DA 18-0305

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 38N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RANDEL J. WOODY,

Defendant and Appellant.

APPEAL FROM: District Court of the Fifth Judicial District,
In and For the County of Jefferson, Cause No. DC 2017-11
Honorable Luke M. Berger, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Haley Connell Jackson, Assistant Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Damon Martin, Assistant Attorney General, Helena, Montana

Steven C. Haddon, Jefferson County Attorney, Boulder, Montana

Submitted on Briefs: August 12, 2020

Decided: February 16, 2021

Filed:

Clerk

Justice Dirk Sandefur delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, we decide this case by memorandum opinion. It shall not be cited and does not serve as precedent. The case title, cause number, and disposition shall be included in our quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Randel J. Woody appeals from his 2018 judgment of conviction and sentence in the Montana Fifth Judicial District Court, Jefferson County, on the offenses of felony criminal possession of dangerous drugs (CPDD) and misdemeanor possession of drug paraphernalia. We affirm.

¶3 At approximately 2:00 a.m. on February 18, 2017, Jefferson County Sheriff's Deputy Jason Korst was on patrol in Whitehall, Montana, when he observed a vehicle with a non-functioning headlight stopped at a stop sign on North Jefferson Street at its intersection with Yellowstone Trail. Behind the vehicle, five residences were located along North Jefferson Street between its intersection with Yellowstone Trail and its dead-end. Deputy Korst did not see whether the vehicle had been at any particular residence prior to approaching the stop sign, but was aware that two women lived in a residence at the end of the dead-end street and that their residence was known to local law enforcement as a "drug house" where suspected drug transactions involving methamphetamine often occurred. After observing the vehicle turn onto Yellowstone Trail at the intersection, Deputy Korst stopped it based on the non-functioning headlight.

¶4 On approach, Korst immediately recognized the driver as Woody, an individual with whom he had "a history," based on previous encounters in town and 2-3 prior traffic stops.

He also knew that Woody had a drug-related criminal history and had recently been on probation on a felony drug conviction in Idaho. Korst was further aware that Woody was known to local law enforcement as a methamphetamine provider for the two women who resided at the suspected "drug house" at the end of the dead-end street.

¶5 As the traffic stop unfolded, Woody could not produce proof of vehicle registration or mandatory liability insurance. He explained that the car was only recently purchased and belonged to his wife. Korst observed that Woody was strangely sitting so far forward in the driver's seat that his knees were up against the dashboard and thus suspected that he was trying to conceal something on the floor. Before returning to his vehicle, Korst asked Woody if he was "still on probation." Woody confirmed that he was.[1]

¶6 The deputy then returned to his patrol car and, through dispatch, contacted the on-call DOC probation officer (PO) in Butte. Coincidentally, the on-call PO was familiar with Woody after having previously supervised him in the DOC Enhanced Supervision Program (ESP). The PO was thus aware that Woody had previously violated DOC-ESP programming requirements based on methamphetamine use. Korst's body-cam recording indicates that he told the PO that Woody had just "left a residence where there's . . . been some trading going on." He stated that the "trading" apparently involved "meth," based on local "intel."[2] Deputy Korst asked the PO for authorization to conduct a probation

[1] After a transfer from Idaho, Woody was under the supervision of the Montana Department of Corrections (DOC) out of its office in Butte, Montana.

[2] However, Korst did not tell the PO about his observation of Woody sitting strangely in the car, or his resulting suspicion that he appeared to be trying to conceal something on the floor.

search of Woody's vehicle. With reference only to the no-headlight traffic violation, the PO authorized the search.

¶7 Deputy Korst returned to the vehicle and advised Woody that the PO had authorized him to search the vehicle and that Korst was going to temporarily detain him during the process.[3] After Woody stepped out of the vehicle, Korst gave him a *Miranda* rights advisory and ultimately asked him, "Am I going to find anything in the car?" Woody replied that somebody left a digital scale underneath the driver's seat. He further explained that he had just come from "[getting] steaks" at "Lori and Carmen's" residence. Korst knew that Lori and Carmen were the two women who resided at the suspected "drug house" at the end of the dead-end street from which Woody turned before the traffic stop. The deputy then proceeded with the search and found a container under the driver's seat containing a digital scale, with suspected methamphetamine residue, two syringes, and a lid from a tin can. A field-test of the scale residue indicated positive for methamphetamine. Korst then arrested Woody.

¶8 The State charged Woody with felony CPDD and misdemeanor possession of drug paraphernalia. Woody moved for suppression of the fruits of the vehicle search on the asserted ground that there was not reasonable cause to justify the search based on non-speculative, corroborated facts. At the suppression hearing, the State presented the

[3] At some point in the process, Korst advised Woody that he was not going to cite him for the no-headlight violation but instead give him a warning.

testimony of Deputy Korst and the involved on-call DOC PO in support of the search.[4] The District Court denied the motion on the summarily stated ground that the PO had reasonable cause to believe that Woody was in violation of his probation based on the no-headlight traffic violation and, as a probationer on DOC supervision, Woody was subject to search under DOC rules upon reasonable cause to believe that he was in violation of his probation. Under a plea agreement reserving his right to appeal the adverse ruling, Woody subsequently pled guilty as charged and was sentenced in accordance with the plea agreement. Woody timely appealed.

¶9 The standard of review of a denial of a motion to suppress evidence is whether the predicate findings of fact are clearly erroneous and whether the lower court correctly interpreted and applied the applicable law to those facts. *State v. Burchett*, 277 Mont. 192, 195, 921 P.2d 854, 856 (1996); *State v. Charlie*, 2010 MT 195, ¶ 20, 357 Mont. 355, 239 P.3d 934. A finding of fact is clearly erroneous if not supported by substantial evidence, the lower court misapprehended the effect of the evidence, or we are firmly convinced upon our review of the record that the lower court was otherwise mistaken. *State v. Fritz*, 2006 MT 202, ¶ 8, 333 Mont. 215, 142 P.3d 806.

[4] Also filed as an attachment to Woody's supporting brief, but apparently not offered into evidence by either party, was a recording of the incident captured by Korst's body camera and which includes Korst's side of his patrol car telephone conversation with the on-call PO. At the suppression hearing, defense counsel questioned Korst regarding the "drug house" and as to whether he told the PO that he had actually observed Woody "leave that residence." Korst testified that he did not recall saying that. He stated that he believed that he told the PO that he saw Woody leaving "the *area* of that residence," to which defense counsel replied, "Correct." (Emphasis added.)

¶10 Private citizens have fundamental federal and state constitutional rights to be free from unreasonable government searches and seizures. *See* U.S. Const. amend. IV and XIV; Mont. Const. art. II, § 11. As a procedural component of those protections, government searches and seizures must generally occur pursuant to a judicial warrant issued on probable cause. U.S. Const. amend. IV and XIV; Mont. Const. art. II, § 11. Except under certain recognized exceptions to the warrant requirement, warrantless searches and seizures are *per se* unreasonable. *City of Missoula v. Kroschel*, 2018 MT 142, ¶ 10, 391 Mont. 457, 419 P.3d 1208 (internal federal and state citations omitted); *State v. Ellis*, 2009 MT 192, ¶ 24, 351 Mont. 95, 210 P.3d 144 (internal federal and state citations omitted).[5] Here, Woody does not contest the constitutional validity of the initial traffic stop or its duration.[6] The question is whether the search was constitutionally reasonable under the circumstances.

¶11 While supervised probationers necessarily have a diminished expectation of privacy due to the nature of probation and the compelling government interests involved, their probation status does not completely deprive them of any right to privacy. *See State v. Fischer*, 2014 MT 112, ¶¶ 11-17, 374 Mont. 533, 323 P.3d 891; *State v. Moody*, 2006 MT 305, ¶ 27, 334 Mont. 517, 148 P.3d 662 (distinguishing diminished expectation of privacy

[5] Whether a constitutional search or seizure occurred is a function of whether government action intruded upon a subjective and objectively reasonable expectation of privacy. *State v. Hoover*, 2017 MT 236, ¶ 29, 388 Mont. 533, 402 P.3d 1224 (federal and state citations omitted); *State v. Goetz*, 2008 MT 296, ¶ 27, 345 Mont. 421, 191 P.3d 489 (internal citations omitted).

[6] Nor does the State assert that the search was not a constitutional search.

of probationers from "no expectation of privacy" of incarcerated prisoners). However, based on the important special government interests involved, probation searches authorized by the supervising agency on reasonable grounds are a recognized exception to the warrant requirement of the Fourth Amendment and Article II, Section 11, of the Montana Constitution. *Griffin v. Wisconsin*, 483 U.S. 868, 873-80, 107 S. Ct. 3164, 3168-72 (1987); *State v. Burke*, 235 Mont. 165, 168-71, 766 P.2d 254, 256-57 (1988) (applying *Griffin* rationale under Montana law); *See also Moody*, ¶¶ 11-12 (distinguishing non-search home visits from home searches on "reasonable cause" under DOC supervision rules). Under this narrow exception, warrantless probation searches are constitutionally permissible based on reasonable cause to suspect that the subject is in violation of his or her probation and facts that reasonably justify the search under the totality of the circumstances in furtherance of the special government interests in rehabilitating probationers and ensuring their compliance with related conditions of probation and the criminal law. *See Fischer*, ¶¶ 11-17 (affirming warrantless probation search under court-ordered probation condition subjecting probationer to search on reasonable suspicion of probation violation); *Burke*, 235 Mont. at 168-71, 766 P.2d at 256-57 (affirming warrantless probation search on "reasonable cause" pursuant to rules of supervising agency); *Griffin*, 483 U.S. at 873-80, 107 S. Ct. at 3168-72 (affirming warrantless probation search on "reasonable cause" pursuant to rules of supervising agency).[7]

[7] *See also Moody*, ¶ 17 ("probation officer is charged with not only enforcing conditions of supervision, but also discerning any deception by the probationer"—citing *United States v. Reyes*, 283 F.3d 446, 458 (2d Cir. 2002)).

¶12 The reasonable cause standard for warrantless searches is different and less demanding than the probable cause and particularized suspicion standards required by the Fourth Amendment and Article II, Section 11, of the Montana Constitution in other contexts. *Griffin*, 483 U.S. at 878-80, 107 S. Ct. at 3171-72 (holding that application of probation search exception obviated the need for consideration of whether the warrantless search at issue was constitutionally permissible on reasonable grounds that probationer was in possession of contraband); *Burke*, 235 Mont. at 168-71, 766 P.2d at 256-57 (applying *Griffin* rationale under Montana law). *Compare State v. Hoover*, 2017 MT 236, ¶ 17, 388 Mont. 533, 402 P.3d 1224 (particularized suspicion standard for investigative stops (internal federal and state citations omitted)). Upon challenge, courts must assess the reasonableness of the justification for a probation search from the perspective of the supervising agency "on the basis of its entire experience with the probationer," its knowledge and assessment of his or her "life, character, and circumstances," and in furtherance of the special government interests in rehabilitating probationers and ensuring their compliance with related conditions of probation and the criminal law. *Griffin*, 483 U.S. at 879, 107 S. Ct. at 3171. *See also Fisher*, ¶ 11 ("probation officer is in the best position to determine what level of supervision is necessary" to further rehabilitation of the probationer and his or her conformance to the law). Law enforcement assistance or involvement in the search "does not render an otherwise lawful probation search invalid." *Burchett*, 277 Mont. at 196, 921 P.2d at 856.

¶13 Here, Woody does not dispute that he was on DOC-supervised probation at the time of the traffic stop and resulting search. He thus does not dispute that he was subject to

Admin. R. M. 20.7.1101(8) (2008) ("offender must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen") and Admin. R. M. 20.7.1101(7) (2008) (probation officer "may search the person, vehicle, and residence of the offender," or "authorize a law enforcement agency" to do so, upon "reasonable suspicion . . . that the offender has violated the conditions of supervision"). Nor does he dispute that the no-headlight offense was a violation of his probation under Admin. R. M. 20.7.1101(8). He asserts, however, that the no-headlight traffic violation was insufficient alone to justify the search of his vehicle and that the on-call PO had no other basis upon which to suspect that he was in possession of contraband or had otherwise violated his probation or the criminal law.

¶14 The probation search exception does not require particularized suspicion that the probationer may be in possession of contraband. It requires only (1) that the supervising agency have reasonable cause to suspect that the probationer may be in violation of his or her probation, and (2) knowledge of case-specific facts that, from the perspective of the agency based on "its entire experience with the probationer" and its knowledge and assessment of his or her "life, character, and circumstances," justify the subject search in furtherance of the special government interests in rehabilitating probationers and ensuring their compliance with related conditions of probation and the criminal law. Here, despite the fact that the on-call PO authorized the search of Woody's vehicle with reference only to the no-headlight offense, the record clearly indicates that he did so with knowledge that Woody: (1) was on probation on a felony drug possession conviction; (2) had a prior history of DOC programming non-compliance based on methamphetamine use; and (3) was

observed by law enforcement at 2:00 in the morning in rural Whitehall, Montana, in the vicinity of a residence suspected by law enforcement, based on local "intel," as a location of methamphetamine "trading." Regardless of the District Court's conclusory rationale, the hearing record thus includes substantial evidence satisfying the requirements of the probation search exception to the constitutional warrant and probable cause requirements under the totality of the circumstances of this case.

¶15 If the ultimate result is correct, we will uphold the result reached by a lower court regardless of the rationale stated as justification therefor. *Phillips v. City of Billings*, 233 Mont. 249, 252, 758 P.2d 772, 774 (1988); *Steadman v. Halland*, 197 Mont. 45, 52, 641 P.2d 448, 452 (1982). We accordingly hold that the District Court correctly denied Woody's motion to suppress the fruits of the DOC-authorized probation search of the vehicle he was driving on February 18, 2017.

¶16 We decide this case by memorandum opinion pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules. Affirmed.

/S/ DIRK M. SANDEFUR

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ JIM RICE