IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-CR-159

State of Indiana

Appellant (Plaintiff below),

–v–

Jarrel Luke Ellis,

Appellee (Defendant below).

Argued: January 21, 2021 | Decided: April 23, 2021

Appeal from the Marion Superior Court,
No. 49G20-1906-F2-24884
The Honorable Jennifer Harrison, Judge

On Petition to Transfer from the Indiana Court of Appeals,
No. 20A-CR-61

Opinion by Justice Goff

Chief Justice Rush and Justices David, Massa, and Slaughter concur.

Goff, Justice.

After determining the defendant's guilt, a trial court sometimes sentences the defendant to serve part or all of his sentence on home detention under the care of community corrections, rather than commitment to the Department of Correction. When a defendant is processed for home detention, he typically signs an agreement in which he foregoes many of his rights. These agreements frequently include consent to allow community corrections to search the defendant's person or home to ensure compliance with other rules. Since this consent to search is a waiver of an important constitutional right, it must be clearly expressed. This case raises the issue of whether a waiver of the "right against search and seizure" clearly informs the defendant that a search may be conducted without reasonable suspicion. We hold that it does. Additional language discussing reasonable suspicion is unnecessary. When an individual waives his rights against search and seizure, this waiver clearly encompasses the right to be free from search and seizure absent reasonable suspicion. [1]

Facts and Procedural History

In 2019, Jarrel Ellis was serving home detention with Marion County Community Corrections (MCCC). When Ellis was placed on home detention, he signed the MCCC Contract (Contract), which provided, in relevant part:

> You waive your right against search and seizure, and shall permit MCCC staff, or any law enforcement officer acting on MCCC's behalf, to search your person, residence, motor vehicle, or any location where your personal property may be found, to [e]nsure compliance with the requirements of community corrections.

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[1] Because the case before us involves home detention, we limit our holding here to that context only.

Ex. p. 10. In January 2019, Jameil Parker, Ellis's case manager, suspected that Ellis wasn't complying with the terms of the Contract because he "requested to visit expensive restaurants" while working only part-time. Tr. pp. 5–6. Parker asked Jill Jones, an MCCC law-enforcement liaison, to complete a compliance check on Ellis's residence. Jones, along with a team of law-enforcement officers, completed the compliance check, including a protective sweep. During the search, officers saw a plastic container with a green leafy substance, which they believed to be marijuana; and a fake book with a hidden compartment that held several bundles of cash. Based on these discoveries, the officers applied for a search warrant. When they executed the search warrant, the officers discovered weapons, a substance believed to be cocaine, paraphernalia consistent with drug dealing, digital scales, and a large amount of cash.

The State charged Ellis with dealing in cocaine, a Level 2 felony; possession of cocaine, a Level 3 felony; five counts of unlawful possession of a firearm by a serious violent felon, all Level 4 felonies; neglect of a dependent, a Level 5 felony; escape, a Level 6 felony; possession of a controlled substance, a Level 6 felony; and possession of marijuana, a Class A misdemeanor. *See* Ind. Code § 35-48-4-1(a)(2) (2019), I.C. § 35-48-4-1(e)(1) (dealing in cocaine); I.C. § 35-48-4-6(a), I.C. § 35-48-4-6(d)(2) (possession of cocaine); I.C. § 35-47-4-5(c) (unlawful possession of a firearm); I.C. § 35-46-1-4(a)(1), I.C. § 35-46-1-4(b)(1)(B) (neglect of a dependent); I.C. § 35-44.1-3-4(b) (escape); I.C. § 35-48-4-7(a), I.C. § 35-48-4-7(b) (possession of a controlled substance); I.C. § 35-48-4-11(a)(1), I.C. 35-48-4-11(b) (possession of marijuana). The State also alleged that Ellis was a habitual offender. *See* I.C. § 35-50-2-8.

Ellis moved to suppress the evidence seized during the search of his home, arguing that the search violated his rights under Article 1, Section 11 of the Indiana Constitution and under the Fourth Amendment to the United States Constitution because (1) the Contract did not unambiguously provide that Ellis waived his rights against a suspicionless search, and (2) law enforcement did not have reasonable suspicion to search Ellis's home. The trial court granted Ellis's motion to suppress, finding that the Contract

didn't include a waiver of searches without reasonable suspicion. The State appealed and the Court of Appeals reversed. *State v. Ellis*, 153 N.E.3d 305, 311 (Ind. Ct. App. 2020). The Court of Appeals determined that the Contract unambiguously authorized warrantless and suspicionless searches, without limitation. *Id*. In doing so, the panel accepted the reasoning in *Hodges v. State*, which found that identical language unambiguously informed Hodges that he was waiving his rights against searches without reasonable suspicion. *Id.* at 309, 311 (citing 54 N.E.3d 1055, 1061 (Ind. Ct. App. 2016)). In following *Hodges*, the panel here rejected the reasoning and outcome in *Jarman v. State*, where another Court of Appeals panel held that a community-corrections contract consenting to searches "without a warrant and without probable cause," but which failed to reference "reasonable suspicion," precluded an unambiguous waiver. *Id.* at 310–11 (citing 114 N.E.3d 911, 914–15 (Ind. Ct. App. 2018)). And even if the reasoning of *Jarman* were correct, the panel found that case distinguishable based on the comparatively limited scope of waiver at issue there. *Id.* at 311.

Ellis petitioned for transfer, which we now grant, thereby vacating the Court of Appeals opinion. *See* Ind. Appellate Rule 58(A).

Standards of Review

The State appealed from a negative judgment, so it must show that the trial court's ruling on the suppression motion was contrary to law. *State v. Keck*, 4 N.E.3d 1180, 1183 (Ind. 2014). While this Court reviews the trial court's factual findings deferentially, we review conclusions of law de novo. *State v. Brown*, 70 N.E.3d 331, 335 (Ind. 2017).

Discussion and Decision

The Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution both generally require police to conduct searches pursuant to a warrant supported by probable cause. *State v. Schlechty*, 926 N.E.2d 1, 3 (Ind. 2010). However, 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. Vanderkolk*, 32 N.E.3d 775, 779 (Ind. 2015). In *Vanderkolk*, police conducted a warrantless and suspicionless compliance search of the residence of Jordan Sullivan, who was on home detention. *Id*. at 775–76. The search revealed illegal drugs and paraphernalia. *Id*. at 776. Vanderkolk was living at Sullivan's residence and was charged with various drug offenses. *Id.* at 775–76. When the trial court suppressed some of the evidence, the State appealed. *Id.* at 776. This Court noted that placement "under either probation or a community corrections program is a matter of grace and a conditional liberty that is a favor, not a right," and that probation searches "are necessary to the promotion of legitimate government interests." *Id*. at 777, 779 (citation and quotation marks omitted). While concluding that the community-correction contract in *Vanderkolk* had only consented to searches upon probable cause, this Court observed that advanced consent could authorize a warrantless search without reasonable suspicion. *Id*. at 780.

After *Vanderkolk*, the Court of Appeals decided *Hodges v. State*, which involved substantially the same language at issue here: "You waive your right against search and seizure, and shall permit a Probation Officer, or any law enforcement officer acting on a Probation Officer's behalf, to search your person, residence, motor vehicle, or any location where your personal property may be found, to [e]nsure compliance with probation." 54 N.E.3d at 1057. The *Hodges* panel held that the phrasing unambiguously informed Hodges that he and his property could be searched without reasonable suspicion. *Id*. at 1061. In so holding, the panel rejected Hodges's assertion that a waiver was only unambiguous if it specified what constitutional protections were being waived. *Id.*

In *Jarman v. State*, a different Court of Appeals panel held that a more detailed agreement did not unambiguously permit a search without reasonable suspicion. 114 N.E.3d at 915. The agreement in that case provided as follows:

> In consideration of the opportunity to participate in a Community Corrections program rather than serve my sentence through the Department of Correction or other secure or more restrictive environment, I acknowledge and agree that

> I hereby waive my rights concerning searches and seizures under the Fourth and Fourteenth Amendments of the United States Constitution and under Article 1, § 11 of the Indiana Constitution. Specifically, I hereby consent to allow employees of Community Corrections or law enforcement officers to search my person or property **without a warrant and without probable cause**.

Id. at 913 (emphasis added). The panel held that, because the last sentence specified that the defendant consented to searches "without a warrant and without probable cause," Jarman did not unambiguously consent to a search without reasonable suspicion. *Id*. at 915. "If the State wanted Jarman to be subject to suspicionless searches as a condition of entering community corrections," the panel added, "it should have included in its waiver form language like 'without suspicion,' 'without reasonable suspicion,' 'without reasonable cause,' or 'without cause.'" *Id*.

Ellis contends that, because the Contract is less descriptive than the contract in *Jarman*, the Contract couldn't have unambiguously waived his right against searches without reasonable suspicion. This argument falls flat, however, because it was the detailed language in the *Jarman* contract (specifically consenting to searches "without a warrant and without probable cause") that precluded an unambiguous waiver of Jarman's right against a warrantless and suspicionless search. In Ellis's Contract, by contrast, no similar language limits the waiver to probable cause. To the extent that *Jarman* suggests language should be used in community-corrections contracts to clarify that the defendant is consenting to such searches, we find that language unnecessary. The broad language in the Contract clearly informs defendants that they are waiving **all** of their rights against searches and seizures, which includes the right against search and seizure absent reasonable suspicion. Additional language specifying that the defendant may be searched without reasonable suspicion is simply unnecessary. A community-corrections home-detention contract that states that the defendant "waives all rights against search and seizure" unambiguously informs the defendant that he is waiving the right against searches absent reasonable suspicion.

Ellis also contends that the language of the Contract makes no sense because there is no "right against search and seizure." Pet. to Trans. at 7. Instead, the "right is one against *unreasonable* search and seizure." *Id.* Therefore, Ellis argues, the Contract couldn't have unambiguously waived his right. While Ellis is correct that the right is against **unreasonable** search and seizure, the absence of the word "unreasonable" does not make the Contract ambiguous. If one broadly waives the right against search and seizure, the waiver necessarily encompasses the right against unreasonable search and seizure. Because Ellis unambiguously consented to searches absent reasonable suspicion, the trial court erred when it suppressed the evidence obtained from the search of Ellis's home.

Conclusion

Because the Contract unambiguously informed Ellis that he waived his right against search and seizure absent reasonable suspicion, we reverse and remand this case to the trial court for proceedings consistent with this opinion.

Rush, C.J., and David, Massa, and Slaughter, JJ., concur.

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