NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (4th) 150387-U

NO. 4-15-0387

FILED
August 24, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
LOYAL FOOTE,	)	No. 13CF184
Defendant-Appellant.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The police officer's search of a closed backpack found in plain view in a shared bedroom during a probation search was valid and performed with consent. The trial court's order denying a motion to quash the arrest and suppress the evidence found in the backpack is affirmed.

¶ 2 Defendant, Loyal Foote, appeals his convictions of one count of methamphetamine delivery, one count of methamphetamine possession, and one count of unlawful possession of a weapon by a felon. The contraband leading to these convictions was discovered during a search of defendant's residence pursuant to his fiancée's probation order. Defendant filed a motion to quash arrest and suppress evidence, arguing his fiancée's probation terms and conditions had no effect on his expectation of privacy and her consent to the probation search did not extend to a search of his personal items. We disagree with defendant and affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2013, the State charged defendant by information with three criminal charges. Count I charged defendant with methamphetamine delivery or possession with intent to deliver less than 5 grams. 720 ILCS 646/55(a)(2)(A) (West 2012). Count II charged defendant with possession of less than 5 grams of methamphetamine. 720 ILCS 646/60(b)(1) (West 2012). Count III charged defendant with unlawful possession of a weapon by a felon. 720 ILCS 5/24-1.1(a) (West 2012). The charges resulted from a search of the contents of a backpack found in defendant's residence, which he shared with his fiancée, Rosa Olvera. At the time of the search, Olvera was on probation for charges relating to possession of methamphetamine. The search was conducted upon the residence pursuant to a tip that Olvera had violated her probation.

¶ 5 Defendant filed a motion to quash his arrest and suppress the contents of his backpack. The trial court conducted a hearing on defendant's motion to suppress. Olvera testified she and defendant lived at 116 North State Street in Danville. On April 2, 2013, at approximately 11 a.m., while she was on probation for a methamphetamine offense, a probation officer and a Vermilion County Metropolitan Enforcement Group (VMEG) officer knocked on the front door. Defendant answered the door. The probation officer advised that Olvera had missed a probation appointment and they needed to "come look through [her] house." Olvera said she believed she was not allowed to say no to the search because the terms of her probation required her to consent to any search of her person or residence. She said defendant did not object to the search, either.

¶ 6 Zachary Robert Maring, a probation officer in Danville, testified he received a tip that there was an anhydrous ammonia tank inside Olvera's residence. Maring inquired of Olvera's probation officer, Bob Jones, whether Olvera had a consent-to-search condition in her

order of probation. Jones told Maring this requirement was a term of Olvera's probation. Maring, accompanied by VMEG officer Eric Millis, went to Olvera's residence to conduct a search. Defendant answered the door and, in a cordial manner, advised he would let Olvera know the officers were there.

¶ 7 When Olvera came to the door, Maring explained the terms of her probation and advised her he and Millis would be searching the residence. Olvera gave them permission to do so. Defendant never objected. The officers began to search the residence and were soon joined by two other officers.

¶ 8 Defendant testified he was not on probation at the time of the search and he and Olvera shared the residence. One of the officers asked for defendant's permission to search his person, and defendant complied. The officer asked to search the detached garage, and defendant complied with that request, as well. Later, according to defendant, the officers threatened to take Olvera to jail because they had found a knife in defendant's "stuff that [he] didn't believe they had permission to search." He "thought they had permission to go through the house." He said he "didn't know they had permission to search [his] belongings." Defendant told the officers the knife was his, not Olvera's. As a result of the search, defendant was arrested.

¶ 9 Defendant said the officers told him the only reason they were taking him to jail was because the knife was spring-loaded and he was a convicted felon. Once at the jail, an officer advised him of the methamphetamine charges.

¶ 10 The State called VMEG officer Eric Millis to testify. He testified he was a narcotics investigator and was asked by Maring to assist in the search. One of the officers found "a black book bag" in the bedroom, which contained "a digital scale with some residue that later field[-]tested positive for the presence of methamphetamine, a black box containing magnetic

strips that contained packaging materials, and I believe it was a blue and green switchblade." Millis asked defendant "to come back in and speak with [him], and at that time, [defendant] stated that all the items found in that room belonged to him."

¶ 11 After considering the evidence and arguments of counsel, the trial court found "this was a valid search pursuant to probation, and that both parties freely consented to the search." The court denied defendant's motion to quash arrest and suppress evidence.

¶ 12 In April 2015, at a stipulated bench trial, the trial court considered defendant's stipulation that the State had sufficient evidence for convictions on counts II and III. The State dismissed count I. After admonishing defendant pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012), the court found defendant guilty on counts II and III and sentenced him to two concurrent terms of two years in prison.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant contends the trial court erred by denying his motion to quash arrest and suppress evidence. Generally, our review of a court's ruling on a motion to suppress evidence involves both questions of fact and law. *People v. Moss*, 217 Ill. 2d 511, 517 (2006). We will uphold findings of historical fact made by the court unless such findings are against the manifest weight of the evidence. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). If we uphold the factual findings, we review *de novo* whether suppression is appropriate under those facts. *Moss*, 217 Ill. 2d at 518. In the instant case, there are no questions of fact disputed by the parties. Defendant does not dispute the legality or authority of the officers' search of the residence or Olvera's authority to consent to the search of the common areas of the residence, including the bedroom. Further, there is no dispute the backpack was found in the bedroom. The only issue is whether

the officers had the authority to search the backpack. Accordingly, we review the application of law to the facts *de novo*. *People v. Gherna*, 203 Ill. 2d 165, 175 (2003).

¶ 16 The fourth amendment to the United States Constitution, which guarantees the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, applies to the states through the due process clause of the fourteenth amendment. *People v. James*, 163 Ill. 2d 302, 311 (1994). Generally, the fourth amendment requires the government to possess a warrant supported by probable cause for a search to be considered reasonable. *Illinois v. McArthur*, 531 U.S. 326, 330 (2001). However, the requirement for a warrant has been held unnecessary in cases involving probationers and parolees when the search is deemed reasonable. See *United States v. Knights*, 534 U.S. 112, 122 (2001); *Samson v. California*, 547 U.S. 843, 856-58 (2006); *Moss*, 217 Ill. 2d at 534. In fact, consent to search is often a stated condition in a probation order, as was the case here.

¶ 17 As the State points out on appeal, individuals serving a period of probation have a diminished expectation of privacy regarding a police search and may be searched without a reasonable suspicion of criminal activity. See *People v. Wilson*, 228 Ill. 2d 35, 52 (2008) (search condition within parole agreement); *People v. Coleman*, 2013 IL App (1st) 130030, ¶ 12 (defendant signed mandatory supervised release consent to search).

¶ 18 Similar to these mandatory-supervised-release terms, Olvera's probation order included a consent-to-search term. Paragraph 17 of Olvera's probation order provided: "The defendant shall consent to search of person or residence at a reasonable request of probation or police officer." Therefore, the issue is not whether the police had the proper authority to conduct a search of the residence. There is no dispute the officers' search request was reasonable. Rather, the issue is whether the police had proper authority, as part of their consent-to-search authority,

to search and seize the contents of the backpack. More specifically, the issue is whether the trial court erred in denying defendant's motion to quash the arrest and suppress the evidence found as a result of the search of the backpack.

¶ 19 On a tip that there was an anhydrous ammonia tank in the residence, a probation officer and several VMEG officers arrived at Olvera's home to conduct a permissible warrantless search. In a bedroom shared by Olvera and defendant, officers found a closed backpack. An officer opened the backpack and found a switchblade knife and drug paraphernalia. When the officers advised defendant and Olvera as to what they found, defendant told the officers the discovered items belonged to him.

¶ 20 At the hearing on defendant's motion to suppress, the prosecutor asserted his belief that Olvera's and defendant's consent to the search of the residence extended to searching the closed backpack found in the shared bedroom. The trial court agreed.

¶ 21 Here, no one presented evidence that the backpack was defendant's exclusive property. Although defendant testified he "didn't know [the officers] had permission to search [his] belongings," he never testified the backpack was his exclusive property. Likewise, Olvera did not testify whether the backpack was her property, defendant's, or whether it was jointly owned or used by both.

¶ 22 Because the officers were searching the residence pursuant to Olvera's probation order, her consent was not necessary. Indeed, it is widely accepted that, as a probationer, Olvera had a lower expectation of privacy in her residence and belongings. See *Knights*, 534 U.S. at 119-20 (a probationer has a "significantly diminished" expectation of privacy because he accepted a broad probation search condition). There is no argument that the consent-to-search condition of Olvera's probation constituted exigent circumstances sufficient to justify the

warrantless search of the residence. See *People v. Lampitok*, 207 Ill. 2d 231, 250 (2003) ("We acknowledge that the importance of the Illinois probation system may justify a warrantless search of a probationer upon a lesser degree of suspicion than probable cause.").

¶ 23 On this subject, this court has previously stated:

> "In analyzing the propriety of a probation search, a court must 'balance the level of intrusion on personal privacy against the degree of need for the search to promote legitimate government interests.' [Citation.] The Illinois Supreme Court has noted Illinois has a 'legitimate interest in promoting its probation system effectively.' [Citation.]
>
> Citing its belief that 'imposing the traditional warrant and probable-cause requirements would unduly interfere with the effective administration of the Illinois probation system,' our supreme court has stated the importance of the probation system can justify a warrantless search of a probationer without probable cause. [Citation.] However, the court held a probation search without any individualized suspicion is constitutionally unreasonable. [Citation.] A probation search is only valid under the fourth amendment if the officers can support the search based on reasonable suspicion of a probation violation. [Citation.]" *People v. Seiler*, 406 Ill. App. 3d 352, 357-58 (2010) (quoting *Lampitok*, 207 Ill. 2d at 249-50).

¶ 24 We find the reasonableness of the officers' search extended to the contents of the backpack because the officers were told that Olvera was in possession of anhydrous ammonia, a known precursor for the production of methamphetamine. Thus, the officers could reasonably search for the product the anhydrous ammonia was intended to produce. Such product, or

evidence of any other precursor for that matter, could reasonably have been located in the backpack, which was located in plain view in the shared bedroom of the residence. It logically follows that the search of the backpack was reasonably related to the circumstances of the initial interference. *Seiler*, 406 Ill. App. 3d at 358.

¶ 25 In sum, we conclude the trial court did not err by denying defendant's motion to quash arrest and suppress evidence. We hold the probation and police officers had the authority to conduct a search of the residence based upon Olvera's probationary terms. We further find Olvera and defendant consented to the search of the residence and that their consent extended to the contents of the backpack found in the shared bedroom.

III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 27 Affirmed.