COURT OF APPEALS
DECISION
DATED AND RELEASED

FEBRUARY 4, 1997

NOTICE

No. 96-1542-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

APRIL DAKINS,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Marathon County: RAYMOND F. THUMS, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

CANE, P.J. April Dakins appeals a judgment entered upon her no contest plea convicting her of possession of marijuana with the intent to deliver. Dakins contends that the trial court erroneously denied her suppression motion. She raises the following issues: (1) Was the "so-called 'probation search'" in fact a prohibited warrantless search; (2) was the "so-called 'probation search'" in fact a warrantless investigative search with the probation officers acting as surrogate investigative agents of the sheriff's department; (3) is the probation department supervisor a neutral and detached magistrate; (4) should all the evidence obtained through the "so-called 'probation search'" be

suppressed because it was a warrantless investigative search; (5) under the circumstances, was Dakins in constructive custody within the meaning of ***Miranda***; (6) should she have been given ***Miranda*** warnings; and (7) should Dakins' incriminating statements made without ***Miranda*** warnings be suppressed.[1]

Because the trial court correctly concluded that the search was a probation search, that the probationer had common authority over the premises that he shared with Dakins, and Dakins was not placed under arrest, under suspicion, or in constructive custody at the time she made her statements, we affirm the judgment.[2]

Dakins shared a two-bedroom apartment with Curt Scheidemann, who was on probation for drug offenses. Sergeant Thomas Kujawa received information from a reliable informant that Scheidemann was dealing drugs from his residence and that two juveniles were going there to purchase marijuana later in the day. Kujawa relayed this information to Scheidemann's probation officer, Craig Jascor.

Jascor's supervisor authorized a probation search of Scheidemann's apartment. Jascor and another probation officer conducted the search, accompanied by Kujawa and a second police officer to provide security. Both Dakins and Scheidemann signed the lease. Dakins testified that she told the officers that Scheidemann had separate living quarters in the apartment and shut the door to her bedroom. Nonetheless, she testified that Scheidemann's thirteen-year-old daughter occupied the only other bedroom and that Curt did not share the bedroom with his thirteen-year-old daughter. She conceded that she was engaged to Scheidemann and approximately seven months' pregnant with Scheidemann's child at the time of the search. The officers observed men's and women's clothing in both bedrooms. Dakins testified she was wearing some of Scheidemann's clothing at the time of the search.

The probation officer testified Scheidemann was the target of the search and that there was nothing about the physical layout of the apartment to

---

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

[2] The order denying the suppression motion was rendered by Reserve Judge William Chase.

indicate Scheidemann's living quarters were separate. After calling his supervisor and explaining the living arrangements of Scheidemann's apartment, he received his supervisor's instruction to search the apartment. He testified that he searched the bedroom that Scheidemann advised was his. The other probation officer searched the bedroom Dakins claimed was hers. In Dakins' bedroom, they found a Lane chest, which one of the officers opened. A quantity of marijuana was in four separate baggies in the chest.

The officers also found a locked safe. They advised that they would remove the safe from the apartment if Dakins refused consent to search it. Dakins called her attorney, who advised her to cooperate and "open the safe for them." The probation officers discovered a "purple colored bong with suspect marijuana."

Scheidemann was taken into custody by the officers. He was initially handcuffed to a kitchen chair and later taken from the apartment. Kujawa remained at the apartment with two probation officers. Kujawa testified that Scheidemann was the target of the investigation and he questioned Dakins to obtain information against Scheidemann. He stated he did not provide ***Miranda*** warnings because she was not in custody and he had no intention of taking her into custody at that time. Dakins was not handcuffed, placed under arrest, or in any way physically restrained.

When Kujawa asked Dakins if the drugs were Scheidemann's, she responded that they were hers. Kujawa testified that he believed she was covering up for Scheidemann and he continued to question her to permit her to "either verify or more to disclaim her story. It wasn't making any sense to me." Dakins testified that at any time he wanted, Scheidemann could have gone into the bedroom she claimed was hers, and that she told the officer Scheidemann's fingerprints may have been on the baggies of marijuana.

During the questioning, Dakins indicated that she wanted to talk to an attorney. Kujawa stopped the questioning and left the apartment with the officers who were with him, without placing Dakins under arrest.

On review of an order denying a motion to suppress evidence, findings of fact will be sustained unless clearly erroneous. *See* ***State v. Kraimer,*** 99 Wis.2d 306, 318-19, 298 N.W.2d 568, 574 (1980). However, we independently

examine the circumstances to determine whether constitutional requirements are complied with. ***Id.***

Dakins argues that the real focus of the investigation was Dakins and that the warrantless search was illegal. We disagree. A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be reasonable. Warrantless searches are per se unreasonable. ***State v. Milashoski,*** 159 Wis.2d 99, 110-11, 464 N.W.2d 21, 25-26 (Ct. App. 1990), *aff'd,* 163 Wis.2d 72, 471 N.W.2d 42 (1991). The State has the burden of proving that the challenged warrantless search falls within one of the exceptions to this general rule. ***State v. Pozo,*** 198 Wis.2d 705, 710 n.2, 544 N.W.2d 228, 230 n.2 (Ct. App. 1995).

"[W]e have permitted exceptions when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.'" ***Griffin v. Wisconsin,*** 483 U.S. 868, 873 (1987) (citations omitted). As his sentence for a commission of a crime, a probationer is committed to the legal custody of the Wisconsin State Department of Health and Social Services and thereby made subject to that department's rules and regulations. The warrantless search of a probationer's home has been held to satisfy the demands of the Fourth Amendment when it is "carried out pursuant to a regulation that itself satisfies the Fourth Amendment's reasonableness requirement under well-established principles." ***Id.***

Wisconsin probation regulations authorize probation and parole agents to search a probationer's home if there are "reasonable grounds" to believe that contraband is present. *Cf.* ***id.***; WIS. ADMIN. CODE § DOC 328.21(3). We conclude that the record supports the trial court's determination that the search of Dakins' and Scheidemann's apartment was a probation search carried out pursuant to department regulations and therefore no warrant issued by a neutral magistrate was necessary.

Dakins argues that the Marathon County Sheriff's Department initiated the search, not the probation and parole officer, and that the probation search procedure is a "sham" to avoid the constitutional warrant requirement. We disagree. The record demonstrates that the probation officer received information from the sheriff's department that supplied the "reasonable grounds" for the search. The probation officers conducted the search. The

sheriff's officers furnishing information and presence at the search did not invalidate the search nor transfer the probation department employees into agents of the sheriff's department. *Cf.* ***Griffin,*** 483 U.S. at 872-73 (Probation rules and regulations authorizing department employees warrantless search of probationer's living quarters satisfied the Fourth Amendment's reasonableness requirement).

We agree that a probation and parole search cannot be targeted against a person not under supervision. *See* ***State v. West***, 185 Wis.2d 68, 517 N.W.2d 482 (1994). Nonetheless, a probation or "parole search may extend to all parts of the premises to which the probationer or parolee has common authority, just as if it were a consent search." ***Id.*** at 94, 517 N.W.2d at 491. The record supports the trial court determination that they shared common authority over the premises searched. Dakins does not dispute that she knew that Scheidemann was on probation at the time she was living with him. As a result, Dakins' reasonable expectation of privacy was correspondingly limited. *See* ***id.*** If the Fourth Amendment rights of nonparolees living with parolees were not reduced, a parolee could avoid all probation or parole searches by living with nonparolees and emasculate the one significant feature of the parole system. ***Id.*** at 82, 517 N.W.2d at 486. Because the record supports the trial court's determination that the search was a probation search and that it extended to areas of common authority and control, we conclude the search is valid.

In her brief, Dakins mentions portions of the record suggesting an issue based upon the scope of the search. Dakins does not discuss or develop this issue on appeal. "The court of appeals had no duty to consider any issues other than those presented to it." ***Waushara County v. Graf,*** 166 Wis.2d 442, 453, 480 N.W.2d 16, 20 (1992). We cannot serve as advocate, ***State v. Pettit,*** 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992), and will not develop an appellant's argument. ***State v. West,*** 179 Wis.2d 182, 195-96, 507 N.W.2d 343, 349 (Ct. App. 1993), *aff'd,* 185 Wis.2d 68, 517 N.W.2d 482 (1994). An issue not briefed or argued is deemed abandoned. ***Reiman Assocs., Inc. v. R/A Advertising, Inc.,*** 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981). We therefore confine our review to the issues articulated.

Next, Dakins argues her interrogation was so coercive and custodial in nature that she should have been afforded ***Miranda*** warnings. We disagree. Where a defendant is subject to a "custodial interrogation," certain

procedural safeguards are necessary to protect Fifth Amendment rights against compulsory self-incrimination. However, "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the factfinding process" is specifically exempted in ***Miranda***. ***Kraimer,*** 99 Wis.2d at 330, 298 N.W.2d at 579 (quoting ***Miranda v. Arizona,*** 384 U.S. 436, 477-78 (1966) (emphasis deleted)). We consider the totality of the circumstances, including the defendant's freedom to leave the scene, the purpose, place and the length of the interrogation. ***State v. Leprich,*** 160 Wis.2d 472, 477, 465 N.W.2d 844, 846 (Ct. App. 1991).

Here, the record supports a finding that the purpose of the questions was to investigate Scheidemann, that the questioning was not lengthy, it took place in Dakins' apartment, and that her movements were not restricted. She was free to telephone her attorney. The officer testified that once she confessed the contraband belonged to her, he disbelieved her. He believed she was covering up for Scheidemann, who was the target of the search, and that her story was incredible. When she indicated she no longer wanted to answer questions, the officer ceased questioning, and the officers left the apartment without placing Dakins under arrest. Under these circumstances, we conclude that the officer's suspicions were not focused against Dakins and she was not subject to any degree of restraint as to require ***Miranda*** warnings.

Finally, Dakins argues that Kujawa's testimony is inconsistent and incredible. This is not an appellate argument. Weight and credibility of testimony are fact-finding determinations for the trial court, not the appellate court. *See* ***Whitaker v. State,*** 83 Wis.2d 368, 377, 265 N.W.2d 575, 580 (1978). The trial court was entitled to determine that Kujawa's testimony was more credible than Dakins'. Our review of the record demonstrates that the trial court properly denied Dakins' suppression motion.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.