

IN THE SUPERIOR COURT OF
GORDON COUNTY
STATE OF GEORGIA

FILED
Clerk Superior Ct., Gordon County

SEP 11 2006

Brian Brannon
Clerk

STATE OF GEORGIA : CRIMINAL ACTION
: :
VS. : FILE NUMBER 04-CR-16471
: :
JERRY WILLIAM JONES, : :
: :
DEFENDANT :

ORDER ON DEFENDANT'S MOTIONS #86 AND 121
TO SUPPRESS EVIDENCE

The above and foregoing Motions to Suppress Evidence came on regularly for a hearing on August 21, 2006, with counsel for the State and Defense being present and the Defendant being present, and after hearing evidence and argument of counsel, the Court enters the following order:

BACKGROUND

Defendant was a suspect in a multiple homicide case in Gordon County who was believed to have also kidnaped two children whom he had allegedly threatened to kill, and who remained at large. Det. Jose Manuel Picone, Gordon County Sheriff's Office, learned that the Defendant was on probation in Gordon and Floyd Counties, and being supervised on probation in Floyd County. He was further advised that a probation warrant was issued for Defendant's arrest. Det. Picone, along with Floyd County Probation Officer Colin Walker, went to Defendant's residence to execute the arrest warrant. Det. Picone believed the Defendant to be armed and dangerous. The officers obtained a key to the residence, entered announcing their identity, and made a sweep of the downstairs and upstairs of the residence. While "clearing" the residence, the officers observed a rifle box upstairs partially under the bed. After determining no one was present in the residence, the

officers, including the Defendant's probation officer, seized pictures, the rifle box, a .223 caliber round, letters and envelopes.

At the hearing on Defendant's Motion to Suppress, the State introduced, *inter alia*, the Defendant's August, 2001, negotiated plea to possession of a firearm by a convicted felon in Gordon County Superior Court, Case No. 14312. The Defendant received a 5-year sentence, 6 months to serve, with 4 ½ years on probation. The sentence was entered on August 15, 2001. The Court ordered the Defendant to pay a fine and a probation fee. The box referring to "other conditions" including the "general and special conditions stated on page 2 (3) [sic] of this sentence" is not marked. Attached to State's Exhibit 1A is a page of general and special conditions signed by the Defendant and his Gordon County probation officer, Dan Fox, dated August 22, 2001, and which refers to case #14312.

The State presented no evidence at the hearing whether the Defendant was advised at the time of his plea of his waiver of his Fourth Amendment rights or whether such waiver was expressly made a part of the negotiation of the plea.¹

DISCUSSION

While the Fourth Amendment applies to probationers, *Allen v. State*, 258 Ga. 424, 369 S.E.2d 909 (1988), the Fourth Amendment bars only those searches and seizures deemed to be unreasonable. *Adams v. State*, 269 Ga. 405, 498 S.E.2d 268 (1998). For there to be a valid waiver

¹ Condition #11, applicable to this motion states: "Probationer shall submit to a search of his/her person, houses, papers and/or effects as those terms of the Fourth Amendment of the United States Constitution are defined by the Court, any time of the day or night, with or without a search warrant whenever requested to do so by a probation supervisor or any law enforcement officer and specifically consents to the use of anything seized as evidence in a proceeding to revoke this order of probation."

of Defendant's Fourth Amendment rights as a special condition of probation, the record must show that the Defendant waived his right as part of the negotiated plea bargain at the time of his sentence. Here, the only evidence before the Court is that the Defendant signed the general and special conditions of probation which contained a waiver of his Fourth Amendment rights some seven days later.

Because the State has presented no evidence that the Defendant waived his right as part of the plea bargain or at the time of sentencing, the Court is forced to find that the warrantless search of the Defendant's residence cannot be based on the Defendant's Fourth Amendment waiver as part of his sentence of probation. *Fox v. State*, 272 Ga. 163, 527 S.E.2d 847 (2000).

However, as *Fox* explains, the inquiry does not stop there.

Although searches must usually be accompanied by a warrant and supported by probable cause to be reasonable, exceptions are permitted when "special needs," beyond the normal need for law enforcement, make the warrant and probable cause requirement impractical. *Griffin v. Wisconsin*, 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987).

Finding that supervision of a probationer is a special need, *Griffin* established that a warrantless search of a probationer's home must be based upon "reasonable grounds to believe the probationer is engaged in some criminal activity there." *Fox, supra*.

In this case, the Defendant's probation officer was contacted by law enforcement prior to entry into the house, the probation officer obtained a probation arrest warrant for a curfew violation with the knowledge that the Defendant was suspected in a multiple homicide and believed to have two children with him as hostages whom he had threatened to kill, and his whereabouts was unknown.

Thus, there was ample reliable information available to the probation officer and law

enforcement that gave the probation officer reasonable suspicion that the Defendant was engaged in criminal activity when he conducted the search. *Id.* The fact that law enforcement was also present and participated in, if not in fact led the search, does not change this conclusion, for it is reasonable to conclude that the search was not conducted solely for law enforcement purposes.

JUDGMENT

Therefore, based upon the above and foregoing, the Court concludes, by a preponderance of the evidence, that the search of the Defendant's residence by law enforcement and the Defendant's probation officer was based upon reasonable suspicion that the Defendant was engaged in criminal activity.

WHEREFORE, Defendant's motions to suppress the evidence seized at the Defendant's residence in Rome, Georgia, are DENIED.

SO ORDERED this 8th day of September, 2006.



G. CAREY NELSON, JUDGE
SUPERIOR COURT OF GORDON COUNTY, GEORGIA