

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

KATHRYN A. LORAN,

Appellant.

No. 41705-7-II

UNPUBLISHED OPINION

Johanson, J. — Kathryn A. Loran appeals her unlawful possession of a controlled substance conviction, arguing that (1) the probationer warrant exception is inapplicable to her deferred disposition status and (2) the State lacked probable cause to search her home. We reverse Loran’s conviction because the deferred disposition order failed to comply with RCW 13.40.127 by omitting to place her on community supervision and thus the probationer warrant exception did not apply to her.

FACTS

In December 2009, the Clallam County juvenile court granted a deferred disposition to Kathryn Loran. Notably, the deferred disposition order failed to place her on “community supervision” or under any other form of supervision by a probation officer. The disposition order did, however, provide several standard conditions including that she refrain from committing new offenses, regularly and timely report to her probation counselor, inform her probation counselor of her telephone number and current address, notify her probation counselor before moving to a

different address, participate in a drug and alcohol dependency evaluation, comply with drug and alcohol treatment, refrain from using illegal drugs and alcohol, and be subject to random urinalysis and other drug testing. Joleen Goodrich, a juvenile probation counselor, was assigned to monitor Loran's deferred disposition. In May 2010, based on alleged violations of the disposition order's conditions, the juvenile court issued a warrant for Loran's arrest.

Goodrich asked the police to accompany her to serve Loran's arrest warrant. After doing a protective sweep of the residence, Officer Andrew Heuett arrested Loran, read her her *Miranda* rights,¹ handcuffed her, and walked her to his patrol car, where he put her in the back seat. Goodrich told Loran that she had been worried about her and asked Loran if she could give a clean urinalysis sample. Loran replied, "No. I just did heroin within the last couple of days." Transcript of Proceedings (TP) at 33. Goodrich decided that she should try to find the drugs Loran had just admitted to taking because "it was part of [her] job." TP at 44. Goodrich went into Loran's room, noticed the dresser with "girl . . . things" on top, and opened the first drawer, finding a little box. TP at 43. Goodrich opened the box and saw pills inside. RP at 44. Officer Benedict radioed news of Goodrich's discovery to Officer Heuett, who asked Loran about the pills. Loran stated they were Vicodin and Percocet.

The State charged Loran with two counts of unlawful possession of a controlled substance (oxycodone and methadone), contrary to RCW 69.50.4013(1). Loran moved to suppress the pills, arguing that Goodrich's warrantless search was unlawful because the probation/parolee warrant exception did not apply to her deferred disposition without conviction. Loran also

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

argued that Goodrich lacked reasonable suspicion. After asking for supplemental briefing, the trial court denied Loran's suppression motion. The trial court concluded that the warrantless search exception for probationers applies to a deferred disposition in juvenile court.

The State dismissed one of Loran's controlled substance possession counts (oxycodone). Based on stipulated facts, the trial court convicted Loran of one count of unlawful possession of a controlled substance (methadone). Loran appeals.

ANALYSIS

The Juvenile Justice Act of 1977—deferred disposition statute—provides:

The adjudicatory hearing shall be limited to a reading of the court's record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond.

RCW 13.40.127 (emphasis added).

Loran appeals her unlawful possession of a controlled substance conviction, arguing that (1) the probationer warrant exception is inapplicable to her deferred disposition status and (2) the State lacked probable cause to search her home. The State's claim is that the warrantless search was valid because Loran's deferred disposition status confers a diminished privacy expectation while on community supervision. We find it fatal to the State's claim, however, that the order here failed to place Loran on "community supervision" or any other form of supervision as required by RCW 13.40.127(5). Thus, we do not reach the question of whether Loran had a diminished privacy right in her home as a result of the deferred disposition.

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Reversed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, J.

We concur:

Hunt, J.

Penoyar, C.J.