IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Vernon Rentz, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050707-CA F I L E D (September 8, 2006) 2006 UT App 365

Seventh District, Monticello Department, 031700005
The Honorable Lyle R. Anderson

Attorneys: William L. Schultz, Moab, for Appellant
Mark L. Shurtleff and J. Frederic Voros Jr., Salt Lake City, for Appellee

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Before Judges Greenwood, McHugh, and Orme.

GREENWOOD, Associate Presiding Judge:

Vernon Rentz appeals his probation revocation and commitment to Utah State Prison. Defendant contends that the trial court erred in denying his motion to suppress in his probation revocation proceeding. We affirm.

Defendant argues that this court should recognize and apply an exception to the general rule that the Fourth Amendment exclusionary rule does not apply to probationary proceedings. See State v. Jarman, 1999 UT App 269,¶7, 987 P.2d 1284 ("[T]he exclusionary rule to the Fourth Amendment does not apply in the context of probation revocation proceedings."). Defendant contends that his case is distinguishable from Jarman because the police officer who searched Defendant's vehicle and discovered the gun under the cup holder was acting without "suspicion of illegality or [knowledge of Defendant's] probationary status." Defendant claims, therefore, that the trial court's failure to entertain and grant his motion to suppress was error and that his Fourth Amendment rights were violated. We review a trial court's factual findings underlying its decision to grant or deny a

motion to suppress for clear error and review its legal conclusions for correctness. See id. at ¶4.[1]

Reviewing the proceedings below for correctness, we conclude that the trial court did not err in denying Defendant's motion to suppress. As Defendant acknowledges, this case is controlled by Pennsylvania Board of Probation & Parole v. Scott, 524 U.S. 357 (1998), and Jarman, 1999 UT App 269. These cases clearly hold that the exclusionary rule does not apply to probation revocation proceedings. See Scott, 524 U.S. at 364 (stating that "the federal exclusionary rule does not bar the introduction at parole revocation hearings of evidence seized in violation of parolees' Fourth Amendment rights"); Jarman, 1999 UT App 269 at ¶7 (applying Scott in probation revocation proceedings, as well as parole revocation proceedings).

Defendant contends that he is not "attempt[ing] to overturn the standing preceden[ts] . . . as to the Fourth Amendment's application to parole revocation proceedings." Instead, he argues, he is asking us to carve out a narrow exception to the rule based on the facts of his case. For two reasons, his claim is unavailing.

First, both Jarman and Scott declined to extend the application of the exclusionary rule beyond the context of a criminal trial. See Scott, 524 U.S. at 364; Jarman, 1999 UT App 269 at ¶7. It is well settled that a probation revocation hearing is a civil proceeding. See, e.g., State v. Hudecek, 965 P.2d 1069, 1071 (Utah Ct. App. 1998) ("Probation revocation proceedings are civil in nature . . . .").

Second, we note the United States Supreme Court's public policy analysis in Scott. In that case, the Court "compared the

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[1]The State argues that Defendant failed to properly preserve this issue for appeal and that we therefore need not consider it. See State v. Cruz, 2005 UT 45,¶33, 122 P.3d 543 ("As a general rule, claims not raised before the trial court may not be raised on appeal." (quotations and citation omitted)). In particular, the State claims that for the first time on appeal, Defendant is seeking a bad faith exception to the exclusionary rule. We disagree. In the probation revocation proceeding, Defendant's counsel argued that the officer did not have reasonable suspicion to stop and search Defendant's vehicle. Although Defendant could have more specifically referred to the applicability of his suppression motion to probation revocation proceedings, we conclude that the issue was sufficiently brought to the trial court's attention so as to preserve the issue.

deterrence benefits against the social costs of the exclusionary rule and concluded that because the costs outweigh the benefits in the context of parole revocations, the exclusionary rule does not apply in those proceedings."[2] Jarman, 1999 UT App 269 at ¶6 (citing Scott, 524 U.S. at 366-67). The Scott Court further explained that to apply "a piecemeal exception to the exclusionary rule would add an additional layer of collateral litigation" involving a police officer's "knowledge of the [probationer's] status." Scott, 524 U.S. at 368. Consistent with the Court's reasoning, we observe that "[t]here appears to be little likelihood that any substantial deterrent effect on unlawful police intrusion would be achieved by applying the exclusionary rule to [probationary] proceedings." In re A.R., 1999 UT 43,¶21, 982 P.2d 73. Hence, we may not apply the exclusionary rule to the case at hand.

In sum, "we conclude that we are bound by Scott in this case, that the [Fourth Amendment's exclusionary rule] does not apply in the context of probationary revocation proceedings, and hence the trial court correctly denied [Defendant's] motion to suppress." State v. Jarman, 1999 UT App 269,¶7, 987 P.2d 1284.

We affirm.

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Pamela T. Greenwood,
Associate Presiding Judge

WE CONCUR:

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Carolyn B. McHugh, Judge

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[2]Furthermore, the Utah Supreme Court reached the same conclusion in a different context. See In re A.R., 1999 UT 43,¶¶19, 21-22, 982 P.2d 73 (holding that the exclusionary rule does not apply to child protection proceedings because social costs outweigh benefits of deterrence).

Gregory K. Orme, Judge