

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-911

KIMBERLY ANN WEBB

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 5, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CR-2008-985-B]

HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant entered a conditional guilty plea to two felony drug offenses pursuant to Ark. R. Crim. P. 24.3(b), reserving her right to appeal the trial court's denial of her motion to suppress evidence obtained in the assertedly illegal search of her motel room. We affirm.

In reviewing the denial of a motion to suppress evidence, the appellate court makes an independent examination based upon the totality of the circumstances and reverses only if the trial court's decision is clearly against the preponderance of the evidence. *Miller v. State*, 81 Ark. App. 401, 102 S.W.3d 896 (2003). Because a determination of the preponderance of the evidence depends heavily on questions of the weight and credibility of the testimony, we defer to the superior position of the trial court on those questions. *Id.*

The record shows that appellant's boyfriend was subject to a valid arrest warrant for failure to appear following affirmance of a criminal conviction. In order to avoid forfeiture

of their bond, two bail bondsmen attempted to locate the boyfriend. In so doing, they tracked appellant to an Oklahoma motel. On arrival, the bondsmen telephoned police officers to inform them that they would attempt to apprehend appellant's boyfriend at the motel. The police appeared at the scene, questioned the motel clerk, and learned that both appellant and her boyfriend were, at that moment, in Room 142 of the motel. The room was registered in appellant's name, and she had been staying there for thirty-nine days, beginning on June 30, 2008. Our affirmance of the boyfriend's revocation was handed down the previous month on May 28, 2008. *Melancon v. State*, CACR07-1295 (Ark. App. May 28, 2008) (unpublished). His failure to surrender himself following our decision gave rise to the warrant for his arrest.

We note that, although a hotel or motel room is not a permanent residence, one registered at a hotel or motel as a guest is protected against unreasonable searches and seizures by the Fourteenth Amendment to the United States Constitution. *Scroggins v. State*, 276 Ark. 177, 633 S.W.2d 33 (1982). However, we find no unreasonable search in this case. A valid warrant had issued for the arrest of appellant's boyfriend. The police officers were aware of this, they had current and reliable information that appellant and her boyfriend were then present in Room 142, and the circumstances supported a reasonable belief that the motel room was serving as their residence. Our supreme court's holding in *Benevidez v. State*, 352 Ark. 374, 101 S.W.3d 242 (2003), explicitly allows officers to enter a dwelling if they have a valid arrest warrant and reason to believe that the suspect lives in the dwelling and is within

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it. In light of that holding and the circumstances of this case, we hold that the trial court did not err in declining to suppress items found in plain view in the motel room while appellant's boyfriend was being apprehended.

Affirmed.

HART and BAKER, JJ., agree.