

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 6, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP1564-CR

Cir. Ct. No. 2013CF1672

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEREMY EZEKIEL HOLLIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: STEPHANIE ROTHSTEIN, Judge. *Affirmed.*

Before Brennan, P.J., Kessler and Brash, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Jeremy Ezekiel Hollis appeals a judgment convicting him of possession of designer drugs with intent to deliver, possession of cocaine with intent to deliver, both as a party to a crime, felon in possession of a firearm, and misdemeanor disorderly conduct. Hollis argues that the circuit court should have granted his motion to suppress evidence found in his home because it was obtained during a warrantless police search, rather than during a valid probationary search as claimed by the State. We affirm.

¶2 The police must have a search warrant to search an individual's home absent certain carefully delineated circumstances. *State v. Jones*, 2008 WI App 154, ¶10, 314 Wis. 2d 408, 762 N.W.2d 106. In contrast, an agent of the Department of Corrections may search the residence of a person on supervision without a warrant if the agent has reasonable grounds to believe that the probationer has contraband. *Id.*, ¶9. Our review of whether a search is a police search or probationary search requires us to engage in a two-step process. *See State v. Hajicek*, 2001 WI 3, ¶27, 240 Wis. 2d 349, 620 N.W.2d 781. We first review the circuit court's findings of fact and will uphold them unless they are clearly erroneous. *Id.* We then review *de novo* the circuit court's conclusion, drawn from the facts, that the search was either a police search or a probationary search. *Id.*

¶3 During the suppression hearing, the circuit court found that the police went to Hollis's residence in response to a 911 call from a neighbor; that Hollis had a weapon and was threatening people; that the police notified Daniel Isaacson, an agent at the DOC, because Hollis was on supervision; that Isaacson is an experienced DOC employee; that Isaacson arrived at Hollis's home; that Isaacson caused a warrant to be issued for Hollis's arrest for violating the terms of his probation based on the neighbor's statement that she saw Hollis with a gun;

that Hollis is not permitted to possess a gun pursuant to the terms of his supervision; that the police forcibly entered Hollis's home to execute the arrest warrant; that the police conducted a protective sweep of Hollis's home after Hollis's arrest; that Isaacson then went into the residence to search it because he believed that Hollis might have a weapon in the home based on the neighbor's statement; that Isaacson advised the police that he was going to conduct a probation search and informed the police that he was in control of the search; that Isaacson informed the police that they were there only for his safety and security; that Isaacson testified that no police officer asked him to search the home; and that Isaacson found drugs and weapons in Hollis's home. Based on these factual findings, the circuit court concluded that the search was conducted by Isaacson, not the police.

¶4 Hollis contends Isaacson's search of his home was subterfuge and that the search was actually conducted and directed by the police. Hollis contends that Isaacson used his authority to help the police evade the Fourth Amendment's warrant requirement. *See id.*, ¶22.

¶5 Hollis's argument is unavailing. When the circuit court makes factual findings, "it is the ultimate arbiter of the credibility of the witnesses." *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. The circuit court found that Isaacson was a credible witness. Isaacson testified that he conducted the search because he believed that Hollis might have a weapon in his home in violation of the rules of his supervision. Isaacson also testified that he explicitly informed the police that he was in control of the search and they were only there for his safety. The circuit court's factual findings do not support Hollis's claim that the search was, in fact, conducted and directed by the police. Therefore, we reject Hollis's claim that the evidence found

in his home should have been suppressed because it was found pursuant to a warrantless police search.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2015-16).

