DIVISION ONE
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PHILIP G. URRY, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 09-0260
	)	
Appellee,	)	DEPARTMENT E
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
STEVE RAY BENTLEY,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-031177-001 SE

The Honorable Michael D. Jones, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Suzanne M. Nicholls, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Christopher M. Johns, Deputy Public Defender
Attorneys for Appellant

J O H N S E N, Judge

¶1 Steve Ray Bentley appeals his convictions on 71 counts of misconduct involving weapons. The sole issue on appeal is whether the superior court erred in denying Bentley's motion to

suppress evidence found in a search of a storage unit after he had been taken into custody. For reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 In reviewing a superior court's ruling on a motion to suppress, we consider only the facts presented at the suppression hearing. *State v. Blackmore*, 186 Ariz. 630, 631, 925 P.2d 1347, 1348 (1996). We review those facts in the light most favorable to sustaining the ruling. *State v. Hyde*, 186 Ariz. 252, 265, 921 P.2d 655, 668 (1996).

¶3 In December 2006, Bentley pled guilty to endangerment, a class 6 undesignated offense, and was placed on two years of supervised probation. As a condition of his probation, Bentley consented to search and seizure of his property or person by the probation department without a search warrant. In addition, the terms of his probation prohibited him from possessing or controlling any firearms.

¶4 On December 28, 2007, after receiving information that Bentley had made death threats against his probation officer and possessed multiple firearms, officers went to Bentley's home to arrest him for violating his probation and to conduct a probation search for the firearms. In searching the home, probation officers found several empty handgun magazines. Bentley's roommate told one of the probation officers that there

had been weapons in the home, but she had helped moved them to a storage facility after Bentley was placed on probation. She provided information regarding the location of the storage facility.

¶5 Based on information from the roommate, a probation officer called Bentley's father at his home in Texas. Bentley's father said he was keeping the weapons belonging to his son in a storage locker he had rented for that purpose. After speaking with Bentley's father, the probation officer spoke to Bentley, who admitted having a key to the storage locker on his key ring. The probation officer located the key ring, on which he found the key to the storage locker and a key to Bentley's vehicle. During a later conversation with Bentley at the jail, Bentley informed the probation officer that the weapons were stored in Unit 2251 of the storage facility. Bentley further stated that he did not have the access code to the storage facility, but that the code might be in his wallet. The probation officer returned to Bentley's home to locate his wallet. No one was at the home, but Bentley's vehicle was in the driveway, and the probation officer used the key on the key ring to unlock the vehicle, then searched it. In the glove box was a rental agreement for a unit at a storage facility dated that same day. The agreement was signed by Thomas R. Bentley and included additional paperwork evidencing that Bentley was vacating Unit

2251 and transferring the account to Unit 2160. The paperwork identified Bentley and his father as the authorized users.

¶6 At the storage facility, the probation officer was able to unlock Unit 2251 using the key on Bentley's key ring. Inside were numerous rifles and other firearms and boxes of handguns, along with boxes of drug paraphernalia, including marijuana seeds, PH test kits and instructions on how to grow marijuana. Because the drug paraphernalia items were unrelated to the purpose of the probation search, the probation officer summoned other law enforcement and a search warrant was obtained for the storage locker.

¶7 The State charged Bentley with 71 counts of misconduct involving weapons, Class 4 felonies; and one count of threatening or intimidating involving weapons, a Class 1 misdemeanor. The latter count was dismissed at the State's request on the first day of trial. The State additionally alleged for sentence enhancement purposes that Bentley had an historical prior felony conviction and that he committed the charged offenses while on probation.

¶8 Prior to trial, Bentley moved to suppress the evidence seized in his vehicle and the storage locker and statements he made to the probation officer, claiming violation of his rights under the United States and Arizona Constitutions. In particular, Bentley argued that his statements were obtained in

violation of *Miranda*[1] and that the searches were illegal for lack of a search warrant. The superior court suppressed the statements Bentley made while in custody, but denied his motion to suppress the physical evidence seized from his vehicle and the storage locker, ruling they were valid probation searches.

¶9 A jury found Bentley guilty on each of the counts of misconduct involving weapons. The court sentenced Bentley as a repetitive offender to a 4.5-year prison term on Count 1 and to concurrent 4.5-year prison terms on the other 70 counts, consecutive to the sentence on Count 1.

¶10 Bentley timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes sections 12-120.21(A)(1) (2003), 13-4031 (2010) and -4033 (2010).

DISCUSSION

¶11 We will not disturb a superior court's ruling on a motion to suppress absent clear and manifest error. *Hyde*, 186 Ariz. at 265, 921 P.2d at 668. In reviewing a ruling on a motion to suppress, we give deference to the superior court's factual findings. *State v. Adams*, 197 Ariz. 569, 572, ¶ 16, 5 P.3d 903, 906 (App. 2000). However, we review *de novo* the legal

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

question of whether the search violated the defendant's constitutional rights. *Id.*

¶12 The Fourth Amendment of the United States Constitution protects against unreasonable searches and seizures and provides that warrants may be issued only upon probable cause. U.S. Const. amend. IV. Although the Fourth Amendment demonstrates a "strong preference for searches conducted pursuant to a warrant" backed by probable cause, *Illinois v. Gates*, 462 U.S. 213, 236 (1983), we apply a reasonableness standard in reviewing warrantless searches and seizures in a variety of circumstances, including probation searches. *State v. Allen*, 216 Ariz. 320, 326 n.5, ¶ 24, 166 P.3d 111, 117 n.5 (App. 2007).

¶13 Bentley concedes that the initial warrantless search of his home was permitted by the terms of his probation but argues that the warrantless search of the storage locker the following day was invalid because he did not have access to the storage facility while he was in custody. Bentley cites *Arizona v. Gant*, 129 S. Ct. 1710 (2009), in support of his argument.

¶14 In *Gant*, the United States Supreme Court addressed warrantless searches of automobiles incident to an arrest and clarified the circumstances under which such searches are permitted. *Id.* at 1716-24. Unlike searches incident to arrest, which are excepted from the Fourth Amendment's warrant and probable cause requirements based on interests in officer safety

and preserving evidence, a warrantless probation search may be constitutionally valid based on a probationer's diminished expectations of privacy. *United States v. Knights*, 534 U.S. 112, 119-20 (2001). "Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled." *Id.* (internal quotes omitted) (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987)); *see also State v. Montgomery*, 115 Ariz. 583, 584, 566 P.2d 1329, 1330 (1977) ("While defendant is on probation his expectations of privacy are less than those of other citizens not so categorized."). Because the rationale for upholding warrantless probation searches is not dependant on the presence of the probationer during the search, *Gant* has no application to probation searches.

¶15 We also reject Bentley's contention that the warrantless search of the storage locker should be invalidated because it was conducted for investigatory rather than probationary purposes. In *Griffin*, the Supreme Court upheld a warrantless search of a probationer's home on the basis that the State's operation of a probation system presented a "special need" for the "exercise of supervision to assure that [probation] restrictions are in fact being observed." 483 U.S. at 875. Bentley maintains that the presence of law enforcement officers during the search of the storage locker indicates that

the search was not a true probation search but rather was "essentially a stalking horse for law enforcement." In *Knights*, however, the Supreme Court stated that its holding in *Griffin* does not limit probation searches to those conducted based on probationary purposes. 534 U.S. at 121-22. Whether conducted to investigate probation violations or general criminal activity, a search is reasonable under the Fourth Amendment when it is "supported by reasonable suspicion [that the probationer is involved in criminal conduct] and authorized by a condition of probation." *Id.* at 122. Thus, the motives of the officers in conducting the search are immaterial to the validity of the search. *Id.*

¶16 Here, Bentley's probation was conditioned expressly on his submitting to "search and seizure" of his property by the probation department "without a search warrant." He does not dispute that the probation officers had reasonable suspicion to believe he had violated his probation by possessing firearms. Indeed, Bentley acknowledges the validity of the search of his home on that basis. The fact that Bentley was taken into custody and transported to jail did not eliminate the existence of reasonable suspicion that he was in violation of his probation by possessing firearms. To the contrary, the additional information the officers developed following his arrest only served to increase their reasonable suspicion that

he possessed firearms and that they were located in the storage locker. Accordingly, the superior court did not err in ruling that the search of the storage locker was a valid probation search under the Fourth Amendment. *See State v. Walker*, 215 Ariz. 91, 95, ¶ 20, 158 P.3d 220, 224 (App. 2007) (noting scope of probation searches extends to property that officers have "reasonable suspicion . . . is owned, controlled, or possessed by probationer") (quoting *United States v. Davis*, 932 F.2d 752, 758 (9th Cir. 1991)). The superior court therefore correctly denied the motion to suppress with respect to the firearms found in the storage locker.

CONCLUSION

¶17 Finding no error, we affirm Bentley's convictions and sentences.

/s/_____
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/_____
PHILIP HALL, Judge

/s/_____
PATRICIA K. NORRIS, Judge