

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Bryan Zaphiriou,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 8, 2022

Court of Appeals Case No.
22A-CR-360

Interlocutory Appeal from the
Marion Superior Court

The Honorable John Michael
Christ, Magistrate

Trial Court Cause No.
49D23-2003-F6-11743

Crone, Judge.

Case Summary

- [1] Bryan Zaphiriou was charged with level 6 felony maintaining a common nuisance and dealing in marijuana. He now brings this interlocutory appeal challenging the trial court's denial of his motion to suppress items seized during the warrantless search of his home while he was serving on home detention. Concluding that Zaphiriou waived his constitutional rights against search and seizure, we affirm.

Facts and Procedural History

- [2] The underlying facts are undisputed. In November 2019, Zaphiriou was placed on home detention through Marion County Community Corrections (MCCC) as part of his executed sentence for an unrelated conviction. In conjunction, Zaphiriou executed an acknowledgment of the terms and conditions of his home detention (the MCCC contract), which prohibited him from possessing non-prescribed drugs on his person and in his residence and required that he obey all laws. The MCCC contract also included the following waiver:

You waive your rights under the Fourth Amendment of the United States Constitution as well as Article 1 Section 11 of the Indiana Constitution, regarding search and seizure of your person or effects. Furthermore, you shall permit MCCC staff, and/or their contracted vendor, as well as any member of law enforcement acting on MCCC's behalf, to search your person, residence or motor vehicle, or any location where your personal property may be found, to [e]nsure compliance with the requirements of MCCC or their contracted vendor.

Appellant's App. Vol. 2 at 20.

[3] On March 4, 2020, the Indianapolis Metropolitan Police Department (the IMPD) received an anonymous tip that narcotics were being distributed from Zaphiriou's home. Officer Brett Lorah was assigned to investigate. For two weeks, he and other officers conducted surveillance of Zaphiriou's home and observed many people visit the residence and leave after only approximately five minutes. The IMPD also conducted traffic stops on vehicles that had been at Zaphiriou's residence, from which the IMPD recovered several clear plastic bags of marijuana, and learned that Zaphiriou supplied the marijuana. Officer Lorah then learned that Zaphiriou was on home detention with MCCC. Officer Lorah contacted MCCC Liaison Officer Jill Jones to inform her of the results of the investigation and suggest a compliance search.

[4] On March 18, 2020, Jones, accompanied by Officer Lorah, went to Zaphiriou's residence to conduct a home visit. Jones knocked on Zaphiriou's door. When the door was opened, Officer Lorah smelled the odor of what he knew to be raw marijuana. Jones explained to Zaphiriou that she was from MCCC and was there to do a home visit. Jones found out from Zaphiriou which bedroom was his, entered the room, and saw a clear plastic bag containing what she knew to be marijuana in a glass jar on a chair. Officer Lorah also detected the strong odor of marijuana throughout the residence. Jones and Officer Lorah suspended the home visit, and Officer Lorah obtained a search warrant. A search of the residence pursuant to the warrant revealed more marijuana, drug ledgers, and over \$20,000 cash.

[5] On March 20, 2020, the State charged Zaphiriou with level 6 felony maintaining a common nuisance and dealing in marijuana. In August 2021, Zaphiriou filed a motion to suppress, which the trial court denied. This interlocutory appeal ensued.

Discussion and Decision

[6] Zaphiriou asserts that the trial court erred in denying his motion to suppress. We review the trial court’s ruling on a motion to suppress for an abuse of discretion. *Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014). Where the court’s ruling involves the constitutionality of a search or seizure, we are presented with a question of law, which we review de novo. *Id.*

[7] The Fourth Amendment to the United States Constitution generally requires police to conduct searches pursuant to a warrant supported by probable cause.¹ *State v. Schlechty*, 926 N.E.2d 1, 3 (Ind. 2010), *cert. denied* (2011). However, our supreme court has held that “neither probable cause nor reasonable suspicion is required if a person on probation or home detention unambiguously consents to a warrantless and suspicionless search.” *State v. Ellis*, 167 N.E.3d 285, 287 (Ind. 2021). Here, pursuant to the MCCC contract, Zaphiriou unambiguously waived his Fourth Amendment right against unreasonable searches and seizures and agreed to permit law enforcement and MCCC staff to search his residence to ensure compliance with the requirements of MCCC. Zaphiriou

¹ Zaphiriou’s challenge to the home visit is based solely on the Fourth Amendment.

does not challenge the validity of the MCCC contract. Rather, he asserts that under *Micheau v. State*, 893 N.E.2d 1053, 1059-60 (Ind. Ct. App. 2008), *trans. denied* (2009), the home visit required a warrant supported by probable cause because it was not a true compliance visit, but rather a pretext in furtherance of an independent police investigation. However, *Micheau* is inapplicable because it addressed a situation where a defendant had *not* executed a waiver of his constitutional rights against unreasonable searches and seizures. *See State v. Fox*, 186 N.E.3d 157, 161-62 (Ind. Ct. App. 2022) (concluding that rationale for *Micheau* does not apply where rights against unreasonable searches and seizures have been waived).

[8] Zaphiriou also argues that under the terms of the MCCC contract, he agreed to waive his Fourth Amendment rights only for searches to ensure compliance with the requirements of MCCC, and he did not agree to waive his rights regarding searches to further an independent investigation by other police agencies. Zaphiriou ignores that under the terms of the MCCC contract, he agreed to follow all laws, not to possess illegal substances, and not to have illegal substances present in his residence. Jones's home visit was to ensure that Zaphiriou was complying with these conditions. As such, the waiver executed by Zaphiriou applies to Jones's home visit regardless of IMPD's involvement. Based on *Ellis* and Zaphiriou's valid waiver of his Fourth Amendment rights, we conclude that the trial court did not abuse its discretion in denying Zaphiriou's motion to suppress.

[9] Affirmed.

Vaidik, J., and Altice, J., concur.