FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-1808

STATE OF FLORIDA,

Appellant,

v.

TAYLOR GREEN,

Appellee.

On appeal from the Circuit Court for Gulf County.
Shonna Young Gay, Judge.

October 12, 2022

RAY, J.

During a warrantless search of the residence Taylor Green shared with probationers, probation officers discovered suspected drugs and drug paraphernalia in plain view. At that point, they stopped their search and law enforcement applied for and obtained a search warrant. The search that followed uncovered additional drugs and drug paraphernalia.

After the State brought charges against Green, she moved to suppress the evidence found during the execution of the search warrant. She argued that the evidence obtained during the warrantless and suspicionless search of the home could not be used to prove a new criminal offense. The trial court agreed, and the State brought this appeal. Because the trial court misapplied case

law dealing with warrantless probationary searches to suppress evidence seized pursuant to a search warrant, we reverse.

I

At the time of the search, Green was sharing a home with two probationers, both of whom were subject to warrantless search conditions. Based on an anonymous tip that one of those probationers, Ray Stripling, possessed controlled substances at the residence, two probation officers went to the home to conduct a warrantless search. Two sheriff's office investigators accompanied the probation officers as a safety precaution. The investigators remained outside with the three residents while the probation officers conducted the search. In the master bedroom Green shared with Stripling, the probation officers found a smoking device and a syringe containing clear liquid. As the probation officers were leaving the bedroom, one of them noticed a crystal-like substance in a container on top of the dresser. The probation officers told investigators what they saw and gave them the syringe. The investigators field-tested the liquid in the syringe, which tested positive for methamphetamine.

At that point, the probation officers stopped their search to allow the investigators to apply for a search warrant. The search warrant affidavit relied on the observations made by the probation officers during their search, including the presence of the crystal-like substance on the bedroom dresser, and their discovery of the smoking device and the syringe filled with methamphetamine. Later that day, a judge approved the search warrant. While executing the warrant, investigators discovered additional drugs and drug paraphernalia hidden in the home, including a clear plastic container on the dresser in the master bedroom that contained forty-one grams of methamphetamine, as well more methamphetamine, oxycodone pills, and drug paraphernalia.

Based on this evidence, the State charged Green with possession of methamphetamine (count I), possession of oxycodone (count II), and possession of drug paraphernalia (count III). She moved to suppress the fruits of the search, arguing that the search warrant was not supported by reasonable suspicion or probable

cause because the initial warrantless search by probation officers was based solely on an anonymous tip.

In its order granting the motion to suppress, the trial court determined that although probable cause existed for the search by law enforcement officers, the evidence recovered in the search would only be admissible in a probation revocation proceeding had Green been on probation. For the seized evidence to be admissible in a new criminal proceeding, law enforcement had to have at least a reasonable suspicion of criminal activity without the information obtained from the warrantless search by probation officers. The court found that the anonymous tip alone could not support reasonable suspicion.

For its part, the State argues that probation officers are allowed to perform a warrantless search of a probationer's residence at any time without a reasonable suspicion of criminal activity. In turn, law enforcement can rely on information gathered by probation officers to obtain a search warrant based on probable cause to believe that other evidence exists in the home, and any evidence seized pursuant to the warrant is admissible in a new criminal prosecution.

II

In reviewing an order on a motion to suppress, we defer to the trial court's factual findings when they are supported by competent, substantial evidence and review the trial court's legal conclusions de novo. *Channell v. State*, 257 So. 3d 1228, 1232 (Fla. 1st DCA 2018). Here, the parties stipulated to the basic facts, so this case turns on a question of law.

A

We begin with the law on warrantless probationary searches because Green, a nonprobationer, "cannot reasonably expect privacy in areas of a residence that [she] share[s] with probationers." *State v. Yule*, 905 So. 2d 251, 264 (Fla. 2d DCA 2005) (Canady, J., concurring) (quoting *People v. Pleasant*, 123 Cal. App. 4th 194, 19 Cal. Rptr. 3d 796, 798 (2004)); *see also id.* ("A person choosing to live in the same home with another who is subject as a

probationer to warrantless searches has a corresponding diminished expectation of privacy.").

A probationer does not enjoy the same expectation of privacy under the Fourth Amendment[1] as an ordinary citizen. *Grubbs v. State*, 373 So. 2d 905, 907 (Fla. 1979). To be sure, "[a] probationer has been convicted of a criminal offense but has been granted the privilege of being free on probation conditioned on his supervision by a probation officer." *Id.* Consequently, a probation officer may visit a probationer's home or place of employment without a warrant. *See* § 948.03(1)(b), Fla. Stat. (providing as a standard condition of probation that a probationer must allow his or her probation officer "to visit him or her at his or her home or elsewhere"). And "[t]he search of a probationer's person or residence by a probation supervisor without a warrant is . . . a reasonable search and absolutely necessary for the proper supervision of probationers." *Grubbs*, 373 So. 2d at 909.

Under Florida law then, a probation officer has the authority, consistent with the Fourth Amendment, to inspect a probationer's home without a warrant or any showing of reasonable suspicion. *See id.*; *Harrell v. State*, 162 So. 3d 1128, 1132 (Fla. 4th DCA 2015) (upholding a warrantless, suspicionless search of a probationer's home after he was randomly selected as part of a Department of Corrections "compliance initiative" for probationers). If evidence of a probation violation is found, such evidence may be used against the probationer in a probation revocation proceeding. *See Soca v. State*, 673 So. 2d 24, 25 (Fla. 1996).

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[1] Both the United States and Florida constitutions prohibit the government from conducting unreasonable searches and seizures. Amend. IV, U.S. Const.; Art. I, § 12, Fla. Const. The conformity clause of the Florida constitution binds Florida courts to decisions of the United States Supreme Court on Fourth Amendment issues. *State v. Markus*, 211 So. 3d 894, 902 (Fla. 2017). But when the United States Supreme Court has not addressed a particular search and seizure issue, Florida courts may rely on Florida state precedent for guidance. *Id.*

But the same evidence may not be used to support new criminal charges unless the search otherwise satisfies the requirements of the Fourth Amendment. *Grubbs*, 373 So. 2d at 910. It bears repeating, however, that probationers do not enjoy the same expectation of privacy under the Fourth Amendment as ordinary citizens. Thus, the United States Supreme Court has held that law enforcement may conduct warrantless searches of probationers' homes under a lesser standard of reasonable suspicion (not probable cause) where a condition of probation included consent to a warrantless search. *See United States v. Knights*, 534 U.S. 112, 121 (2001). The Court reasoned that "[w]hen an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable." *Id.*[2]

B

The trial court relied on the foregoing principles of law to conclude that the evidence seized pursuant to the search warrant was inadmissible to support criminal charges against Green because the anonymous tip alone was not enough to establish reasonable suspicion. But the trial court's analysis stopped short of considering the effect of the intervening search warrant, which was based on information and evidence lawfully obtained by probation officers during their warrantless search.

This case is like *Lawson v. State*, 751 So. 2d 626, 627 (Fla. 4th DCA 1999), where the Fourth District held that law enforcement

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[2] Because the search of the probationer in *Knights* was based on both reasonable suspicion and the probationary search condition, the Court declined to address the question of whether suspicionless searches of probationers by law enforcement are permitted under the Fourth Amendment. 534 U.S. at 120 n.6; *cf. Samson v. California*, 547 U.S. 843, 857 (2006) (holding that "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee").

could use information found in a probationary search to obtain a search warrant. There, Department of Corrections officials performed a warrantless administrative search of an individual on community control. *Id.* at 626. During the search, they discovered bullets, a machete, and two safes, one of which was a gun safe. *Id.* At that point, they stopped the search and worked with law enforcement to obtain a search warrant for the safes. *Id.* The safes were then searched pursuant to the warrant, and multiple firearms were discovered. *Id.* Based on the firearms seized from the safe, the state charged the defendant with possession of a firearm by a convicted felon. *Id.*; *see also Lawson v. State*, 751 So. 2d 623, 624 (Fla. 4th DCA 1999) (discussing these searches in an appeal from the revocation of the same defendant's community control).

The defendant moved to suppress the firearms. 751 So. 2d at 626. In denying the motion, the trial court found that "the search was properly conducted, no law enforcement officers entered [d]efendant's home during the administrative search, the warrant was properly issued, and the searches, both the administrative search by DOC officers and the FDLE search pursuant to the search warrant, were lawful and proper." *Lawson*, 751 So. 2d at 626–27.

The Fourth District affirmed. It observed that Florida law gave the state two options in investigating suspected criminal activity on the part of probationers. *Id.* at 627 (citing *Soca*, 673 So. 2d at 28). First, the state can allow probation officers to seize evidence during a warrantless search and use that evidence to seek a revocation of probation. *Id.* Second, the state can continue the investigation and seek a search warrant to secure the evidence necessary to support new charges. *Id.* Concluding that the state followed proper procedure, the district court held that "where evidence observed during a valid administrative search is used by the state to obtain a search warrant, the fruits of a subsequent search pursuant to the warrant are legally seized and may be used to support a separate substantive charge." *Id.*; *see also Ramos v. State*, 344 So. 3d 526, 528–529 (Fla. 2d DCA 2022) (following the reasoning of *Lawson*).

Likewise, here, probation officers had a right to inspect Green's residence without a warrant or a showing of reasonable suspicion. During the search, the probation officers discovered evidence of drug use, which they passed along to the investigators waiting outside the residence. Armed with this information, the investigators secured a search warrant and seized additional evidence of drugs and drug use that was later used to support criminal charges against Green. The trial court acknowledged that the search warrant affidavit established probable cause for the law enforcement search. But in relying on case law governing warrantless probationary searches by law enforcement, it improperly excluded the evidence seized under the search warrant. The exclusionary rule does not apply when there was no illegal conduct on the part of law enforcement.

III

Green does not defend the trial court's reasoning on appeal. Instead, she makes an argument not raised below. She now asserts that the evidence seized and observed by the probation officers during the warrantless search indicated only personal use of drugs and did not create reasonable suspicion to believe that additional contraband would be discovered in the home.

For support, Green relies on cases involving trash pulls, where law enforcement searches a person's trash to obtain evidence of drugs. Those cases stand for the principle that a small amount of drugs in someone's trash does not reliably signal that more contraband would be found inside the home. *See, e.g.*, *Cruz v. State*, 788 So. 2d 375, 376, 379 (Fla. 4th DCA 2001) (holding that an anonymous tip, two trash pulls uncovering a small amount of drugs, and a prior arrest for possession of drugs and paraphernalia did not provide probable cause to believe there was ongoing criminal activity or that cannabis would be found in the home); *Gesell v. State*, 751 So. 2d 104, 105–06 (Fla. 4th DCA 1999) (holding that an anonymous tip and a trash pull uncovering a small amount of marijuana did not provide probable cause to search the defendant's home); *Raulerson v. State*, 714 So. 2d 536, 537 (Fla. 4th DCA 1998) (holding that an anonymous tip combined with a trash pull uncovering a small amount of cannabis-related

debris did not establish a fair probability that cannabis would be found in the defendant's home).

This case is different. Here, the probation officers collected a smoking device and a used syringe containing liquid. They also told investigators that they saw a crystal-like substance in a plastic container on the dresser in the master bedroom. The substance was not seized or tested by the probation officers. But considering the paraphernalia that was already discovered and the fact that the liquid in the syringe had field-tested positive for methamphetamine, it could reasonably be inferred that the crystal-like substance was also methamphetamine. Thus, there was probable cause to believe that additional drugs remained in the house. *See* § 933.18(5), Fla. Stat. (allowing a search warrant to be issued for a private dwelling when the affidavit establishes that "[t]he law relating to narcotics or drug abuse is being violated therein"); *State v. Carreno*, 35 So. 3d 125, 128 (Fla. 3d DCA 2010) (explaining that an affidavit seeking a search warrant must establish that (1) "a particular person has committed a crime" and (2) "evidence relevant to the probable criminality is likely located at the place to be searched" (quoting *Burnett v. State*, 848 So. 2d 1170, 1173 (Fla. 2d DCA 2003))).

IV

For these reasons, we conclude that there was no illegal search or seizure under the Fourth Amendment. We thus reverse the trial court's order granting Green's motion to suppress and remand for further proceedings.

JAY, J., concurs; WINOKUR, J., concurs with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

WINOKUR, J., concurring.

I concur in full with the majority's opinion. I write to make an additional observation about the standards related to review of the motion to suppress. The evidence at issue here was seized pursuant to a search warrant. Whether evidence seized pursuant to warrant should be suppressed is a separate question from whether a defendant's Fourth Amendment rights were violated. *See State v. Teamer*, 151 So. 3d 421, 430 (Fla. 2014) (citing *United States v. Leon*, 468 U.S. 897, 906 (1984)). Evidence seized in good faith reliance on a search warrant, even if it is later found that the warrant was not supported by probable cause, is generally not subject to suppression. *Leon*, 468 U.S. at 926.[*]

In this case, considering that Florida case law supported the contention that information found in a probationary search could form the basis for a search warrant, it seems likely that police acted in good faith reliance on that search warrant. However, the State did not argue below that the investigator acted in good faith on what he believed to be a valid warrant. As such, this basis for reversal is unavailable to the State. If they had, this argument might have provided the proper basis for reversal.

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[*] *Leon* sets forth four exceptions to this rule, none of which seem to apply here. *See Leon*, 468 U.S. at 923.