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State v. Jaskowski Appellant's Brief Dckt. 44772

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 44772
 Plaintiff-Appellant,)
) Bear Lake County Case No.
 v.) CR-2016-269
)
 BRODY L. JASKOWSKI,)
)
 Defendant-Respondent.)
 _____)

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BEAR LAKE**

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order suppressing evidence found as a result of a probation search.

Statement Of The Facts And Course Of The Proceedings

A magistrate placed Brody L. Jaskowski on supervised probation for 18 months after his conviction for DUI. (State's Exhibit 1.) One of the conditions of probation was:

9. WARRANTLESS SEARCHES: I shall submit and I agree to polygraph examinations, warrantless searches of my person, personal property, electronic devices, automobiles, residence, and outbuildings at the request of my Probation Officer, by the Probation Officer, Peace Officer, and/or his designee; with or without Probable Cause; any time day or night. I understand that any Alcohol, evidence, and/or Contraband will be confiscated, and new charges can be filed in the event of criminal activity.

(State's Exhibit 1, p. 3.)

A few days before the expiration of Jaskowski's probation, a police officer was looking for him to serve an arrest warrant. (R., p. 156.) Knowing Jaskowski was on probation, the officer contacted his probation officer. (Id.) The probation officer also requested that the officer stop Jaskowski. (Id.) The probation officer requested the stop so he could "see" Jaskowski, whom he had not had personal contact with for a while, and to "test" him. (R., p. 159.) The officer stopped Jaskowski while Jaskowski was driving, but learned before making contact with him that the warrant had been withdrawn. (R., p. 156.) The officer proceeded with the traffic stop on the basis that the probation officer had also requested the

officer to stop Jaskowski. (Id.) The officer ultimately cited Jaskowski for failure to have a current driver's license. (R., pp. 156-57.)

The probation officer arrived at the scene of the stop, talked to Jaskowski, and searched his car. (R., p. 157.) The probation officer found a glass pipe with methamphetamine residue on it. (R., p. 158.) The probation officer requested that the police officer take Jaskowski into custody and then the probation officer and the police officer continued the search of Jaskowski's car and found another pipe with methamphetamine residue. (R., pp. 157-59.)

The state charged Jaskowski with possession of a controlled substance. (R., pp. 6-7, 56.) Jaskowski moved to suppress "all evidence seized following the unconstitutional stop." (R., pp. 94-95.) In a memorandum in support of the motion, Jaskowski submitted three issues:

A. Was [Police] Officer Wells and/or [Probation] Officer Harper authorized to stop Jaskowski's vehicle based solely upon an alleged waiver of 4th Amendment Rights and a desire to speak with Jaskowski?

B. Does the existence of a warrant for arrest and its subsequent recall form the basis for a permissible traffic stop?

C. Did the state of Idaho adequately meet its burden of proof at the preliminary hearing with the introduction of a field test conducted by the officer with no scientific foundation concerning the reliability of the test?

(R., p. 106.)

The district court concluded that the traffic stop did not violate Jaskowski's Fourth Amendment rights because his agreement to submit to warrantless searches included an implied consent to a limited seizure of his person. (R., pp. 161-65.) It granted the suppression motion, however, based on the

conclusion that the search of Jaskowski's car violated his rights because the probation officer "did not request permission or consent to search the vehicle." (R., pp. 165-67.) The state filed a timely notice of appeal from the order granting suppression of evidence found in the probation search of Jaskowski's car. (R., pp. 174-76.)

ISSUE

Did the district court err when it concluded that Jaskowski's probation conditions did not allow the search of his car?

ARGUMENT

The District Court's Conclusion That Jaskowski's Probation Conditions Did Not Waive His Right Against Warrantless Searches Of His Car By His Probation Officer Under The Facts Of This Case Is Error

A. Introduction

Concluding that the decision in State v. Turek, 150 Idaho 745, 250 P.3d 796 (Ct. App. 2011), was “controlling,” the district court held the search of Jaskowski’s car violated his rights against unreasonable searches because the probation officer “did not request permission or consent to search the vehicle.” (R., pp. 166-67.) The district court’s decision is in error because it misread the clear holding in Turek that the probationer must be *informed* of an officer’s intent to conduct an impending search pursuant to a probation waiver such as imposed upon Jaskowski. The district court’s holding that the probation officer was required to do more than inform Jaskowski of the impending search, and instead obtain an independent consent before conducting a proper search, was in no way required by the holding of Turek, and was reversible error.

B. Standard Of Review

“When reviewing a motion to suppress, this Court defers to the district court’s findings of fact unless the findings are clearly erroneous. But this Court may undertake a free review of the district court’s determination as to whether constitutional requirements have been satisfied in light of the facts found.” State v. Pachosa, 160 Idaho 35, 38, 368 P.3d 655, 658 (2016) (internal quotations omitted).

C. The Search Of His Car Did Not Infringe On Any Privacy Right Held By Jaskowski During His Probation

Probationers enjoy a reduced expectation of privacy. Samson v. California, 547 U.S. 843, 848 (2006); United States v. Knights, 534 U.S. 112, 118 (2001); State v. Klingler, 143 Idaho 494, 497, 148 P.3d 1240, 1243 (2006); State v. Gawron, 112 Idaho 841, 843, 736 P.2d 1295, 1297 (1987); State v. Cruz, 144 Idaho 906, 908, 174 P.3d 876, 878 (Ct. App. 2007). One such reduction in the expectation of privacy may arise from “an advance waiver of fourth amendment rights” as a condition of probation. Gawron, 112 Idaho at 843, 736 P.2d at 1297. See also Knights, 534 U.S. at 118-21 (probation condition “significantly diminish[ed] Knights’ reasonable expectation of privacy”); Cruz, 144 Idaho at 910, 174 P.3d at 880 (“Cruz’s parole condition significantly diminished his reasonable expectation of privacy”). The Idaho Supreme Court “has determined that a probationer’s consent to searches constitutes a waiver of Fourth Amendment rights.” State v. Purdum, 147 Idaho 206, 208, 207 P.3d 182, 184 (2009). “Idaho appellate courts have long recognized that parolees and probationers have a diminished expectation of privacy and will enforce Fourth Amendment waivers as a condition of parole or probation.” State v. Hedgecock, 147 Idaho 580, 584, 212 P.3d 1010, 1014 (Ct. App. 2009).

In Turek, the Idaho Court of Appeals applied these legal principles to a probation search condition similar to the one executed by Jaskowski, and concluded that it did not constitute “a *complete* waiver of all Fourth Amendment rights.” Turek, 150 Idaho at 749, 250 P.3d at 800 (emphasis original). The Court held that “a probation condition that requires a probationer to submit to a search

'at the request of' an officer requires that the probationer be *informed* of an officer's intent to conduct an impending search." Id. at 752, 250 P.3d at 803 (emphasis added). In this case, the probation officer "advised" Jaskowski he was going to "search the vehicle." (11/17/16 Tr., p. 7, Ls. 2-14.) Because Jaskowski was informed of the probation officer's intent to conduct an impending search, the search of the car complied with the Fourth Amendment waiver as interpreted in Turek.

The district court concluded that the search was improper because the probation officer "did not request permission or consent to search" but instead made the "declaratory statement" of his intent to search. (R., p. 167.) However, under the plain language of the holding of Turek, the Fourth Amendment waiver at issue merely required that Jaskowski "be *informed* of an officer's intent to conduct an impending search." Turek, 150 Idaho at 752, 250 P.3d at 803 (emphasis added). The district court's requirement that the probation officer secure "permission or consent to search" on top of the Fourth Amendment waiver is not required by Turek.

Requiring "permission or consent" in addition to the rights waiver is also inconsistent with the above-cited law because it would render the Fourth Amendment waiver a nullity. As set forth above, "a probationer's consent to searches constitutes a waiver of Fourth Amendment rights." Purdum, 147 Idaho at 208, 207 P.3d at 184. "Idaho appellate courts have long recognized that parolees and probationers have a diminished expectation of privacy and will enforce Fourth Amendment waivers as a condition of parole or probation."

Hedgecock, 147 Idaho at 584, 212 P.3d at 1014. Interpreting Jaskowski’s Fourth Amendment waiver as merely allowing a probation officer to request Jaskowski’s consent to search, something the probation officer could do without a waiver, renders the waiver a nullity. Compare Turek, 150 Idaho at 749, 250 P.3d at 800 (Fourth Amendment waiver in question is a waiver, albeit not “a *complete* waiver of all Fourth Amendment rights” (emphasis original)). Moreover, such an interpretation would make the Fourth Amendment waiver completely redundant to the first condition of probation requiring compliance with all “lawful requests” of probation officers and police officers. (Exhibit 1, p. 2.)

The language of probation condition 9 and the holding of Turek show that Jaskowski entered a waiver, albeit not a “complete” waiver, of Fourth Amendment rights that reduced his expectation of privacy. Jaskowski was still entitled to be *informed* of the intent to search, but he was so informed. The search in this case did not infringe upon Jaskowski’s reduced expectation of privacy, and therefore did not violate the Fourth Amendment. The district court erred in holding otherwise.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order suppressing evidence and remand for further proceedings.

DATED this 14th day of June, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 14th day of June, 2017, served two true and correct paper copies of the foregoing BRIEF OF APPELLANT to be placed in the United States mail, postage prepaid, addressed to:

BRODY L. JASKOWSKI
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/s/ Kenneth K. Jorgensen
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KKJ/dd