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COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
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APPELLATE COURT CAUSE NO. 03-17-00803-CR

FILED
COURT OF CRIMINAL APPEALS
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IN THE COURT OF CRIMINAL APPEALS

THE STATE OF TEXAS,
Appellant (Appellee below)

VS.

MICHAEL JOSEPH TILGHMAN,
Appellee (Appellant below)

STATE'S SUPPLEMENT TO ITS PETTION FOR DISCRETIONARY REVIEW

FROM THE COURT OF APPEALS FOR THE THIRD DISTRICT AT AUSTIN

ORIGINAL APPEAL FROM THE 274TH JUDICIAL DISTRICT COURT, HAYS COUNTY, TEXAS, TRIAL COURT CAUSE NO. CR-16-1126

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State's Additional Case Law in Support of Its Original Arguments

The State has identified additional case law in support of its position that an individual does not have a reasonable expectation of privacy following a lawful eviction, regardless of whether his occupancy period has expired prior to the eviction. *See United States v. Banks*, 262 Fed.Appx. 900 (10th Cir. 2008); *United States v. Haddad*, 558 F.2d 968 (9th Cir. 1977); *People v. Hardy*, 77 A.D.3d 133, 907 N.Y.S.2d 244 (N.Y. 2010); *Johnson v. State*, 285 Ga. 571, 679 S.E.2d 340 (2009); *Bordley v. State*, 205 Md. App. 692 (2012); *Commonwealth v. Molina*, 459 Mass. 819, 948 N.E.2d 402 (2011); *State v. Williams*, 2016 ND 132, 881 N.W.2d 618 (2016). Pursuant to Texas Rule of Appellate Procedure Rule 68.10, the State is providing this relevant supplemental material to demonstrate numerous other courts' holdings regarding this matter.

Six of these cases address an appeal regarding evidence suppression, while the seventh case, *Haddad*, challenges the trial court's finding regarding Fourth Amendment rights. 558 F.2d at 970; *see also Banks*, 262 Fed. Appx. at 902; *Hardy*, 77 A.D.3d at 137; *Johnson*, 285 Ga. at 572; *Bordley*, 205 Md. App. at 698; *Molina*, 948 N.E.2d at 404; *Williams*, 881 N.W.2d at 620. In *Banks*, *Johnson*, *Bordley*,

Molina, and *Williams*,[1] the term of occupancy had not expired at the time police searched the respective hotel rooms. *Banks*, 262 Fed.Appx. at 902; *Johnson*, 285 Ga. at 574; *Bordley*, 205 Md. App. at 703; *Molina*, 948 N.E.2d at 409; *Williams*, 881 N.W.2d at 621.

In *Haddad*, Appellant was strongly encouraged to check out earlier than his anticipated departure to avoid further legal problems, bearing strong resemblance to an official eviction. 558 F.2d at 971. In *Hardy*, the Court held that "[o]nce the hotel possessed good cause to eject the defendant and the hotel employee took the affirmative step of contacting the police for their assistance in physically evicting the defendant, the defendant's expectation of privacy in the room was extinguished." *Hardy*, 77 A.D.3d at 140.

The courts in five of the cases held that the guest's privacy rights were nonexistent at the time of the search due to the occupant's lawful eviction. *See Haddad*, 558 F.2d at 975; *Hardy*, 77 A.D.3d at 141; *Johnson*, 285 Ga. at 574; *Bordley*, 205 Md. App. at 699; *Williams*, 881 N.W.2d at 624. In *Banks* and *Molina*, the Court held respectively that the eviction meant the occupant had no reasonable expectation of privacy and that the defendant was locked out of the room, although

[1] Although not explicitly stated in the opinion, the parties' briefs provide a timeline indicating the eviction occurred prior to the occupancy period expiring. The appellant's brief may be found at: http://www.ndcourts.gov/supreme-court/dockets/20150042/33, and appellee's brief at: http://www.ndcourts.gov/supreme-court/dockets/20150042/39.

neither court made an official finding regarding the hotel's control of the room at the time of the search. *Banks*, 262 Fed. Appx. at 905; *Molina*, 948 N.E.2d at 406.

In three cases, the hotel provided some form of notification regarding the eviction or forced removal, and, in all three, police were present either at the hotel room door or on hotel property to assist the hotel staff with the guest's eviction. *See Banks*, 262 Fed. Appx. at 902; *Haddad*, 558 F.2d at 971; *Hardy,* 77 A.D.3d at 136. The other four cases included no eviction notice. *See Johnson,* 285 Ga. at 574; *Bordley,* 205 Md. App. at 712; *Molina*, 948 N.E.2d at 409; *Williams*, 881 N.W.2d at 621. Furthermore, in *Molina*, the Court specifically addressed the notice issue and indicated that notice is an issue for the legislature to take up, not a matter for the court to address. 948 N.E.2d at 409, FN11.

Overall, the Courts held that so long as the eviction was lawful, the guests lost any reasonable expectation of privacy and the warrantless searches by police were not a violation of the guests' Fourth Amendment rights. The State acknowledges these cases are not binding on the Court of Criminal Appeals. Nonetheless, five Federal Circuit Court decisions and five state court decisions, three of which are from the highest state courts, have held differently than the Third Court's majority on this very issue. The State cites these cases to support its argument that the Court of Criminal Appeals should grant the State's Petition for Discretionary Review to correct the Third Court's erroneous decision to reverse Appellee's conviction.

Respectfully submitted,

By: _____

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CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P., RULE 9.4

I certify that this supplement contains 763 words. When added to the word count of the original petition, this petition still does not exceed 4,500 words.[2]

_____

Michael C. McCarthy
Asst. Criminal District Attorney

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing brief has been email-delivered to: Paul Evans on this the 22nd day of July, 2019.

[2] A petition for discretionary review in the Court of Criminal Appeals must not exceed 4,500 words if computer-generated, and 15 pages if not. Tex. R. App. P. 9.4

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