IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DEONTE L. WILLIAMS,

Defendant.

OPINION AND ORDER

07-CR-0059-C-01

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In a report and recommendation entered on August 28, 2007, United States Magistrate Judge Stephen Crocker recommended denial of defendant Deonte L. Williams's motion to suppress evidence seized during a search initiated by defendant's state probation officer on October 9, 2006. Defendant has filed objections to the report and recommendation, arguing that the magistrate judge erred in finding the search of defendant's residence constitutional. In addition to his objections, defendant has asked the court to supplement the facts found by the magistrate judge to include the specific probation conditions regarding searches to which defendant was subject and a description of the way in which the search was initiated. Although it seems unlikely that either the precise conditions concerning searches or the manner in which the search was initiated is relevant

to the decision in this case, I will supplement the magistrate judge's report with the additional facts, in the event the court of appeals would take a different view of their relevance.

The parties filed copies of police and probation reports prepared in connection with the search. These include the specific probation conditions on searches that defendant signed:

> You shall make yourself available for searches or tests ordered by your agent including but not limited to urinalysis, breathalyzer, DNA collection and blood samples or search of residence or any property under your control.

They also include a description of the search and the events leading up to it, beginning with the information that defendant's probation officer, Michelle Eggers, learned in early October 2006 to the effect that defendant had informed others that he was "always 'packing' to protect himself" and that he had been involved in shooting incidents. The information led Eggers to obtain permission from her supervisor to search defendant's residence. She arranged for several probation officers and police officers to assist her in the search. On the afternoon of October 9, she made contact with defendant at the entrance to the second floor of the building in which he was living and turned him over to the police, who handcuffed him and kept him outside the residence under police guard. When Patrice Freeman responded to Eggers's knock on the door of the residence, Eggers told her and Daniel Williams (defendant's brother and Freeman's live-in boyfriend) that she planned to

conduct a probation search. The search, which began about 4:00 p.m., uncovered a loaded .25 caliber Beretta handgun in a shoebox filed with papers belonging to defendant.

OPINION

Defendant relies, as he did before the magistrate judge, on his interpretation of Griffin v. Wisconsin, 483 U.S. 968 (1987), in which the Supreme Court upheld as constitutional searches of probationers' residences conducted pursuant to state regulations that themselves satisfy the Fourth Amendment. The Court found that the "special needs" of administering a probation system justify warrantless searches, provided that they are supported by reasonable grounds to believe that the probationer is in possession of contraband.

From Griffin, defendant draws the conclusion that the search of his residence is constitutional only if it was carried out in strict compliance with the state's rules and regulations. It follows, therefore, that because Eggers failed to comply with all of the regulations and specifically the regulation requiring her to inform the probationer of the search, its purpose and the manner in which it will be conducted, § DOC 328.21, the resulting search was not constitutional.

Defendant's argument ignores the Court's own footnote in Griffin, 483 U.S. at 880 n.8, in which the Court explained that it is irrelevant whether the probation officers comply with every provision of the state's regulations. The provisions of the state regulations do not

bear on the determination of the search's constitutionality. The critical question is whether the procedures the officers employ establish "reasonable grounds" under Wisconsin law and are adequate under federal constitutional standards. It makes no sense for defendant to argue that the officers had to follow each regulatory provision. It is hornbook law that, as the magistrate judge observed, "federal courts determine constitutional reasonableness under federal standards. Rep. & Rec., dkt. #22, at 4 (citing United States v. Brack, 188 F.3d 748, 759 (7th Cir. 1999)).

If Griffin left any question about the need for probation officers to meet every requirement of the state's regulations, it was dispelled in United States v. Knights, 534 U.S. 112 (2001), when the Court jettisoned the "special needs" justification for warrantless searches of probationers and their residences. The Court directed the lower courts to evaluate the constitutionality of any search by using the "general Fourth Amendment approach of 'examining the totality of the circumstances,' Ohio v. Robinette, 519 U.S. 33, 39 (1996), with the probation search condition being a salient circumstance." Knights, 534 U.S. at 118-19.

Although defendant argues that the limited consent he provided does not justify the kind of search approved in Knights, his argument is unpersuasive. In Knights, the Court held explicitly that the specific language of the regulation was not determinative of the 0legitimacy of a particular search. Id. at 118 ("We need not decide whether Knights'

acceptance of the search condition constituted . . . a complete waiver of his Fourth Amendment rights"). "[T]he reasonableness of a search is determined 'by asessing, on the one hand, the degree to which it intrudes upon an individual's privacy and on the other, the degree to which it is needed for the promotion of legitimate governmental interests." Id. at 118-19 (quoting Wyoming v. Houghton, 526 U.S. 295, 300 (1999)). The Court found that the probation condition imposed on Knights significantly diminished his reasonable expectation of privacy. Id. at 119-20.

Defendant was subject to a condition of his probation that required him to make himself available for searches of any residence or property under his control. This may have been, as defendant contends, a "far cry from the condition in Knights," which required the probationer to "[s]ubmit his . . . person, property, place of residence, vehicle, personal effects, to search at anytime, with or without a search warrant, warrant of arrest or reasonable cause by any probation officer or law enforcement officer." Id. at 114. However, it was enough to diminish significantly any expectation of privacy defendant had in his own person, residence or property.

Given defendant's reduced privacy interest, the state needed no more than the reasonable suspicion Eggers possessed to undertake a constitutionally valid search of defendant's residence.

ORDER

IT IS ORDERED that the magistrate judge's recommendation to deny defendant Deonte L. Williams's motion to suppress the evidence obtained during the search of his residence on October 9, 2006 is ADOPTED and the motion is DENIED.

Entered this 17th day of September, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge