

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff/ Appellant,)	
)	Supreme Court No. 20180300
vs.)	
)	District Court No. 27-2018-CR-00235
Shannon David Keola Stenhoff,)	
)	
Defendant/ Appellee.)	

BRIEF OF PLAINTIFF-APPELLANT

APPEAL FROM ORDER GRANTING MOTION TO SUPPRESS

MCKENZIE COUNTY DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT
HONORABLE ROBIN A. SCHMIDT, PRESIDING

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STATEMENT OF THE ISSUE

[¶1] Whether the District Court's erred in granting Defendant's Motion to Suppress Evidence.

STATEMENT OF THE CASE

[¶2] The State of North Dakota (“State”) appeals from the District Court’s Order (Appellant’s Appendix (Ax. 27.)) granting Shannon David Keola Stenhoff’s (“Stenhoff”) Motion to Suppress Evidence (Ax. 12.). The State charged Stenhoff by complaint filed on February 20, 2018, with Count 1: Endangerment of a child or vulnerable adult, a Class C Felony, Count 2: Unlawful possession of a firearm, a Class C Felony, Count 3: Unlawful possession of drug paraphernalia (methamphetamine), a Class C Felony, Count 4: Unlawful possession of drug paraphernalia (methamphetamine) a Class C Felony; Count 5: Unlawful possession of a controlled substance, a Class A Misdemeanor, Count 6: Fraudulent practices in urine testing, a Class A Misdemeanor, Count 7: Unlawful possession of drug paraphernalia (marijuana - store), a Class A Misdemeanor, Count 8: Unlawful possession of drug paraphernalia (marijuana - ingest), a Class B Misdemeanor, Count 9: Unlawful possession of a controlled substance (marijuana), a Class B misdemeanor (Ax. 3). The State alleged Stenhoff committed these offenses on or about February 6, 2018. The Preliminary Hearing was held on April 26, 2018. Judge Robin A. Schmidt bound Stenhoff over on felony counts 1 through 3, dismissing count 4 without prejudice. (Ax. 11.) The information was filed; Stenhoff was arraigned and maintained his not guilty plea. (Ax. 8.)

[¶3] On May 21, 2018, Stenhoff timely moved to suppress the evidence giving rise to the charges against him. He alleged the search of his residence was a violation of his Fourth Amendment Rights and evidence seized must be suppressed. (Ax. 12.) The State opposed Stenhoff’s motion on grounds the search was conducted at the direction of his

probation officer under the terms of his supervised probation. (Ax. 23.) The search was conducted following Stenhoff's arrest on an Order to Apprehend Warrant.

[¶4] A hearing was held on June 20, 2018. (Ax. 1.) The court granted Stenhoff's Motion to Suppress Evidence determining enough time had elapsed from when Stenhoff was arrested to when the probation search was conducted that law enforcement could have obtained a warrant. (Ax. 27.)

[¶5] The State filed a timely notice of appeal of the order granting motion to suppress, along with a prosecutor's statement accompanying notice of appeal. This appeal ensued. (Ax. 30 & 31.)

STATEMENT OF THE FACTS

[¶6] On November 22, 2017, in case 27-2017-CR-633 Shannon David Keola Stenhoff (Stenhoff), was sentenced to two (2) years supervised probation, which included a search clause. (Ax. 33 & 37.) Stenhoff allegedly failed to comply with the terms of the judgment, including failing to report to his probation officer as directed, a petition to revoke probation was filed on January 20th, 2018, and an order to apprehend warrant was issued the same day. (Ax. 39 & 42.)

[¶7] Law enforcement went to the residence at 1803 3rd Street Southeast in Watford City, North Dakota on February 5th, 2018 because this was believed to be where Stenhoff was residing. (Suppression Hearing Transcript (Tr.) 4:20-1, 9:6-9, 11:12-5.). Stenhoff was apprehended in the residence at approximately 1:15^{A.M.} on February 6th, 2018, roughly four (4) hours after arriving on scene (Tr. 6:19-20.). Following the arrest of Stenhoff and the other adult living at the location, his significant other, Tabitha Corneille, (Corneille) law enforcement performed a security sweep of the residence, but did not engage in any sort of investigative search (Tr. 13:22-3, 25, 14:1). Also present at the residence were five (5) minor children. (Ax. 5.) While law enforcement was on scene, one of the children made a statement to an officer "You are here for the drugs". (Tr. 6:12-7.) Based on this statement and Stenhoff's status as a probationer, law enforcement attempted but was unsuccessful in contacting his probation officer, Ted Truedson (Truedson) (Tr. 10:17-20.).

[¶8] After the security sweep was completed Law Enforcement secured the residence following its execution at roughly 1:15^{A.M.}. (Tr. 6:19-23.) Truedson was successfully contacted later on February 6th, and asked about the potential of conducting a probation search at 1803 3rd Street Southeast in Watford City, North Dakota based on Stenhoff

representing that was where he resided. Truedson contacted the State's Attorney's Office to inquire about Parole and Probation conducting a search after Stenhoff had been arrested. The State's Attorney Office indicated their belief the search clause in the probation conditions was still in affect and a search could be conducted of the residence.

[¶9] On the afternoon of February 6th, Truedson, along with fellow probation officers and local law enforcement conducted a probation search on Stenhoff's residence. To the best of Law Enforcement's knowledge and based on the appearance when they and Truedson arrived, no one had entered or exited the residence since it was secured approximately 14 hours earlier.

[¶10] During the search of 1803 3rd Street Southeast, multiple items of drug paraphernalia, controlled substances and firearms were located throughout the residence. This included in the kitchen where the minor children would be able to access them as well as in the master bedroom which appeared to be occupied by Stenhoff and Corneille. Based on the evidence located during the search, the State filed charges in the underlying criminal case, 27-2018-CR-00235 on February 20th, 2018.

[¶11] The Court bound over felony counts 1 through 3 following the preliminary hearing. Count 4 was dismissed without prejudice. Stenhoff filed a Motion to Suppress Evidence on May 21st, 2018. The State responded on June 4th, 2018. In defense's motion, it was argued the search of the residence at 1803 3rd Street Southeast was illegal because 1) it was not reasonable; 2) Stenhoff was no longer on probation because he was arrested; 3) 1803 3rd Street Southeast was no longer his residence as he was in the McKenzie County Jail; and 4) there was no exclusion to the warrant requirement. The State refuted these arguments in its response, articulating the reasonableness of the

search under the conditions of probation, which is an exception to the warrant requirement, and the contradictions in Stenhoff's reasoning he was not a resident nor still on probation due to his arrest and removal from 1803 3rd Street Southeast.

[¶12] Following the hearing held on June 20th, 2018, the District Court took the matter under advisement. The Order granted the Motion to Suppress was filed on July 27th, 2018. (Ax. 27.) In its order the District Court reasoned because of the time which elapsed between Stenhoff's arrest, securing the residence and when the probation search was conducted, a search warrant should have been obtained. For this reason the District Court granted Stenhoff's Motion to Suppress Evidence seized during the probation search of his residence at 1803 3rd Street Southeast, Watford City, North Dakota. (Ax. 27.)

STANDARD OF REVIEW

[¶13] [T]he standard of review for a district court's decision on a Motion to Suppress Evidence is well established . . . we defer to the district court's findings of fact and resolve conflicts in testimony in favor of affirmance. City of Dickinson v. Hewson, 2011 ND 187, ¶ 6, 803 N.W.2d 814 (quoting State v. Zink, 2010 ND 230, ¶ 5, 791 N.W.2d 161).

[¶14] We affirm the district court's decision unless we conclude there is insufficient competent evidence to support the decision, or unless the decision goes against the manifest weight of the evidence. Id.

ARGUMENT

¶15] Stenhoff argued in his Motion to Suppress Evidence the probation search of his residence violated his fourth amendment right to privacy and as a result, the evidence seized must be suppressed. The State argued because of statements made to law enforcement by a juvenile female living at Stenhoff's residence about them "being there for the drugs", plus the lesser expectation of privacy probationers have, the search conducted by Truedson and members of law enforcement was reasonable. The District Court relies on State v. Ballard, 874 N.W.2d 61, 2016 ND 8 in concluding the search of Stenhoff's residence, following his arrest was not reasonable.

¶16] A sweep of the residence was done to clear it, but no search was conducted on the night of February 5th, 2018. This was because Ingram could not reach Truedson, at the time of Stenhoff's arrest, to obtain approval in conducting a probation search. Truedson, who was made aware of Stenhoff's arrest the next day, chose to conduct a probation search because statements were made indicating "[the] probationer subject to a search condition is engaged in criminal activity . . .". Griffin v. Wisconsin, 483 U.S. 868 (1987), at 121. (emphasis added). In Ballard the arresting deputy admitted he knew petitioner's conditions of unsupervised probation included random testing and a search clause, which were the only basis for conducting the traffic stop and searching Ballard's bedroom, acknowledging he had no reasonable suspicion when he stopped Ballard that he was involved in criminal activity. Id. at ¶3. (emphasis added). Here an Order to Apprehend Warrant had already been issued because Stenhoff failed to comply with the terms of his supervised probation in case 27-2017-CR-633. He failed to report to probation or cooperate with terms monitoring sobriety. These factors coupled with the

statement “you are here for the drugs” distinguish this case from Ballard because there was reasonable suspicion to further the search.

[¶17] Determining whether the search in this case was reasonable should not hinge on the timing of when it was conducted. The search of Stenhoff’s property occurred less than 24 hours after his arrest. It was still his residence and where he expected to return when released from custody. It was, “where he would return in seasons of repose”. State ex. rel Sathre v. Moodie, 258 N.W. 558, 563 (N.D. 1935). Instead, the totality of the circumstances should be considered as in United States v. Knights, 534 U.S. 112 (2001), “a warrantless search of a probationer’s home ‘was reasonable under our general Fourth Amendment approach of ‘examining the totality of the circumstances’” . Id. at 118.

[¶18] The District Court, in its order, (Ax. 28, ¶5) begins the analysis in this case relying on Ballard, specifically,

When reviewing the constitutionality of probationary searches, we interpreted the North Dakota Constitution to provide the same protections for probationers as provided by the United States Constitution. Under our general Fourth Amendment approach we

examine the totality of the circumstances to determine whether a search is reasonable within the meaning of the Fourth Amendment.

Id. at ¶8. Due to Stenhoff being on supervised probation, there is a balancing test which must be considered when looking at whether his Fourth Amendment rights were violated. In Ballard, the continued analysis looks at State v. Schlosser, 202 N.W.2d 136 (N.D. 1972). The Court in Schlosser concluded “defendant’s status as a probationer does affect his rights under the Fourth Amendment. The court has a responsibility to regulate a probationer’s activities to help in his rehabilitation and at the same time to guard

against continued criminal behavior.” Id. at 139. The Schlosser analysis is relevant to Stenhoff’s case for two reasons. First he was not cooperating with the terms of his probation conditions, which diminishes the court’s ability to assist in his rehabilitation. Second, there was information provided to law enforcement Stenhoff continued to be involved in criminal activity, specifically involving drugs, the use of which was a part of the underlying case for which he was on probation. A condition of probation must relate 1) to the crime an offender is convicted of, 2) to conduct which is itself illegal and 3) be reasonable in the conduct it requires or forbids being related to future criminality, or it does not serve a purpose in terms of probation. Ballard at ¶ 11, (quoting People v. Dominguez , 256 Cal.App.2d 623, 64 Cal Rptr 29-, 293 (1967).) Under this test, the search clause in Stenhoff’s probation conditions served a purpose because the underlying crime was ingestion of a controlled substance. Possession and use of controlled substances is a crime, fulfilling the second prong under Dominguez. Requiring Stenhoff to make his residence available to searches reasonably relates to preventing further criminal activity as it is not uncommon to find controlled substances concealed throughout the residence of someone know to use them illegally. Based on these two tests, the probation search was not a violation of Stenhoff’s Fourth Amendment rights.

[¶19] The District Court does not take into consideration the totality of the circumstances, instead relying simply on the timeline in which the underlying events occurred. This narrow view does not coincide with the line of cases which articulate that when there is reasonable suspicion, a search may be conducted because “a probationer who has been granted the privilege of probation on condition that he submit

at any time to a warrantless search may have no reasonable expectation of traditional Fourth Amendment protection.” Ballard at ¶12, (citing Schlosser at 139.) In 2015, this Court in State v. Gonzalez, 2015 ND 106, 862 N.W.2d 535, held “[w]hen a probationary search is authorized by a condition of probation and is supported by reasonable suspicion, the search is a valid probationary search and is reasonable under the Fourth Amendment” (relying on its decision in State v. Maurstad, 2002 ND 121, 647 N.W.2d 688), concluding “Under the totality of the circumstances, Gonzalez’s probation officer had reasonable suspicion that Gonzalez was engaged in unlawful activity[, and] the probation search was supported by reasonable suspicion. Gonzalez. at ¶25, 7. Stenhoff’s diminished expectation of privacy, coupled with his failure to comply with the terms of his probation and statements about possible continuing criminal activity supports the validity of the probation search, regardless of the time which elapsed.

CONCLUSION

[¶20] Whether there was sufficient time for law enforcement to acquire a search warrant in this case is not relevant because this was a probation search. Nowhere in cases considering reasonableness of a probation search, does a court conclude there is a timeline under which this clause expires and a search warrant must be obtained. The conducted search was reasonable under the totality of the circumstances and a warrant was not needed. For this reason, the District Court's decision to suppress evidence based on the time line of events should be reversed and the case remanded to the lower court.

Dated this 13th day of November, 2018.

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I hereby certify I made service of the foregoing Brief of Plaintiff-Appellant, Appendix and Certificate of Service upon Jared Gietzen, Attorney for Defendant-Appellee, by emailing a true and correct copy of the same to dickinsonpublicdefender@nd.gov, on this 13th day of November, 2018.

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