

2000

Utah v. Leslie Gene Loya : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jan Graham; Attorney General; Karen A. Klucznik; Assistant Attorney General; Attorneys for Appellee.

Joan C. Watt; Ronald S. Fujino; Salt Lake Legal Defender Association; Attorneys for Appellant.

Recommended Citation

Reply Brief, *Utah v. Loya*, No. 20000034 (Utah Court of Appeals, 2000).
https://digitalcommons.law.byu.edu/byu_ca2/2569

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH. :
 :
 Plaintiff Appellee. :
 :
 v. :
 :
 LESLIE GENE LOYA. : Case No. 20000034-CA
 : Priority No. 2
 Defendant Appellant. :

REPLY BRIEF OF APPELLANT

Appeal from a judgment of conviction for Possession of a Forgery Writing/Device,
a third degree felony, in violation of Utah Code Ann. § 76-6-502 (1999), in the Third
Judicial District Court in and for Salt Lake County, State of Utah, the Honorable
J. Dennis Frederick, Judge, presiding.

JOAN C. WATT (3967)
RONALD S. FUJINO (5387)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Attorneys for Defendant/Appellant

JAN GRAHAM (1231)
ATTORNEY GENERAL
KAREN A. KLUCZNIK (7912)
ASSISTANT ATTORNEY GENERAL
Heber M. Wells Building
160 East 300 South, 6th Floor
P. O. Box 140854
Salt Lake City, Utah 84114-0854
Attorneys for Plaintiff/Appellee

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
 :
 Plaintiff Appellee, :
 :
 v. :
 :
 LESLIE GENE LOYA, : Case No. 20000034-CA
 : Priority No. 2
 Defendant Appellant. :

REPLY BRIEF OF APPELLANT

Appeal from a judgment of conviction for Possession of a Forgery Writing Device,
a third degree felony, in violation of Utah Code Ann. § 76-6-502 (1999), in the Third
Judicial District Court in and for Salt Lake County, State of Utah, the Honorable
J. Dennis Frederick, Judge, presiding.

JOAN C. WATT (3967)
RONALD S. FUJINO (5387)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Attorneys for Defendant/Appellant

JAN GRAHAM (1231)
ATTORNEY GENERAL
KAREN A. KLUCZNIK (7912)
ASSISTANT ATTORNEY GENERAL
Heber M. Wells Building
160 East 300 South, 6th Floor
P. O. Box 140854
Salt Lake City, Utah 84114-0854
Attorneys for Plaintiff/Appellee

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT	
POINT I. <u>APPELLANT HAD A LEGITIMATE EXPECTATION</u> <u>OF PRIVACY IN HER MOTEL ROOM.</u>	1
A. LESLIE HAD A SUBJECTIVE EXPECTATION OF PRIVACY.	1
B. LESLIE'S EXPECTATION OF PRIVACY IN HER ROOM WAS OBJECTIVELY REASONABLE.	7
POINT II. <u>THE STATE FAILED TO ESTABLISH THAT</u> <u>PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES</u> <u>JUSTIFIED THE SEARCH.</u>	10
CONCLUSION	16

TABLE OF AUTHORITIES

Page

CASES

<u>City of Orem v. Henrie</u> , 868 P.2d 1384 (Utah Ct. App. 1994)	15, 16
<u>Com. v. Brass</u> , 674 N.E.2d 1326 (Mass. App. Ct.), <u>cert. denied</u> , 679 N.E.2d 558 (Mass. 1997)	6, 7
<u>Illinois v. Rodriguez</u> , 497 U.S. 177 (1990)	12
<u>State v. Perkins</u> , 588 N.W.2d 491 (Minn. 1999)	8, 9
<u>State v. Webb</u> , 790 P.2d 65 (Utah Ct. App. 1999)	4, 5, 7
<u>State v. Yoder</u> , 935 P.2d 534 (Utah Ct. App. 1997)	14
<u>United States v. Allen</u> , 106 F.3d 695 (6th Cir. 1997)	8
<u>United States v. Singleton</u> , 922 F. Supp. 1522 (D. Kansas 1996)	8, 9
<u>Welsh v. Wisconsin</u> , 466 U.S. 740 (1980)	10, 15, 16

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

Utah Code Ann. § 76-9-102 (1999)	10, 11, 12, 16
Amend. IV, Utah Const.	2, 9, 10, 15

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
 :
 Plaintiff Appellee, :
 :
 v. :
 :
 LESLIE GENE LOYA, : Case No. 20000034-CA
 : Priority No. 2
 Defendant Appellant. :

INTRODUCTION

Appellant Defendant Leslie Loya ("Appellant" or "Leslie") replies to the state's brief as follows. Arguments not addressed in this reply brief were either adequately discussed in Appellant's opening brief or do not merit reply.

SUMMARY OF THE ARGUMENT

Appellant had a subjective expectation of privacy in the motel room which was reasonable under the circumstances. The state failed to establish that probable cause and exigent circumstances justified the entry. The evidence seized from Appellant's motel room after officers illegally entered it must be suppressed.

ARGUMENT

POINT I. APPELLANT HAD A LEGITIMATE EXPECTATION OF PRIVACY IN HER MOTEL ROOM.

A. LESLIE HAD A SUBJECTIVE EXPECTATION OF PRIVACY.

A review of the facts demonstrates that Leslie had a subjective expectation of privacy in her motel room. Leslie was still in the room, packing her things, when the officers arrived at 1:30 p.m.¹ As fully set forth in Appellant's opening brief, the totality of the manager's testimony demonstrates that the manager extended the checkout time to allow Leslie to be out by 2:00 p.m. See e.g. R. 91:16-17. While the state is correct that the testimony technically shows that Leslie needed to be out *by* 2:00 p.m., the search and seizure occurred in this case at 1:30 p.m., well before the 2:00 p.m. deadline. Since the manager's communication to Leslie as to the deadline by which she was required to vacate the room indicated that she had any time up until 2:00 p.m. to leave, the Fourth Amendment violation occurred well before the deadline imposed by the manager. Based on the manager's extension of the deadline to allow Leslie to vacate the room at any time up until 2:00 p.m., Leslie had a continuing subjective expectation of privacy.

While the state is unwilling to acknowledge that the manager's repeated testimony

¹ Without record support, the state arbitrarily selects 1:45 p.m. for the time at which the officers arrived at Leslie's room. State's brief at 12. The evidence shows and the trial court found that the officers arrived at 1:30 p.m. R. 66; 91:25. There is no evidence that the officers spent 15 minutes doing something other than approaching the room when they arrived. Instead, the evidence shows that either one of the officers immediately went up to the room on his own (R. 91:25) or they both went straight to the room and initially talked to the manager at the room (R. 91:17, 31). There is no evidence that both officers talked to the manager at a place other than the room, let alone, that the brief exchange with the manager lasted 15 minutes. Moreover, even if the officers entered the room at 1:45 p.m., Leslie nevertheless had a reasonable expectation of privacy since the officers entered her room prior to the 2:00 p.m. deadline for her to vacate the room.

that she may have or did allow Leslie to vacate the room by 2:00 p.m. extended Leslie's privacy interest in the room, it apparently is willing to extend the time to include a one-hour grace period based on a passing reference by the manager. State's brief at 12. The manager testified:

Manager: Well, actually, they're supposed to be out at 11:00 or pay by 11:00. She had come down to talk to me and I may have extended that time. We usually give them a one-hour grace period, but *I did say that we close at 2:00 that day and we most definitely had to be out before then.*

R. 91:13 (emphasis added). This testimony indicates that while in some circumstances the manager gives a one-hour grace period, in this case, Leslie was told that she needed to be out by 2:00 p.m.

The state also suggests that Leslie's expectation of privacy changed after the manager visited the room at 1:00 p.m. and "told defendant [] to leave immediately and was told in response [by Leslie's mother] that defendant would probably not even be out by 2:00 p.m. and then had the door slammed in her face." State's brief at 12, citing R. 91:15-16. Actually, the entirety of the exchange cited by the state establishes that while the manager may have told Leslie that she needed to get out "immediately," she also defined immediately as 2:00 p.m. R. 91:16. The manager did not change her previous deadline of 2:00 p.m. when she went to the room at 1:00 p.m. In addition, the slamming of the door by Leslie's mother evidences a belief that the room was still Leslie's. The 1:00 p.m. visit by the manager and the outburst by Leslie's mother did

nothing to alter Leslie's belief that she had until 2:00 p.m. to vacate the room.

The fact that Leslie had the motel room door open while moving also does not change the fact that she had a subjective expectation of privacy of the room. Doors are often open while people are moving because of the many times people pass through the door and to ventilate the room while people are exerting themselves. In addition, there is no evidence as to how long the door had been opened or whether it had just been opened; it may well have just been opened to move something out when the officers arrived. An open door does not mean that Leslie thought officers would come inside and rummage through her belongings, and the open door in this case did not put the officers in plain view of any of the contraband they later seized.

While the actual practice utilized in this case was to extend Leslie's time so as to require her to be out of the room by 2:00 p.m., Ms. Hattenbruck's testimony that her usual practice is to work with people and extend the time bolsters the manager's testimony that she extended the time in this case. The fact that extending the time was consistent with the manager's usual practice and she may have allowed Leslie to pay for her room after checkout time on a prior occasion, coupled with the testimony that she extended the time in this case, establish that Leslie had a legitimate expectation of privacy in the room until 2:00 p.m.

The state relies on the factors set forth in State v. Webb, 790 P.2d 65, 80 (Utah Ct. App. 1990) in arguing that Leslie did not have a subjective expectation of privacy in the

room. State's brief at 9-14. The Webb factors combine the two inquiries as to whether a subjective expectation existed and whether that expectation was reasonable. Webb, 790 P.2d at 80.

As this court recently pointed out, there is no bright line test to use in making this fact-sensitive determination [as to whether a legitimate expectation of privacy exists]. [citations omitted]. A legitimate expectation of privacy incorporates two elements: first, whether the defendant "exhibited an actual (subjective) expectation of privacy," and second, whether that subjective expectation is "one that society is prepared to recognize as reasonable." [citations omitted]. Factors relevant to this inquiry include whether the defendant had any possessory or proprietary interest in the place searched or the item seized in the challenged search; was legitimately on the premises; had the right to exclude others from that place; exhibited a subjective expectation that the place would remain free from governmental invasion; *or* took normal precautions to maintain his privacy.

Id. (citations omitted) (emphasis added). The use of the word "or" indicates that the listed factors, while relevant to the inquiry, need not all be met in order to demonstrate a subjective expectation of privacy. Moreover, any one factor, such as slamming the door in the manager's face, thereby expressly exhibiting a subjective expectation of privacy, might be enough to establish a subjective expectation of privacy.

Applying the Webb factors to this case further demonstrates that Leslie had a legitimate expectation of privacy in the room.

First, as outlined in Appellant's opening brief at 14 - 21, Leslie had a possessory interest in the room up until 2:00 p.m.

Second, she was legitimately on the premises since even during the exchange at

1:00 p.m., the manager reiterated that Leslie needed to be out by 2:00 p.m. Packing quickly indicated an attempt to cooperate, and did not indicate that Leslie did not think she had a claim to the room at 1:30 p.m.

Third, Leslie had a right to exclude others since her time had been extended. A lack of objection as to the manager's presence does not indicate that Leslie did not have an expectation of privacy; instead, it indicates that Leslie chose to be cooperative and try to vacate by 2:00 p.m.

Fourth, the slamming of the door exhibited an expectation of privacy in the room. Since there was no communication between Leslie and the manager after the door was slammed, nothing changed in regard to Leslie's expectation. As set forth above, the open door did not demonstrate a lack of expectation of privacy in the room. Moreover, the mother's continued discussion would suggest that the mother at least believed that there was a legitimate basis for continuing to exert control over the room and was an attempt to maintain the privacy of the room even after the intimidation that can be caused by the arrival of police officers.

The state relies on Com. v. Brass, 674 N.E.2d 1326 (Mass. App. Ct.), cert. denied, 679 N.E.2d 558 (Mass. 1997), in support of its argument that Leslie did not have a reasonable expectation of privacy in the room since checkout time was 11:00 a.m. See state's brief at 9. In Brass, unlike the present case, the defendant made no attempt to extend the time for checkout and had not received permission from the manager to stay

beyond checkout time. Brass, 674 N.E.2d at 1327. Instead, "well beyond checkout time," the manager went to the room "from which the defendant and a companion were supposed to have checked out earlier but had not." Id. Applying a general rule "that a person who stays over in a hotel or motel room 'after his rental period has terminated' has lost any reasonable expectation of privacy in the room that he may have once had" under the circumstances in Brass (Id. at 1327-28) is significantly different from taking such an approach in this case where the manager allowed Leslie to stay in the room until the manager had to leave at 2:00 p.m. In this case, Leslie had a subjective expectation of privacy in the room which was reasonable.

B. LESLIE'S EXPECTATION OF PRIVACY IN THE ROOM WAS OBJECTIVELY REASONABLE.

The application of the Webb factors outlined above likewise demonstrates that Leslie's expectation of privacy was objectively reasonable since those factors relate to both aspects of the inquiry.

In addition, as the state acknowledges at page 15 of its brief, the evidence showed that Leslie may have been allowed to pay for her room after check-out time in the past; this past experience would certainly create a reasonable expectation on Leslie's part that the manager was extremely flexible as to when she must actually leave. The manager did not clearly indicate to Leslie that she was a holdover tenant; instead, although the manager referred to the 11:00 a.m. checkout, the gist of the communication from the

manager to Leslie was that Leslie was to be out by 2:00 p.m. if she did not pay for another day. It was objectively reasonable to have an expectation of privacy in the room until that time.

The state's reliance on United States v. Allen, 106 F.3d 695, 699 (6th Cir. 1997), United States v. Singleton, 922 F. Supp. 1522 (D. Kansas 1996), and State v. Perkins, 588 N.W.2d 491, 492-93 (Minn. 1999), is misplaced. In Allen, the clerk told the tenant that he needed to pay additional money in order to keep the room. Allen, 106 F.3d at 697. The tenant said he would pay that shortly. Id. An hour later, when the tenant had not paid the amount, the clerk called the room and did not receive an answer. Id. The clerk told the manager, who went to the room. The manager unlocked the door, went inside and found marijuana. The manager left and locked the room with a lockout bolt that only she could open. Id. In concluding that Allen did not have a legitimate expectation of privacy in the room, the court relied on the fact that the manager had taken possession of the room by locking the defendant out, thereby divesting him of his occupancy of the room and privacy interest in its contents. Id. at 699. In this case, the manager took no such action to divest Leslie of the occupancy of the room. Instead, the manager reiterated that Leslie must be out of the room by 2:00 p.m.

Perkins, 588 N.W.2d at 491, likewise does not support the state's argument. In Perkins, the defendant signed a registration card which indicated that guests who created a disturbance would be asked to leave. Id. at 493. Perkins had been warned twice that his

party was too loud, "and could not have been unaware that the 'party' remained excessively loud." Id. The court held that under these circumstances, Perkins was divested of any privacy interest in the room. Id. By contrast, in the present case, Leslie had not been warned that her occupancy would be terminated because of her mother's behavior, and the mother's behavior did not rise to the level of the behavior in Perkins.

Singleton also did not involve a situation like the present one where the manager had agreed to extend the time for departure. In Singleton, the tenant told the manager that he wanted to stay an additional night, and that he would come to the office right away and pay. Singleton, 922 F. Supp. at 1525. At around 1:00 p.m., two hours after checkout time, the manager phoned the room three times, asking when the tenant would be arriving with the rent money. Id. The tenant told the manager that he was waiting for an employment check. Id. The manager told the tenant that he would be charged for an additional half day if he stayed past 2:00 p.m., then called again at 2:00 p.m., looking for the rent. Id. "Anticipating a problem because [the tenant] now owed the Inn rent for one-half day, [the manager] called [the police] around 3:00 p.m." Id. Unlike the present case where Ms. Hattenbruck extended the deadline for departure until 2:00 p.m., the manager in Singleton made it clear that the defendant was required to leave at checkout time.

The state argues further that Leslie did not have a privacy interest in the room because the interests of society outweigh Leslie's Fourth Amendment interests and require that the officers be able to search under these circumstances. State's brief at

17-18. Contrary to the state's claim, officers did not need to circumvent the Fourth Amendment in order to resolve this situation. They could have simply asked Leslie to step outside the room and talked to her about the situation. If the mother continued to interrupt or make noise, the officers could have asked her to quiet down without entering the room, or asked Leslie to control her mother. Leslie was trying to vacate the room by 2:00 p.m. As the officer recognized, there was no urgency or exigency requiring entry. R. 91:32. A serious crime was not involved and it was not a violent situation. Instead, there were simply two people under the pressure of a deadline who were trying to move out. This hardly warrants a determination that society's interests outweigh the protections provided by the Fourth Amendment. See Welsh v. Wisconsin, 466 U.S. 740, 750 (1980) ("When the government's interest is only to arrest for a minor offense, that presumption of unreasonableness [which attaches to warrantless home entries] is difficult to rebut . . .).

Under these circumstances where the manager led Leslie to believe that she could remain in the room as long as she was out by 2:00 p.m., Leslie had subjective expectation of privacy in the room which was objectively reasonable.

POINT II. THE STATE FAILED TO ESTABLISH THAT PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES JUSTIFIED THE SEARCH.

Relying on Utah Code Ann. § 76-9-102 (1999), the state suggests that the officers had probable cause to enter Leslie's motel room because the door was open and Leslie's

mother was engaging in the crime of disorderly conduct. State's brief at 19-21. Utah Code Ann. § 76-9-102 (1999) states:

76-9-102. Disorderly Conduct

- (1) A person is guilty of disorderly conduct if:
 - (a) he refuses to comply with the lawful order of the police to move from a public place, or knowingly creates a hazardous or physically offensive condition, by any act which serves no legitimate purpose; or
 - (b) intending to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he:
 - (i) engages in fighting or in violent, tumultuous, or threatening behavior;
 - (ii) makes unreasonable noise in a public place;
 - (iii) makes unreasonable noises in a private place which can be heard in a public place; or
 - (iv) obstructs vehicular or pedestrian traffic.
- (2) "Public place," for the purpose of this section, means any place to which the public or a substantial group of the public has access and includes but is not limited to streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
- (3) Disorderly conduct is a class C misdemeanor if the offense continues after a request by a person to desist. Otherwise, it is an infraction.

Utah Code Ann. § 76-9-102 (1999). Without analyzing how this statute applies to the facts of this case, the state simply assumes that the facts in this case created probable cause to arrest on disorderly conduct because "defendant's mother again began a disturbance, apparently yelling both at the police and the manager. R. 91:37-38." State's brief at 20-21.

The record fails to demonstrate probable cause to arrest Leslie's mother for disorderly conduct. The portion of the record cited by the state indicates that Leslie's

mother was interrupting the officers' conversation with the manager "and yelling, causing our conversation to be interrupted, so the other officer entered the room and brought her to the far side of the room and explained to her that she would have her turn to talk to me and that she just needed to keep quiet until I finished with Margie." R. 91:37-38. There is no evidence suggesting that Leslie's mother refused to comply with a lawful order to move from a public place or knowingly created a hazardous or physically offensive condition as required by subsection (a). Nor is there evidence Leslie's mother intended to cause "public inconvenience, annoyance, or alarm" or recklessly created a risk thereof, or that she made unreasonable noise in a public place, or unreasonable noises in a private place which could be heard in public. See Utah Code Ann. § 76-9-102 (b) (1999). The evidence shows only that Leslie's mother interrupted the officers and yelled. This is not enough to establish probable cause to arrest for disorderly conduct, as evidenced by the officer's testimony that exigent circumstances were not involved, and the fact that the record does not indicate that Leslie's mother was arrested.

The state also seems to suggest that entry was reasonable because the manager had consented to the entry. State's brief at 20, citing *inter alia* Illinois v. Rodriguez, 497 U.S. 177, 185-86 (1990). While the record demonstrates that the manager told the officers she was trying to get Leslie and her mother out of the room, it does not indicate that the manager gave the officers permission to enter the room. See R. 91:27, 31, 37. In addition, one of the officers was already in the room while the other officer was talking to

the manager and receiving information about the situation. R. 91:37-38. Since neither officer had talked to the manager when the first officer entered the room, the officer who entered the room could not have received consent from the manager. Moreover, a belief that the manager could consent would not be reasonable since, as the officer acknowledged, "[t]here were some arrangements made between the manager and Ms. Loya prior to my arrival, as far as exact times, I don't recall--." R. 91:33. Since the officer was informed that arrangements had been made to extend the time, even if the manager had given them permission to enter, it would not have been reasonable for officers to assume the manager could consent in light of this information and the mother's insistent interruptions.

The record also does not demonstrate exigent circumstances justifying a warrantless entry. The state argues that the prior conduct of Leslie's mother as reported by the manager coupled with the mother's actions in interrupting the officers and yelling when they were talking to the manager established exigent circumstances. State's brief at 21. According to the state, "[u]nder such circumstances, a reasonable person would have believed that immediate entry was necessary to defuse the mother's anger *before the situation escalated to violence* and to ensure that the disagreement between the mother and the manager could be settled peacefully." State's brief at 21 (emphasis added). First, although the mother was apparently upset, it was not reasonable to assume that the situation would escalate into violence. While the mother slammed the door prior to the

arrival of officers, she did not threaten or harm the manager. Once the officers asserted their presence, any harm was even less likely. Expressing one's anger is not synonymous with creating probable cause to believe that an individual will become violent.

Second, exigent circumstances by definition include circumstances where it was reasonable to believe that entry "was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." State v. Yoder, 935 P.2d 534, 540 n.2 (Utah Ct. App. 1997) (further citation omitted). Keeping a situation from escalating is not necessarily an exigent circumstance; instead, it must be reasonable under the circumstances to believe entry was necessary to prevent physical harm. In this case, the evidence does not demonstrate that it was reasonable to think the mother would harm Ms. Hathenbruck. Ms. Hathenbruck was not in the motel room. Although the mother had yelled and slammed a door earlier, she had not threatened Ms. Hathenbruck or done anything to suggest she would harm the manager during the prior interactions. After the officers arrived, any possibility of violence was even less likely. The officers merely wanted the mother to quiet down while they talked to the manager. Moreover, the officers themselves did not think that any urgency existed, as evidenced by the officer's acknowledgment that exigent circumstances did not exist.²

² When the police officer testified that no exigent circumstances existed which required entry (R. 91:32), the trial judge interrupted and stated that while he would entertain the officer's opinion that no exigency existed, the ultimate determination as to

Third, even if the officers had probable cause to arrest the mother for disorderly conduct, the state's interest in arresting on such a minor offense does not overcome the presumption of unreasonableness which attaches to a warrantless entry of a home or motel room. See Welsh, 466 U.S. at 750. In Welsh, the Supreme Court held that the warrantless entry into defendant's home and arrest for drunk driving violated the Fourth Amendment. The Court reasoned that since drunk driving in Wisconsin was a "noncriminal, civil forfeiture offense for which no imprisonment [was] possible," society's interests in arresting the defendant did not outweigh the interests protected by the Fourth Amendment. City of Orem v. Henrie, 868 P.2d 1384, 1389 (Utah Ct. App. 1994) (quoting Welsh, 466 U.S. at 750).

In Henrie, this Court concluded that the warrantless entry into the defendant's home and arrest for drunk driving and leaving the scene of an accident did not violate the Fourth Amendment due to the greater penalties attached to drunk driving in Utah, and the existence of probable cause to believe the defendant had committed an additional crime. Henrie, 868 P.2d at 1389. Because the offense was serious in nature and evidence could be lost as the defendant's blood alcohol level dissipated, this Court concluded that the officers in Henrie did not violate the Fourth Amendment when they entered the defendant's home to effectuate an arrest.

whether exigent circumstances existed was a question of law which he would decide. While the legal conclusion is one for a court to make, the officer's testimony nevertheless demonstrates that there was no urgency in this situation.

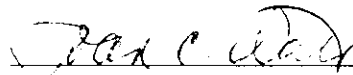
The offense which the state claims justified the entry in this case is minor if it existed at all. There is not evidence that the behavior continued after the officers made a request to desist. The offense was therefore an infraction, which is not punishable by imprisonment. See Utah Code Ann. § 76-9-102 (3) (1999). Even if the officers had asked Leslie's mother to desist and she persisted, the offense would have been punishable only as a class C misdemeanor. The behavior of Leslie's mother was not nearly as serious as the drunk driving and hit and run which occurred in Henrie. Instead, it is more on par, and even less serious than the offense in Welsh. Pursuant to Welsh, the officers did not have exigent circumstances justifying the warrantless entry.

A review of the record demonstrates that the state failed to sustain its burden of establishing that probable cause and exigent circumstances justified the warrantless entry of the motel room. Remand for findings on this issue is unnecessary since the record establishes that the entry was not justified under this alternative ground which the state urges for affirmance on appeal.

CONCLUSION

The trial court committed reversible error in denying Appellant's motion to suppress the evidence seized from her motel room. Appellant respectfully requests that this Court overturn her conviction and remand the case for a new trial absent the illegally seized evidence.

SUBMITTED this 5th day of September, 2000.



JOAN C. WATT

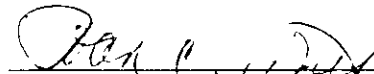
Attorney for Appellant/Defendant

RONALD S. FUJINO

Attorney for Appellant/Defendant

CERTIFICATE OF DELIVERY

I, JOAN C. WATT, hereby certify that I have caused to be delivered eight copies of the foregoing to the Utah Court of Appeals, 450 South State, 5th Floor, P. O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to Karen A. Klucznik, Assistant Attorney General, Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P. O. Box 140854, Salt Lake City, Utah 84114-0854, this 5th day of September, 2000.



JOAN C. WATT

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this _____ day of September, 2000.