

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 14-CR-149-GKF
)	
JESSICA LYNN NEALIS,)	
)	
Defendant.)	

**DEFENDANT’S MOTION TO SUPPRESS EVIDENCE
AND BRIEF IN SUPPORT**

Defendant Jessica Lynn Nealis, acting pursuant to Fed.R.Crim.P. 12(b)(3)(C), moves the Court to suppress from the Government’s case-in-chief the evidence seized from her purse (methamphetamine and drug paraphernalia) and the evidence seized from her vehicle (marijuana and cash) on the afternoon of August 15, 2014, at the Indigo Sky Casino in Wyandotte, Oklahoma. Said evidence is the product of a warrantless search conducted by the Eastern Shawnee Tribal Police Department in violation of Defendant’s Fourth Amendment rights.¹

Defendant Nealis requests an evidentiary hearing on her motion to establish the facts of the case through the admission of sworn testimony and other evidence. Defendant Nealis requests permission to supplement this brief and to raise any other motions based on the facts and evidence that may be revealed during the evidentiary hearing.

¹If the Fourth Amendment is not implicated, its standards would still apply to Indians acting on Indian land. 25 U.S.C. § 1302; *United States v. Lester*, 647 F.2d 869 (8th Cir. 1981).

Factual Background

On or about August 14 to 15, 2014, Defendant Nealis was a guest at the Indigo Sky Casino and Hotel, Wyandotte, Oklahoma, a trust land belonging to the Eastern Shawnee Tribe. Her purse was in her hotel room. On the afternoon of August 15, 2014, security officer(s)² entered her hotel room without a warrant, removed her purse to their security office, then opened and searched her purse. The Eastern Shawnee Tribal Police Department played a role in the search of Defendant Nealis's purse, recovering a small quantity of methamphetamine and drug paraphernalia from the purse.

Officers from the Tribal Police Department later located Defendant Nealis's vehicle on the Casino property and conducted a warrantless search of its interior and trunk. Officers recovered a small quantity of marijuana and \$5,709.00 from the vehicle.

Legal Argument and Authorities

The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated"

(1) Warrantless Entry into Defendant's Hotel Room

The warrantless entry into Defendant Nealis's hotel room for the purpose of seizing her purse violated her Fourth Amendment rights.

²Police reports give no details as to the authority or credentials of the security officers.

The warrantless search of a home is presumptively unreasonable. *See, e.g., Flippo v. West Virginia*, 528 U.S. 11, 13 (1999)(warrantless search by police is invalid); *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993)(searches and seizures conducted without a warrant are *per se* unreasonable under the Fourth Amendment); *New York v. Belton*, 453 U.S. 454, 457 (1981)(“It is the first principle of Fourth Amendment jurisprudence that the police may not conduct a search unless they first convince a neutral magistrate that there is probable cause to do so.”) “The Fourth Amendment protection against unreasonable searches and seizures . . . also extends to such places as hotel or motel rooms.” *See Stoner v. California*, 376 U.S. 483, 490 (1964), *abrogated on other grounds by United States v. Matlock*, 415 U.S. 164 (1974); *United States v. Kimoana*, 383 F.3d 1215 (10th Cir. 2004).

Should the Government seek to excuse its warrantless invasion of Defendant Nealis’s hotel room, the burden of establishing any exception to the Fourth Amendment’s warrant requirement rests squarely upon the government. *See, e.g., McDonald v. United States*, 335 U.S. 451, 456, 69 S.Ct. 191, 93 L.Ed. 153 (1948); *United States v. Jeffers*, 342 U.S. 48, 51, 72 S.Ct. 93, 96 L.Ed. 59 (1951); *United States v. Edwards*, 242 F.3d 928, 937 (10th Cir. 2001)(“The government has the burden of proving that an exception to the warrant requirement applies.”)

(2) *Warrantless Search of Defendant’s Purse*

Even if the entry into Defendant Nealis’s hotel room was not in violation of her Fourth Amendment rights, the ensuing search of her purse was.

A defendant claiming violation of the Fourth Amendment must show that she had a “legitimate expectation of privacy in the invaded place,” *Rakas v. Illinois*, 439 U.S. 128, 143 (1978), and that her expectation is reasonable. *Minnesota v. Carter*, 525 U.S. 83, 88 (1998). A defendant’s subjective expectation of privacy is a legitimate expectation of privacy if it is “one that society is prepared to recognize as reasonable.” *Rakas*, 439 U.S. at 143-44 n.12 quoting *Katz v. United States*, 389 U.S. 347, 361 (1967)(Harlan, J., concurring). See also *Illinois v. Andreas*, 463 U.S. 765, 771 (1983)(to receive protection under the Fourth Amendment for search of container, a defendant must have a reasonable expectation of privacy in the contents of the container).

A purse is the type of property in which an individual has a legitimate expectation of privacy. “It is fundamental that, absent some special exception, all containers and packages will receive the full protection of the fourth amendment during a police search.” *United States v. Bonitz*, 826 F.2d 954, 957 (10th Cir.1987). See also *Smith v. Ohio*, 494 U.S. 541 (1990) (*per curiam*) (brown paper grocery bag); *United States v. Place*, 462 U.S. 696 (1983) (luggage); *Ex parte Jackson*, 96 U.S. 727 (1877) (letters and packages). In the instant case, law enforcement officers searched Defendant Nealis’s purse without having first obtained a search warrant.

“[S]earches and seizures 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.” *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993). The Government bears the burden of justifying its

warrantless search and of proving that a recognized exception to the warrant requirement applies. *See, e.g., McDonald v. United States*, 335 U.S. 451, 456 (1948); *United States v. Jeffers*, 342 U.S. 48, 51 (1951); *United States v. Edwards*, 632 F.3d 633, 642-43 (10th Cir. 2001).

(3) *Warrantless Search of Defendant's Vehicle*

Defendant Nealis's vehicle was legally parked on the casino's grounds. Officers from the Eastern Shawnee Tribal Police Department located the vehicle, removed an individual who was occupying the passenger side of the vehicle, and then searched the vehicle's interior and trunk. They did so without a warrant.

"[S]earches and seizures 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." *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993). The Government bears the burden of justifying its warrantless search and of proving that a recognized exception to the warrant requirement applies. *See, e.g., McDonald v. United States*, 335 U.S. 451, 456 (1948); *United States v. Jeffers*, 342 U.S. 48, 51 (1951); *United States v. Edwards*, 632 F.3d 633, 642-43 (10th Cir. 2001).

(4) *The Remedy of Suppression*

Through a series of decisions, the Supreme Court has established the exclusionary rule as the appropriate remedy for violation of the Fourth Amendment. *See Boyd v. United States*, 116 U.S. 616 (1886); *Weeks v. United States*, 232 U.S. 383 (1914); and *Mapp v. Ohio*, 367

U.S. 643 (1961). The exclusionary rule is a judicially-created remedy which “prohibits introduction into evidence of tangible materials seized during an unlawful search and of testimony concerning knowledge acquired during an unlawful search.” *Murray v. United States*, 487 U.S. 533, 536 (1988). Furthermore, any additional evidence or statements obtained as a direct result of the unlawful search must also to be suppressed pursuant to *Wong Sun v. United States*, 371 U.S. 471, 486-87 (1963).

Conclusion

WHEREFORE, Defendant Nealis requests the Court set this matter for evidentiary hearing and, at the conclusion thereof, grant her Motion to Suppress.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 18th day of February, 2016, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrant(s):

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