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DISTRICT II

February 2, 2022

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Circuit Court Judge
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Skylar D. Fondren
1524 Maple St.
Racine, WI 53404

You are hereby notified that the Court has entered the following opinion and order:

2020AP1354-CR State of Wisconsin v. Skylar D. Fondren (L.C. #2017CF144)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Skylar D. Fondren appeals pro se from a judgment of conviction following his no contest plea to possession with intent to deliver between 15-40 grams of cocaine, contrary to WIS. STAT. § 961.41(1m)(cm)3 (2017-18).¹ He claims the circuit court erred in denying his motion to suppress. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20). We affirm.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

In February 2017, Deputy John Lanctot of the Kenosha County Sheriff's Department observed a car travelling northbound on I-94 in the Village of Pleasant Prairie, County of Kenosha, with an improperly displayed registration sticker. Lanctot was positioned near the Wisconsin/Illinois border so that the northbound traffic he observed was travelling into Wisconsin from Illinois. Lanctot conducted a traffic stop, advised the driver of the reason for the stop, and asked for his driver's license. Lanctot identified Fondren as the driver and owner of the car, and upon running Fondren's license, Lanctot learned that Fondren: (1) was on extended supervision following convictions for "felony possession of a firearm, possession with intent to deliver cocaine, [and] possession with intent to deliver marijuana[;]" (2) had been released from prison in May 2016; and (3) "had an extensive criminal history" from 1996 to 2013. Lanctot attempted to contact Fondren's probation and parole agent, but the agent was not available.

Lanctot returned to Fondren's car and asked him where he was coming from. Fondren responded that "he was on his way back from Gurnee," Illinois. When a back-up officer arrived, Lanctot asked Fondren to step out of the vehicle to conduct a pat-down search for weapons. Lanctot noticed Fondren began to act nervously. Lanctot testified that based on his experience, he was familiar with the standard rules for individuals released to extended supervision and that one of the standard rules requires such individuals to obtain a travel permit for out-of-state travel. When Lanctot asked Fondren if he had a travel permit, Fondren responded that he did not. Lanctot informed Fondren that because he did not have a travel permit, he "would be conducting

an Act 79^[2] search” of Fondren’s vehicle.

Lanctot then entered Fondren’s car from the driver’s side door, opened the center armrest console, and found the cocaine. The drugs were discovered in “less than a minute.” Lanctot placed Fondren under arrest and the State charged him with possession with intent to deliver cocaine. Fondren thereafter filed motions challenging the search.

The circuit court denied Fondren’s suppression motions because it found Lanctot’s search did not violate the Fourth Amendment.³ The circuit court found: (1) the traffic stop was lawful based on the improperly placed registration sticker; (2) Lanctot could lawfully check Fondren’s driver’s license status and criminal history as part of the mission of the traffic stop, *see Rodriguez v. United States*, 575 U.S. 348, 355 (2015); (3) Lanctot knew Fondren was on extended supervision for three felony offenses (firearm and drugs), which subjected him to search pursuant to 2013 Wis. Act 79, § 5 (hereinafter referred to as “Act 79”); (4) Lanctot saw Fondren driving from Illinois and confirmed he did not have a travel permit; (5) Lanctot knew the standard rules of supervision included obtaining a travel permit before leaving Wisconsin; and (6) Lanctot knew from his experience that this stretch of I-94 was used as a drug corridor.

On appeal, Fondren contends the circuit court erred in denying his “motion to suppress/as applied challenge in violation” of the Fourth Amendment. His argument seems to be that WIS. STAT. § 302.113(7r) is unconstitutional as applied to him because when Lanctot conducted the

² 2013 Wis. Act 79 “created several statutes authorizing law enforcement officers to search individuals on certain community supervision statuses, including those on probation and parole, as well as those recently released from prison on extended supervision.” *State v. Anderson*, 2019 WI 97, ¶22, 389 Wis. 2d 106, 935 N.W.2d 285.

³ U.S. CONST. amend. IV.

search, Lanctot did not perform the search in compliance with the requirements of WIS. ADMIN. CODE § DOC 328.22 (Oct. 2019) or verify that Fondren’s supervision conditions did in fact obligate him to obtain a travel permit before leaving the state. We reject Fondren’s argument and affirm.

In reviewing a decision on a suppression motion, we apply “a two-step standard of review.” *State v. Anderson*, 2019 WI 97, ¶19, 389 Wis. 2d 106, 935 N.W.2d 285. The circuit court’s findings of facts will be upheld “unless they are clearly erroneous[.]” *Id.*, ¶20. Interpretation of statutes and the administrative code are legal issues reviewed de novo. *State v. Schultz*, 2020 WI 24, ¶17, 390 Wis. 2d 570, 939 N.W.2d 519; *State ex rel. Peter Ogden Fam. Tr. of 2008 v. Board of Rev.*, 2019 WI 23, ¶24, 385 Wis. 2d 676, 923 N.W.2d 837. Whether a statute is unconstitutional as applied is a question of law reviewed de novo. *Society Ins. v. LIRC*, 2010 WI 68, ¶13, 326 Wis. 2d 444, 786 N.W.2d 385.

The statute at issue here is WIS. STAT. § 302.113(7r), which the legislature enacted in 2013 Wis. Act 79, § 5. Section 302.113(7r) provides:

A person released under this section, his or her residence, and any property under his or her control may be searched by a law enforcement officer at any time during his or her period of supervision if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of release to extended supervision. Any search conducted pursuant to this subsection shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing. A law enforcement officer who conducts a search pursuant to this subsection shall, as soon as practicable after the search, notify the department.

The statute lowered the standard needed for law enforcement to search a felony offender who is serving the extended supervision portion of a sentence. *Anderson*, 389 Wis. 2d 106, ¶23. “Act

79 allows for a full search of those subject to its provisions where reasonable suspicion is present[.]” *Id.*, ¶24.

Thus, to conduct an Act 79 search, an officer must: (1) know the person is on “supervision status”; and (2) have reasonable suspicion that either the person “was committing, was about to commit, or had committed a crime” or has committed “a violation of a condition of release to extended supervision.”⁴ WIS. STAT. § 302.113(7r); *Anderson*, 389 Wis. 2d 106, ¶¶21, 30-31. Once those requirements are present, an officer may lawfully search “any property” under the person’s control. *Anderson*, 389 Wis. 2d 106, ¶22 (quoting WIS. STAT. § 302.113(7r)). Act 79 also prescribes the manner of the search: (1) it “shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing”; and (2) the searching officer must notify the Department of Corrections (DOC) “as soon as practicable after the search[.]” Sec. 302.113(7r).

Fondren does not dispute that he was subject to the statute, as he was on extended supervision. He also does not dispute that Lanctot had reason to believe he was subject to Act 79 searches. Fondren contends the search here was unreasonable because Lanctot performed the search without first complying with the requirements of WIS. ADMIN. CODE § DOC 328.22 (Oct. 2019). Specifically, Fondren argues that § DOC 328.22(7)(a) requires that “[a]n agent shall obtain supervisory approval prior to any search under this subsection[.]” and because Lanctot never verified the supervision rules (specifically that he was required to obtain a travel permit

⁴ During the suppression motion hearing, Lanctot testified that Fondren’s lack of a travel permit formed the basis for the Act 79 search: “[I]f it turned out that Mr. Fondren had a travel permit I would not have searched his vehicle.”

before leaving the state), the search violated the Fourth Amendment. We reject Fondren’s argument.

The Fourth Amendment protects against unreasonable searches and seizures. *State v. Brown*, 2020 WI 63, ¶9, 392 Wis. 2d 454, 945 N.W.2d 584, *cert. denied*, 141 S. Ct. 881 (2020) (“[W]hat the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures.” (alteration in original; citation omitted)). However, “what is unreasonable for a probationer differs from what is unreasonable for a law-abiding citizen.” *State v. Purtell*, 2014 WI 101, ¶22, 358 Wis. 2d 212, 851 N.W.2d 417. Those serving the extended supervision portion of a sentence have “significantly diminished privacy interests.” *See Samson v. California*, 547 U.S. 843, 849-50 (2006).

When a law enforcement officer knows a person is on extended supervision, the officer needs only reasonable suspicion before conducting a search. WIS. STAT. § 302.113(7r). In reviewing whether reasonable suspicion existed, we look at the totality of the circumstances. *Anderson*, 389 Wis. 2d 106, ¶31. In determining whether Lanctot had reasonable suspicion, we apply the objective standard that asks “whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience,” *see id.*, ¶32 (citation omitted), to suspect Fondren was in “violation of a condition of release to extended supervision.” *See* § 302.113(7r). “[R]easonable suspicion” is “based on ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *Anderson*, 389 Wis. 2d 106, ¶33 (citations omitted).

Here, Lanctot knew Fondren was on extended supervision and therefore subject to the lower standard. Lanctot also knew that a standard condition of extended supervision is that a

travel permit is required before leaving the state.⁵ Fondren told Lanctot he did not obtain a travel permit and that he was coming from Illinois. Fondren was acting nervously. Lanctot also knew the portion of the highway where he stopped Fondren was a drug corridor and that Fondren had been convicted of drug crimes, including possession with intent to sell. Under the totality of circumstances, it was reasonable for Lanctot to suspect that Fondren was in violation of his conditions of extended supervision, and, therefore, Lanctot had the requisite reasonable suspicion to conduct the Act 79 search. Additionally, the search was conducted in a reasonable manner and was not “arbitrary, capricious, or harassing[,]” *see* WIS. STAT. § 302.113(7r), as the search was short in duration and Lanctot found the drugs in the center console almost immediately.

Fondren’s reliance on the administrative code provision is misplaced. As the circuit court correctly concluded, the administrative code provision applies to DOC employees, not to law enforcement. WISCONSIN ADMIN. CODE § DOC 328.02 (Oct. 2019) provides: “This chapter applies to the department and to offenders under the division’s custody and supervision for correctional purposes.”⁶ The text of § DOC 328.22 (Oct. 2019) refers to “employee” or a

⁵ Lanctot’s understanding that the standard rules require individuals on extended supervision to obtain a travel permit from his or her agent is consistent with WIS. ADMIN. CODE § DOC 328.04(3), which provides in relevant part:

(3) Standard rules require that the offender shall comply with all of the following:

(i) Obtain permission and a travel permit from an agent before leaving the state.

See WIS. ADMIN. CODE § DOC 328.04(3)(i). To obtain such permit, Fondren was required to “submit[] a written request and ... receive[] written authorization prior to the requested travel.” *See* WIS. ADMIN. CODE § DOC 328.13(1).

⁶ “Department” refers to the Department of Corrections, and “Division” refers to the Division of Community Corrections. WIS. ADMIN. CODE §§ DOC 328.03(15), (17).

supervisee’s “agent,” and it refers to “employees,” not law enforcement, when it describes the persons conducting searches pursuant to its authority.

WISCONSIN STAT. § 302.113(7r), to the contrary, specifically identifies “law enforcement officer[s]” within its text. Law enforcement is bound by the statute, *not* this administrative code provision. The statute’s requirements were met here and therefore Lanctot’s search pursuant to § 302.113(7r) did not violate Fondren’s Fourth Amendment rights.

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals