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IN THE
COURT OF APPEALS OF INDIANA

State of Indiana,
Appellant-Plaintiff,

v.

Lamar Fox,
Appellee-Defendant.

April 6, 2022

Court of Appeals Case No.
21A-CR-2445

Appeal from the Marion Superior
Court

The Honorary Sheila A. Carlisle,
Judge

The Honorable Stanley E. Kroh,
Magistrate

Trial Court Cause No.
49D29-2102-F4-5501

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Plaintiff, State of Indiana (State), appeals the trial court's grant of Appellee-Defendant, Lamar Fox's (Fox), motion to suppress.
- [2] We reverse.

ISSUE

- [3] The State presents us with one issue, which we restate as: Whether the trial court's grant of Fox's motion to suppress was contrary to law because he waived his Fourth Amendment and Article 1, Section 11 rights as a condition of his home detention.

FACTS AND PROCEDURAL HISTORY

- [4] On July 10, 2020, Fox was placed on home detention through Marion County Community Corrections (MCCC) in a criminal matter unrelated to the instant case. On July 13, 2020, Fox executed a Post-Conviction Acknowledgement of Electronic Monitoring Terms and Conditions (home detention contract) which outlined the rights and obligations of his home detention placement and GPS monitoring. Fox acknowledged that, while on home detention, he was to refrain from possessing non-prescribed drugs on his person or in his residence; refrain from possessing firearms; refrain from tampering with his GPS equipment; obey all laws; be available to MCCC staff at all times; and always remain within his residence unless he had express, written permission to be

away. Fox further acknowledged that the home detention contract had been read or explained to him, he had watched an orientation video, and that he understood that a failure to abide by the contract could result in a violation being filed. The home detention contract contained the following provision (search provision), which Fox also acknowledged:

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 law enforcement, MCCC staff, and/or their contracted vendor, as well as 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 MCCC or their contracted vendor.

(Exh. Vol. p. 3).

[5] The following facts are not in dispute. While Fox was on home detention, he became the focus of a drug investigation led by Detective Steven Brinker (Detective Brinker) of the Indianapolis Metropolitan Police Department's (IMPD) Interdiction Unit. Detective Brinker desired to search Fox's hotel room at the Budget 8 hotel on East 21st Street in Indianapolis, but he did not believe that he had sufficient probable cause to procure a search warrant. Detective Brinker had previously encountered Fox and suspected that he was on some form of conditional release or monitoring program. On February 12, 2021, Detective Brinker emailed Jill Jones (Jones), the MCCC law enforcement liaison, shared his concerns about Fox, inquired about Fox's placement, and

inquired if Jones would conduct a visit to Fox's hotel room. Jones initially replied to Detective Brinker that she could not conduct a visit as part of a law enforcement investigation. However, Jones then investigated Fox's MCCC records and discovered that a home visit had already been requested in December 2020 by a MCCC team leader due to concerns that Fox had been tampering with his monitoring gear. Jones had not yet been able to make the visit due to her workload. Jones also discovered that Fox had been the subject of an administrative hearing in January 2021 for testing positive for cannabinoids and masking his GPS device.

[6] After consulting with the Marion County Prosecutor's Office, Jones contacted Detective Brinker and informed him that she was ready to make a home visit to Fox's hotel room and requested that members of the IMPD accompany her for safety reasons, as per MCCC protocols for home visits. On February 18, 2021, Jones performed a home visit of Fox's hotel room, accompanied by Detective Brinker and other IMPD officers. Jones and the officers saw suspected contraband in plain view and stopped their search. Detective Brinker applied for and was granted a search warrant for Fox's hotel room and for a car believed to be connected to Fox. Execution of the search warrant netted additional items of suspected contraband.

[7] On February 22, 2021, the State filed an Information, charging Fox with unlawful possession of a firearm by a serious violent felon, a Level 4 felony; possession of methamphetamine, a Level 5 felony; possession of a controlled substance, a Level 6 felony; and escape, a Level 6 felony. On July 30, 2021,

Fox filed a motion to suppress. Relying on *Micheau v. State*, 893 N.E.2d 1053 (Ind. Ct. App. 2008), *trans. denied*, Fox argued that MCCC's involvement in the warrantless search of his Budget 8 hotel room was a subterfuge for law enforcement, the search required probable cause and a warrant, and that because both probable cause and a warrant were lacking, the search of his hotel room violated the Fourth Amendment, voiding the probable cause supporting the search warrant. Fox also argued that the warrantless search of his hotel room was unreasonable under the totality of the circumstances in violation of Article 1, Section 11 of the Indiana Constitution. The State responded that, as a condition of his home detention, Fox had unambiguously waived his rights against search and seizure under both our federal and state Constitutions.

[8] On September 30, 2021, the trial court held a hearing on Fox's motion to suppress. On October 22, 2021, the trial court granted Fox's motion to suppress, relying on *Micheau* and finding that the warrantless search of Fox's hotel room had been impermissibly initiated by law enforcement as part of a criminal investigation. The trial court made no findings of fact or conclusions thereon concerning the search provision of Fox's home detention contract. The State's motion to dismiss the charges against Fox was granted without prejudice.

[9] Pursuant to Indiana Code section 35-38-4-2(a)(5), the State now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[10] The State appeals the trial court’s grant of Fox’s motion to suppress evidence flowing from a warrantless search of Fox’s hotel room. A warrantless search or seizure is per se unreasonable, and the State bears the burden to show that one of the well-delineated exceptions to the warrant requirement applies. *Cox v. State*, 160 N.E.3d 557, 560 (Ind. Ct. App. 2020). Because the State appeals from a negative judgment, in order to obtain reversal, it must show that the trial court’s suppression ruling was contrary to law. *State v. Harper*, 135 N.E.3d 962, 968 (Ind. Ct. App. 2019), *trans. denied*. Upon review of a trial court’s suppression ruling, we must determine whether the record contains substantial evidence of probative value that supports the trial court’s decision. *Id.* We defer to the trial court’s findings of fact but review its conclusions of law de novo. *Id.*

II. *Analysis*

[11] The State contends that the trial court, relying on *Micheau*, improperly considered the source of the investigation which resulted in the initial warrantless search of Fox’s hotel room and that Fox’s “agreement to waive his constitutional rights against search and seizure as a condition of his home detention makes it irrelevant what source [MCCC] relied upon as a basis for conducting a search of his hotel room.” (Appellant’s Br. p. 11). Therefore, the State argues that the trial court’s suppression ruling was contrary to law. The

trial court's suppression determination was based on this court's decision in *Micheau*, and therefore we begin our analysis with that decision.

[12] Micheau was on parole in Indiana due to a drug conviction in Texas. *Micheau*, 893 N.E.2d at 1057. Based on an anonymous tip that Micheau might be manufacturing and selling methamphetamine, his parole officer, escorted by law enforcement who had also received the tip, performed a home visit which provided probable cause for a search warrant that uncovered methamphetamine and evidence of methamphetamine production, among other things. *Id.* at 1057-58. Micheau moved to suppress this evidence, arguing that the search of his residence had been without probable cause, a search warrant, valid consent, or exigent circumstances. *Id.* at 1058. After the denial of his motion to suppress and eventual conviction on multiple charges, Micheau appealed, arguing that the challenged search was “an investigatory search that was under the guise of a probationary search.” *Id.* at 1059. The *Micheau* court observed that a probationer¹ still enjoys a limited protection of his privacy interests, the Fourth Amendment requires the search of a probationer's home to be reasonable, and a “probation search cannot be a mere subterfuge enabling the police to avoid obtaining a search warrant.” *Id.* Therefore, the court held that the State is required to show that any warrantless search of a probationer was a true probationary search, not an investigatory search and that any true

¹ The *Micheau* court referenced the law of probation which has been held to be generally applicable to parolees. *See Allen v. State*, 743 N.E.2d 1222, 1228 n.8 (Ind. Ct. App. 2001) (noting that a probationer and a parolee hold a similar status), *trans. denied*.

probationary search was reasonable. *Id.* at 1060. The *Micheau* court concluded that the search of Micheau’s home was a true parole search and that the search was reasonable. *Id.* In her concurring opinion, Judge Robb observed Micheau’s case illustrated the “murky line” between parole and investigatory searches because the same conduct may be both a parole violation and a new crime. *Id.* at 1068. However, significantly for our present purposes, *Micheau* did not involve any waiver executed by Micheau of his constitutional protections against searches and seizures as part of his parole.

[13] Nearly thirteen years after *Micheau* was decided, our supreme court handed down *State v. Ellis*, 167 N.E.3d 285 (Ind. 2021). Ellis was placed on home detention through MCCC and executed a home detention agreement containing the following search provision:

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.

Id. at 286. When Ellis’ home detention case manager became concerned that Ellis was spending more money than he reported making and might not be in compliance with his contract, the case manager contacted the same MCCC law enforcement agent involved in this case, Jones, who conducted a home visit on Ellis’ residence with an officer escort. *Id.* The results of the home visit led the officers to apply for a search warrant which yielded evidence of cocaine dealing, among other crimes. *Id.* The trial court credited Ellis’ suppression argument

that the warrantless search of his home violated his federal and state constitutional rights against unreasonable search and seizure because he had not unambiguously waived his rights against a suspicionless search and the officers did not have reasonable suspicion to search. *Id.* at 287. After this court reversed the trial court’s suppression ruling, our supreme court granted transfer and clarified that, although the police are generally required to conduct searches pursuant to a warrant supported by probable cause, “neither probable cause nor reasonable suspicion is required if a person on probation or home detention unambiguously consents to a warrantless and suspicionless search.” *Id.* The *Ellis* court held that a home detention contract with “broad language” stating that a defendant “waives all rights against search and seizure” unambiguously informs a defendant that he is waiving all his rights, including the right against search and seizure absent reasonable suspicion. *Id.* at 288-89. Because *Ellis*’ contract contained such a waiver, our supreme court held that he had validly waived his rights under the Fourth Amendment and Article 1, Section 11 and reversed the trial court’s suppression ruling. *Id.* at 289.

[14] Here, Fox executed a home detention contract which contained a waiver provision which, if anything, is even more detailed in what rights he was waiving than the contract involved in *Ellis*, as Fox’s contract specifically provided that he waived his “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.” (Exh. Vol. p. 3). In light of *Ellis*, we conclude that, due to Fox’s valid waiver of his constitutional

rights, Jones was not required to have any degree of suspicion to initiate the home visit on Fox's hotel room and was permitted to enter and search Fox's hotel room regardless of IMPD's involvement.

- [15] On appeal, Fox does not address the effect of his waiver through the search provision or contest its validity. What is more, the rationale for the *Micheau* decision and concurring opinion, namely the vindication of a probationer's limited, yet still existent, Fourth Amendment protections, simply does not apply where those rights have been waived.² Consent is one of the well-established exceptions to the warrant requirement. *Cox*, 160 N.E.3d at 560. Accordingly, we conclude that the State has demonstrated that the trial court improperly ignored Fox's waiver of his Fourth Amendment and Article 1, Section 11 rights and relied upon distinguishable precedent.

CONCLUSION

- [16] Based on the foregoing, we conclude that the trial court's suppression ruling was contrary to law.
- [17] Reversed.
- [18] Robb, J. and Molter, J. concur

² Because we find that *Micheau* is distinguishable, we decline the State's invitation to voice an opinion concerning its continuing validity after *Ellis*. In addition, in light of our conclusion that Fox waived his Article 1, Section 11 rights, we do not address his argument that the search of his hotel room was illegal under our state constitution.