IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellant,

v.

JOSHUA ALAN SHARP,
Defendant-Appellee.

Supreme Court Case No. CRA17-003
Superior Court Case No. CF0529-16

OPINION

Cite as: 2017 Guam 19

Appeal from the Superior Court of Guam
Argued and submitted on October 25, 2017
Hagåtña, Guam

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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; ROBERT J. TORRES, Associate Justice.

MARAMAN, C.J.:

[1] People of Guam ("People") appeal from a trial court order suppressing evidence of drugs and drug paraphernalia discovered during a search of Defendant-Appellee Joshua Alan Sharp's person and hotel room. In this appeal, we consider whether a warrantless arrest pursuant to 8 GCA § 20.15(a)(3) requires the misdemeanor, for which an officer has reasonable cause to believe has been committed, to be committed "in the officer's presence." We also consider whether a vacant hotel room constitutes a "dwelling" under 9 GCA § 37.30.

[2] Because we hold that a vacant hotel room is a "dwelling" under 9 GCA § 37.30 and officer presence is not required under 8 GCA § 20.15(a)(3), we reverse the suppression order and remand to the trial court for proceedings not inconsistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] A grand jury indicted Sharp on four charges: Possession of a Schedule II Controlled Substance with Intent to Deliver; Promoting Major Prison Contraband; Possession of a Schedule II Controlled Substance; and Criminal Trespass. The indictment was predicated on the following alleged facts upon which the parties agreed for this appeal:

[4] Guam Police Officers Terlaje and Imanil responded to a radio call that new guests found two girls in Room 402 of the Wyndham Gardens Hotel. The room was supposed to be unoccupied. Upon the officers' arrival, hotel management informed them that the girls said Sharp let them into the room. Management further stated that Sharp was in the parking lot. Officer Terlaje, along with other officers, approached Sharp in the parking lot and instructed him to empty his pockets, and he complied. After Sharp emptied his pockets, Officer Terlaje

conducted a pat-down search. The search uncovered a hotel key to Room 236, two knives, and two improvised glass pipes. Officers entered Room 236—properly rented by Sharp's girlfriend—using the key discovered during the search and found drugs. Upon discovery of the paraphernalia on his person, Sharp was informed that he was under arrest. At the precinct, officers also located drugs in Sharp's shoe.

[5] Sharp filed a Motion to Suppress Evidence alleging, in part, that his arrest was not authorized under 8 GCA § 20.15. The trial court initially denied the motion, finding that the misdemeanor arrest was supported by reasonable cause and that the hotel room was a dwelling, but did not address Sharp's argument that 8 GCA § 20.15(a)(3) requires officer presence at the time a crime is committed to authorize a warrantless arrest. Upon defense's motion, the trial court granted both rehearing and suppression because it found that, when read as a whole, 8 GCA § 20.15(a)(3) requires officer presence. The People appealed. This court ordered briefing on whether a vacant hotel room is a dwelling under 9 GCA § 37.30.

II. JURISDICTION

[6] This court has jurisdiction to review the government's appeal from an order granting a motion to suppress evidence. 8 GCA § 130.20(a)(6) (2005); 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-90 (2017)); 8 GCA § 130.40 (2005).

III. STANDARD OF REVIEW

[7] This court generally reviews suppression orders *de novo*. *People v. Taman*, 2013 Guam 22 ¶ 9. Interpretations of statutes are also reviewed *de novo*. *See People v. Cundiff*, 2006 Guam 12 ¶ 14.

IV. ANALYSIS

[8] As an initial matter, based on the parties' concessions, we do not address the legality of the searches after Sharp's arrest or the question of whether 8 GCA § 20.15 comports with the Fourth Amendment's general warrant requirement. *See, e.g.*, *Katz v. United States*, 389 U.S. 347, 357 (1967) ("[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions."). Those questions are left for another day. Our analysis is limited to whether a vacant hotel room constitutes a "dwelling" under 9 GCA § 37.30 and whether 8 GCA § 20.15(a)(3) requires the misdemeanor to be committed "in the officer's presence" to authorize a warrantless arrest.

A. A Vacant Hotel Room is a "Dwelling" Under 9 GCA § 37.30

[9] The question of whether a vacant hotel room constitutes a dwelling has not been answered in this jurisdiction, and there is no specific authority from other states. While hotel rooms can constitute dwellings, they generally do so when there is an occupant. *See, e.g.*, *People v. Fleetwood*, 217 Cal. Rptr. 612, 615 (Ct. App. 1985). A vacant and abandoned building cannot constitute a "dwelling." *See Fillman v. State*, 251 A.2d 557, 558 (Del. 1969). Further, California law, on which Guam's Penal Code is based, specifically requires dwellings to be inhabited to support conviction for certain crimes. *See, e.g.*, Cal. Penal Code § 212.5 (distinguishing first and second-degree robbery).

[10] At the time Sharp allegedly let the girls into the room, it was vacant. Record on Appeal ("RA"), tab 39 at 2 (Opp'n to Mot. Suppress, Oct. 4, 2016); Appellant's Br. at 8 (June 7, 2015). This is critical, because if a vacant room is not a dwelling, then Sharp's criminal trespass is only a petty misdemeanor. Criminal trespass constitutes a misdemeanor only if it is committed in a

dwelling or motor vehicle. 9 GCA § 37.30(a) (2005). Criminal trespass in any other "habitable property" or building constitutes a petty misdemeanor. *Id.* A warrantless arrest for a petty misdemeanor is plainly not permitted under 8 GCA § 20.15 unless it was committed in the officer's presence. As Sharp's alleged offense was not committed in Officer Terlaje's presence, the legality of the arrest depends on whether Officer Terlaje's reasonable cause—also known as probable cause—alone permits the arrest. Because the officers were informed that the room was vacant, *see* RA, tab 39 (Opp'n to Mot. Suppress); Appellant's Br. at 8, there exists no reasonable cause for the officers to believe the room may have been occupied. Whether the vacant hotel room is a "dwelling," therefore, matters in this case.

[11] On this point, Sharp notes that the statute distinguishes between "habitable property" and "dwelling," Appellee's Suppl. Br. at 2-3 (Oct. 5, 2017), and that the first definition of "dwelling-house" in Black's Law Dictionary is: "The house or other structure in which a person lives; a residence or abode." *Dwelling House*, Black's Law Dictionary (10th ed. 2014). Accordingly, he argues that this definition requires someone to be "currently residing or living in the structure." Appellee's Suppl. Br. at 2.

[12] However, the People argue that a hotel room's vacancy has "no legal impact." Appellant's Suppl. Br. at 4 (Oct. 3, 2017). In *United States v. McClenton*, cited in the People's brief, the Third Circuit held that since a "hotel guest room is intended for use as human habitation," even if "on a transient or temporary basis," it still falls within the definition of a dwelling. 53 F.3d 584, 587 (3d Cir. 1995). The Third Circuit cited to *United States v. Sherman*, a Ninth Circuit case, which also noted in passing that "because hotels are in the business of housing overnight guests, many of the reasons that make traditional dwelling burglaries dangerous seem likewise present. . . ." 928 F.2d 324, 326 n.2 (9th Cir. 1991).

[13] Further, in *State v. Scott*, the New Jersey Supreme Court, interpreting "dwelling" under New Jersey Statutes Annotated section 2C:18-3 (West 1995)—a similar trespass statute—concluded "that an unoccupied apartment that is between rentals but is suitable for occupancy is a dwelling for purposes of the criminal trespass statute." 776 A.2d 810, 815 (N.J. 2001). The New Jersey court considered "modern realities, including the fact that many citizens live in close proximity to their neighbors in densely populated areas." *Id.* It found "[a] community-based sense of security is appropriate, indeed essential." *Id.* Although *Scott* dealt with an apartment, the danger and security considerations are present in hotels, too, where other occupants of the building have made a "home away from home." *Acheson v. Johnson*, 86 A.2d 628, 633 (Me. 1952) (finding a hotel to be of "domestic" use for tax statute). Although Room 402 was vacant at the time of the trespass, the hotel was suitable for residential use and had other occupants. While abandonment of a hotel may be an affirmative defense in certain cases, *see* 9 GCA § 37.30(c)(1), we need not consider that issue here where the room was transitorily vacant. Hotel guests should not arrive to find unauthorized individuals in their room. This is the type of danger the statute means, in part, to avoid. Thus, Room 402 constituted a "dwelling" under 9 GCA § 37.30. Since a vacant hotel room constitutes a dwelling, we now turn to whether a police officer may, with reasonable cause, arrest a person without a warrant for a misdemeanor not committed in the officer's presence.

B. The Plain Language of 8 GCA § 20.15(A)(3) Does Not Require the Misdemeanor to Have Been Committed "In The Officer's Presence"

[14] Title 8 GCA § 20.15 authorizes officers to conduct warrantless searches under the following circumstances:

§ 20.15. Peace Officer Arresting Without Warrant; Circumstances.

(a) A peace officer may make an arrest in obedience to a warrant, or may, without a warrant, arrest a person:

(1) Whenever the officer has reasonable cause to believe that the person to be arrested has committed an offense in the officer's presence;

(2) When the person arrested has committed a felony, although not in the officer's presence;

(3) Whenever the officer has reasonable cause to believe that the person to be arrested has committed a felony or misdemeanor whether or not a felony or misdemeanor has in fact been committed[;]

(4) Who has escaped from any jail or prison or the lawful custody of a peace officer.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, a peace officer for false arrest or false imprisonment for an arrest which is lawful under Subsection (a).

8 GCA § 20.15 (2005).

[15] The People sought this court's review of the trial court's order granting suppression of evidence under this statute. The trial court held that Sharp's arrest was unlawful because, when 8 GCA § 20.15 is read as a whole, subsection (a)(3) requires a police officer's presence at the time the crime was committed to authorize a warrantless arrest. The trial court determined that since subsection (a)(2) specifically did not require officer presence, subsection (a)(3) impliedly required it.

[16] The trial court's textual analysis fails. *See, e.g., Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6 ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997))). By the trial court's same reasoning, the opposite outcome is as equally likely. It can be argued that since subsection

(a)(1) includes a presence requirement, then subsection (a)(3) impliedly does *not* require officer presence. The legislature could have easily included the "presence" language in subsection (a)(3) if it specifically intended to include an "in the officer's presence" requirement. It did not.

[17] Focusing on the operative language of subsection (a)(3), this court observes that it is the only portion of the statute that authorizes warrantless arrests for *probable* crimes committed outside an officer's presence. 8 GCA § 20.15(a)(3). Subsection (a)(1) requires officer presence, and subsection (a)(2) requires that a felony is actually committed. The plain language of subsection (a)(3) does not include a presence requirement, and this court declines to impliedly read one in. Guam is the only jurisdiction with such broad authorization for warrantless arrests in the case of misdemeanors. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 355-60 (2001) (summarizing the warrantless arrest statutes of the 50 states). When looking at this statute's broad and specific contexts and the other jurisdictions' warrantless arrest statutes, it appears that 8 GCA § 20.15(a)(3)'s lack of a "presence" requirement was a deliberate choice by the legislature. The plain language of 8 GCA § 20.15 indicates that police power to arrest for felonies and misdemeanors, when reasonable cause exists, extends to crimes committed outside an officer's presence. We apply the language as written. *See, e.g.*, *People v. Gomia*, 2017 Guam 13 ¶ 13.

[18] We, therefore, hold that the plain language of 8 GCA § 20.15(a)(3) does not require the felony or misdemeanor to have been committed "in the officer's presence."

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V. CONCLUSION

[19] Because a vacant hotel room constitutes a dwelling under 9 GCA § 37.30 and officer presence is not required to authorize a warrantless arrest under the plain language of 8 GCA § 20.15(a)(3), we **REVERSE** the portion of the trial court's Decision and Order granting suppression and **REMAND** the case for further proceedings not inconsistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice