omitted); see also United States v. Irizarry, 673 F.2d 554, 556 (1st Cir. 1982)("The hotel room here was registered to [Defendant 1 but Defendant 2], however, offered no evidence of any personal interest in the room beyond his being 'merely present.'"). Aiken's guest of a guest status does not resolve the question of whether he had a reasonable expectation of privacy in the room. Therefore, we turn to the government's second argument.[v]

The court of appeals then set out to determine if Aiken had a reasonable expectation of privacy in the room. The government argued that Aiken did not meet his burden of providing sufficient evidence to demonstrate a reasonable expectation of privacy. Aiken argued that, because he slept in the room, his subjective expectation of privacy (the first prong of the test) was objectively reasonable (the second prong of the test). However, the court of appeals stated that just sleeping in the room is not enough to meet his burden to show that his subjective expectation of privacy is objectively reasonable (one that society is willing to protect).

The court of appeals examined Supreme Court precedent and stated

> In Minnesota v. Carter, 525 U.S. 83 (1998), the Supreme Court considered whether an individual who was legitimately on the premise for the purpose of bagging cocaine had an expectation of privacy in an apartment. **Despite the permission and presence of the apartment's occupant, the Court found that "the purely commercial nature of the transaction . . . the relatively short time on the premises, and the lack of any previous connection between respondents and the householder," resulted in a lack of Fourth Amendment protection. Id. at 91. Therefore, it is appropriate for us to consider the (1) the nature of the defendant's visit, (2) his length of stay, and (3) his relationship to the host in analyzing a defendant's reasonable expectation of privacy**.[vi] [emphasis added]

Regarding the first factor, the nature of Aiken's visit, it appears, based on evidence, that his visit was for the purpose of drug trafficking. Aiken provided no evidence to contradict the evidence that supports this conclusion.

Regarding the second factor, his length of stay, the district court concluded that Aiken stayed in the room "more than a brief period." However, there was no specific finding of time. The evidence did show that he was in the room less time than Bonnett, and Aiken provided no evidence as to when he arrived at the room.

Regarding the third factor, Aiken provided no evidence as to how he knew Bonnett and Browne. In fact, the only evidence suggestive of their relationship supports the evidence that their relationship was business, particularly drug sales. The evidence to which the court was referring was that, when the agents found the drugs, Bonnett stated to Aiken "We should have put it where we usually do." This implied that their usual relationship is that of drug dealers.

Aiken relied upon Supreme Court precedent that suggests an "overnight guest" possesses a reasonable expectation of privacy in the place he is staying. However, the court of appeals opined that

the Supreme Court did not intend to include drug dealers who sleep in a room with another drug dealer for the purpose of selling drugs in its definition of "overnight guests." Specifically, the court stated

> While the district court found that Aiken slept in the room, there was no finding that he was an "overnight guest" within the meaning of Minnesota v. Olson. **There is a qualitative difference between an overnight guest and drug trafficker who is present inside a motel room and falls asleep for an unknown period of time… In light of all of the inferences the district court already made in Aiken's favor, it is not reasonable for this Court to assume that sleeping in a hotel room, for more than a brief period of time, means that Aiken was an overnight guest as envisioned by the Supreme Court in Olson. Had the Supreme Court meant to encompass all guests under the Olson analysis, it would have said so, but as the dissent itself notes, the overnight guest relationship envisioned by Olson is imbued with an expectation of privacy because it is a "longstanding social custom that serves functions recognized as valuable by society**." 495 U.S. at 96 (emphasis added). **And the examples of overnight guests provided in Olson include "houseguests," and visiting "parents, children, and distant relatives."** Id. at 97. Aiken does not fall into this category.[vii] [emphasis added]

The court then examined various facts that demonstrate that Aiken does not meet the "overnight guest" intent in *Olson.* The factors the court relied upon were as follows: (1) Aiken did not have possessions in the room other than his t-shirt and shoes (no overnight bag, toiletries etc…); (2) Aiken did not possess a key to the room, whereas Bonnett did, thus there was no evidence that Aiken had any control over the premises; and (3) Aiken tried to distance himself from the room by telling his mother that it was not his room and he was just visiting.

The court then held

> We cannot find that Aiken had a reasonable expectation of privacy in the motel room. It remains unclear what purpose Aiken had in room 218, how long he stayed in the room, how long he slept in the room and how well he knew the occupant. While certain inferences can be drawn from the testimony provided, these inferences alone cannot satisfy Defendant's burden. **We find that sleeping in a motel room for longer than a brief period of time, without more, is insufficient to warrant Fourth Amendment protection**.[viii] [emphasis added]

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[i] No. 17-1036 (1st Cir. Decided December 18, 2017)
[ii] Id. at 2-4
[iii] Id. at 6
[iv] Id. at 5
[v] Id. at 7
[vi] Id. at 9
[vii] Id. at 11-13
[viii] Id. at 16