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DISTRICT II

April 17, 2024

To:

Hon. Teresa S. Basiliere
Circuit Court Judge
Electronic Notice

Sarah Burgundy
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Leonard D. Kachinsky
Electronic Notice

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

2022AP1931-CR

State of Wisconsin v. Jason J. Strieter (L.C. #2019CF610)

Before Neubauer, Grogan and Lazar, 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).

Jason J. Strieter appeals a judgment of conviction entered after she¹ pled no contest to one count of possession of child pornography. Strieter challenges the circuit court's denial of a motion to suppress, arguing that the police lacked reasonable suspicion to conduct a warrantless search of her cell phone. Based upon our review of the briefs and Record, we conclude at

¹ By order of this court dated September 19, 2023, we granted Strieter's motion to refer to Strieter by female pronouns in this opinion. Strieter is also known as "Jawadah Destiny Strieter." The circuit court also followed this convention at Strieter's request.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).² We reject Strieter’s arguments and summarily affirm.

Strieter pled no contest to possession of child pornography and was sentenced to three years of initial confinement and three years of extended supervision. The charge was based on evidence seized from a cell phone during a search of Strieter’s residence by law enforcement. At the time of the search, Strieter was on extended supervision for a felony conviction. Under 2013 Wis. Act 79, § 9 (Act 79), law enforcement may search a probationer or supervisee, his or her residence, and any property under his or her control “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 probation.” WIS. STAT. § 973.09(1d). Strieter moved to suppress the evidence seized during the search of her residence, arguing that law enforcement lacked reasonable suspicion to search the premises pursuant to Act 79. The circuit court denied the motion after a hearing, concluding that law enforcement had reasonable suspicion sufficient to justify a search of Strieter’s residence and cell phone. Strieter appeals.

When we review a suppression issue, we uphold the circuit court’s factual findings unless those findings are clearly erroneous. *State v. Johnson*, 2007 WI 32, ¶13, 299 Wis. 2d 675, 729 N.W.2d 182. We review de novo whether the facts satisfy the standard for reasonable suspicion. *See id.*

Generally, a full search cannot be conducted absent probable cause. *State v. Anderson*, 2019 WI 97, ¶2, 389 Wis. 2d 106, 935 N.W.2d 285. “However, if a person is subject to Act 79,

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

a full search may be conducted on the lesser showing of reasonable suspicion.” *Id.* On appeal, Strieter does not dispute that she was subject to Act 79 as a result of her supervision status. However, she argues that law enforcement lacked the requisite reasonable suspicion to search the digital contents of her cell phone. For the reasons discussed below, we reject Strieter’s arguments.

As an initial matter, we deny Strieter’s contention that the digital contents of cell phones are not “any property under [the supervisee’s] control”, however, while the phone itself could be seized pursuant to Act 79, its contents are not searchable pursuant to Act 79. The circuit court denied this argument as undeveloped and unsupported, concluding that “[Strieter] does not cite any persuasive argument that Act 79 does not apply to cell phones.” Similarly, we reject this argument as underdeveloped and unsupported by Wisconsin law. *See Techworks, LLC v. Wille*, 2009 WI App 101, ¶27, 318 Wis. 2d 488, 770 N.W.2d 727 (explaining “we will not address arguments that are not developed.”); *see also Industrial Risk Insurers v. American Eng’g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (holding that “[a]rguments unsupported by legal authority will not be considered, and we will not abandon our neutrality to develop arguments.” (citations omitted)). Strieter provides no basis from which we can conclude that Act 79 does not apply to the contents of cell phones seized pursuant to the Act, particularly in a case such as this, where law enforcement had a valid warrant to search the contents of Strieter’s phone.

We also reject Strieter’s argument that the scope of the search of her cell phone was unreasonable to the extent that the officer opened photo applications on Strieter’s phone while at Strieter’s residence. Strieter effectively concedes that the officers here had reasonable suspicion that she was using illegal drugs, but asserts they were limited to searching her “communications

such as emails, texts and instant messages—not cached photos” to find evidence of illegal activity, but could not expand the search into other areas of the phone. Strieter again provides no controlling legal authority in support of her position.

As we now explain, we uphold the circuit court’s conclusion that officers had reasonable suspicion to seize and search the phone pursuant to Act 79. At the suppression hearing, police Sergeant Adam Nagel testified that he received a “cyber tip” from the National Center for Missing and Exploited Children indicating that Strieter had downloaded some images related to child pornography on her cell phone. Nagel and another officer went to Strieter’s apartment based on the tip to conduct a “knock-and-talk.” During the discussion with law enforcement, Strieter commented several times to Nagel that she had evidence of recent drug activity on the cell phone; she never claimed that the evidence of her drug use was limited to texts, emails, or instant messages. Indeed, Strieter implied to the officers that her phone had illegal downloads, asked how a person could wipe downloaded materials from their device, and discussed how easily one could inadvertently download unwanted material by clicking on links. Strieter’s references to downloads, which she brought up in the context of the officer asking whether there were any child pornography images on Strieter’s phone, supported the inference that the images and photos Strieter either downloaded or accessed on her phone contained inculpatory material. Under those circumstances, Nagel’s viewing Strieter’s photos on her phone at the scene, and later pursuant to a search warrant, was a reasonable and lawful search.

Here, we are satisfied based on the totality of the circumstances that Nagel had an objectively reasonable basis to believe that Strieter was involved in criminal activity. Nagel testified as to several different factors that he found, based on his training and experience, to support the inference that Strieter had evidence of illegal activity on her cell phone. Nagel found

it telling that Strieter admitted to having drug paraphernalia in her apartment, contrary to the rules of supervision, and that Strieter stated that she did not know how to get rid of items or links downloaded to her cell phone. We conclude that these factors, when considered with the fact that they occurred in quick succession and when considered alongside the cyber tip as well as Nagel’s knowledge of Strieter’s supervision status, supported a reasonable inference by Nagel that Strieter was involved in criminal activity.

In sum, we conclude that there was reasonable suspicion for the search such that the circuit court properly denied Strieter’s motion to suppress evidence obtained from the search.³

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.

See WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals

³ To the extent that the parties make arguments that we do not address, including whether Strieter gave consent to Nagel to search her cell phone and its contents, we decline to address these issues because our decision regarding reasonable suspicion is dispositive of this issue. *See Village of Slinger v. Polk Props. LLC*, 2021 WI 29, ¶26 n.12, 396 Wis. 2d 342, 957 N.W.2d 229 (explaining that we decide cases “on the narrowest possible ground” and do not reach issues we need not reach).