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**DISTRICT II**

April 13, 2022

*To:*

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Melody Lorge  
Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Loryn Lange Limoges  
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Joel Urmanski  
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You are hereby notified that the Court has entered the following opinion and order:

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2020AP2092-CR

State of Wisconsin v. John Anthony Fortino (L.C. #2018CF368)

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).**

John Anthony Fortino appeals from a judgment of conviction entered after he pled guilty to one count of possession of child pornography. He also appeals from an order denying his postconviction motion, which asserted a new reason he believed warranted suppression of the child pornography the police found on his phone. He contends that the circuit court erred in denying his postconviction motion. 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).<sup>1</sup> We affirm.

In May 2018, police executed a search warrant at Fortino's residence in regard to a child pornography investigation. The warrant contained a clause that allowed police to compel anyone on the premises at the time of the warrant's execution to use their fingerprints to unlock Apple devices found in the search.

During the search, Fortino gave the police his phone in which the police discovered multiple images of child pornography. The State subsequently charged him with thirteen counts of possession of child pornography.

Fortino moved to suppress the child pornography found on his phone, alleging that the search warrant was based on stale information. He also challenged the admissibility of his statements, asserting that police did not honor his invocation of counsel during questioning. The circuit court denied both motions.

After losing his motions, Fortino pled guilty to one count of possession of child pornography. The remaining counts were dismissed and read in. The circuit court sentenced him to three years of initial confinement and five years of extended supervision.

Fortino then filed a postconviction motion alleging a new basis to suppress the child pornography found on his phone. Fortino claimed that the search warrant's fingerprint clause violated the Fifth Amendment privilege against self-incrimination of everyone in the residence,

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

and this rendered the entire warrant void ab initio. Again, the circuit court denied the motion. This appeal follows.

On appeal, Fortino contends that the circuit court erred in denying his postconviction motion, which sought to suppress on grounds different than what he raised in his preconviction motion to suppress. The State asserts that Fortino waived the issue in his postconviction motion because he did not raise it before pleading guilty. We conclude that Fortino's guilty plea waived his right to raise his new basis for suppressing postconviction.

As a general rule, a valid guilty plea “waives all nonjurisdictional defects, including constitutional claims[.]” *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (citation omitted). There is an exception to this rule found in WIS. STAT. § 971.31, which governs motions *before* trial. It allows a defendant to appeal “[a]n order denying a motion to suppress evidence or a motion challenging the admissibility of a statement of a defendant[.]” Sec. 971.31(10).

Here, Fortino filed two motions before his plea that fall within this statutory exception. However, neither motion involved the issue he wishes to litigate in this appeal (i.e., whether the fingerprint clause made the search warrant void ab initio). Indeed, Fortino did not raise the issue he wishes to litigate until his postconviction motion, which was *after* his guilty plea. Under these circumstances, we conclude that he has waived the issue. *Kelty*, 294 Wis. 2d 62, ¶18.

Upon the foregoing reasons,

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*