STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 24, 2012
v	No. 301049 Emmet Circuit Court
MICHAEL JAMES KRUSELL, Defendant-Appellant.	LC No. 10-003236-FH

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

After a jury trial, defendant Michael James Krusell was convicted of possessing less than 25 grams of a controlled substance, Methadone, MCL 333.7403(2)(a)(v). The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to two to 15 years' imprisonment. Defendant appeals as of right. We affirm.

This case arose when a woman filed a police report accusing defendant of stealing her Ritalin medication.[1] While investigating the woman's allegation, the police searched the woman's residence and found numerous bottles of pills and drug paraphernalia. The woman told the police that defendant had used Ritalin and Methadone with her. Police officers and defendant's probation officer, Nathan Purvis, then went to defendant's residence to investigate defendant's potential involvement with illegal drugs. At the time, defendant lived with his father, had been twice convicted of controlled-substance offenses, and was on probation for a larceny conviction. The terms of defendant's probation stated the following:

> You must not use or possess any controlled substances or drug paraphernalia, unless prescribed for you by a licensed physician, or be with anyone you know to possess these items.
>
> You must use prescription drugs only as prescribed for you by your licensed physician.

[1] The police ultimately determined that the woman lied about the Ritalin theft in an attempt to obtain more Ritalin pills.

* * *

> You must submit to a search of your person and property, including but not limited to your vehicle, residence, and computer, without need of a warrant if the field agent has reasonable cause to believe you have items which violate the conditions of your probation.

The officers did not receive an answer at defendant's residence, so they contacted defendant's father and informed him that they suspected defendant was using drugs and they wished to search the house. Relying on the officers' representations, the father permitted the officers to search the areas of the residence to which defendant had access.[2] When the police ultimately entered defendant's residence, they found defendant sleeping. A search of defendant's coat and residence yielded various drug paraphernalia and an envelope containing crushed Methadone. The officers arrested defendant and transported him to a hospital for a blood test. While in transit, defendant received his *Miranda*[3] rights and then stated that Ritalin and Methadone would be found in his blood. Defendant's blood tested positive for cocaine, marijuana, and opiates.

Defendant's first contention on appeal is that the trial court erroneously denied his motion to suppress the evidence that the police obtained through the warrantless search of his residence. We review a trial court's factual findings with respect to a motion to suppress for clear error and its ultimate decision de novo. *People v Galloway*, 259 Mich App 634, 638; 675 NW2d 883 (2003).

"It is well settled that both the United States Constitution and the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009) (quotations and citations omitted); see also US Const, Am IV; Const 1963, art 1, § 11. Searches and seizures conducted by the police without a warrant are unreasonable per se, unless one of several well-established exceptions applies. *People v Brown*, 279 Mich App 116, 131; 755 NW2d 664 (2008). One such exception is the "special needs" exception for probationers' residences. *People v Woods*, 211 Mich App 314, 317; 535 NW2d 259 (1995). In *Griffin v Wisconsin*, 483 US 868, 871-873; 107 S Ct 3164; 97 L Ed 2d 709 (1987), the United States Supreme Court held that a warrantless search of a probationer's residence was proper because it was performed pursuant to a state regulation that permitted a warrantless search when there was "reasonable grounds" to believe that the probationer possessed items prohibited by the conditions of his probation. According to the Court, the regulation itself satisfied the Fourth Amendment's reasonableness requirement; the

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[2] The nature of the father's consent was the subject of dispute between the parties. After an evidentiary hearing on the motion to suppress, the trial court found that there was reasonable cause to believe defendant had violated the terms of his probation, so the search was justified under the terms of the probation order, and the officers' representation to defendant's father that they had the authority to search defendant was accurate. Defendant's father relied on this representation when he consented to the search.

[3] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

special needs of the state's probation system—supervision of probationers—made the Fourth Amendment's warrant requirement impracticable and justified the replacement of the Fourth Amendment's probable cause standard with a "reasonable grounds" standard. *Griffin*, 483 US at 873-876. The Court explained:

> In such circumstances it is both unrealistic and destructive of the whole object of the continuing probation relationship to insist the same degree of demonstrable reliability of particular items of supporting data, and upon the same degree of certainty of violation, as is required in other contexts. In some cases—especially those involving drugs or illegal weapons—the probation agency must be able to act based upon a lesser degree of certainty than the Fourth Amendment would otherwise require in order to intervene before a probationer does damage to himself or society. The agency, moreover, must be able to proceed on the basis of its entire experience with the probationer, and to assess probabilities in the light of its knowledge of his life, character, and circumstances. [*Id*. at 879.]

In the present case, the terms of defendant's probation prohibited him from using or possessing any controlled substance or drug paraphernalia. Defendant agreed to consent to a warrantless search if his probation officer had "reasonable cause" to believe that defendant was in possession of items that violated his probation. The "reasonable cause" standard of defendant's probation is akin to the "reasonable grounds" standard addressed by the Court in *Griffin*. See *id.* at 875-876. Moreover, the terms of defendant's probation were reasonably tailored to meet his rehabilitation needs because they addressed his history with the correctional system, which included two controlled-substance convictions. See *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990) (concluding that a waiver of the constitutional protections against unreasonable searches and seizures may be made a condition of probation where the waiver is reasonably tailored to the defendant's rehabilitation). Thus, pursuant to the "special needs" exception, the search of defendant's residence was reasonable if Purvis had "reasonable cause" to believe that defendant was in possession of items that violated his probation, i.e., controlled substances or drug paraphernalia. We conclude that Purvis had reasonable cause to believe such facts. When determining whether to perform the search, Purvis was permitted to assess the probability of defendant's possession of prohibited items by relying on his entire experience with defendant and the circumstances presented. See *Griffin*, 483 US at 879. Here, Purvis and the police received information during the investigation of the woman's allegations that she and defendant were involved in a "narcotics deal" and "the use of drugs," which would have violated the terms of defendant's probation. According to Purvis, defendant had previously tested positive for Methadone during an initial drug test. And, at that time, defendant admitted that he did not have a valid prescription for the Methadone and was warned not to use Methadone again.

Defendant appears to argue that the "special needs" exception does not apply in this case by relying on the United States Supreme Court's decision in *United States v Knights*, 534 US 112, 114, 116-118; 122 S Ct 587; 151 L Ed 2d 497 (2001), a case differentiated from *Griffin* by the Court because the search of the probationer in *Knights* was not a "special needs" search, as it was performed pursuant to a condition of probation that permitted a search by a probation or law enforcement officer at any time, without reasonable cause, and for any purpose. At issue in

Knights was whether warrantless searches of probationers must be related to a "probationary purpose," *Knights*, 534 US at 112, and whether a probationary condition that allows for a search "at anytime, with or without . . . reasonable cause . . ." violates the Fourth Amendment, *id.* at 117. The Supreme Court held that it "need not address the constitutionality of a suspicionless search" because the search in that case, based on a totality of the circumstances, was supported by reasonable suspicion. *Knights*, 534 US at 120, n 6. The Court held that "[w]hen an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable." *Id*. at 121.

To the extent defendant argues that the "special needs" exception does not apply, we reject the argument. The terms of defendant's probation prohibited defendant from using or possessing controlled substances and drug paraphernalia. Where Purvis had reasonable cause to believe that defendant used or possessed controlled substances or drug paraphernalia, the terms of defendant's probation permitted a search of defendant's residence. The search here, authorized under and performed pursuant to defendant's probation, was for a probationary purpose. Moreover, the search remains a "special needs" search even though it could result in new criminal charges against defendant for possessing items prohibited by the terms of his probation. See *Griffin*, 483 US at 870-872 (search for contraband is a "special needs" search even where defendant was charged with possession of a firearm by a felon as a result of the search).

Defendant insists that the search was unreasonable because probable cause was required for the search of his residence as the Michigan Constitution affords him greater protection than the United States Constitution. Defendant relies on this Court's decision in *People v Peterson*, 62 Mich App 258, 265-267; 233 NW2d 250 (1975), where we struck down a provision of a defendant's probation that provided for searches "at any and all times by the probation officer and . . . law enforcement officers without a search warrant." We reject defendant's argument. "The Michigan Constitution . . . is generally construed to provide the same protection as the Fourth Amendment of the United States Constitution." *Hyde*, 285 Mich App at 438-439. Moreover, defendant's reliance on *Peterson* is misplaced as the probation provision in *Peterson* provided for virtually unfettered search authority; neither the regulation in *Griffin* nor the probation provision in the present case is analogous to the provision in *Peterson*.

Accordingly, we hold that the warrantless search of defendant's residence was reasonable under both the United States and Michigan Constitutions.

Defendant's final argument is that the trial court abused its discretion when it admitted testimony that described how defendant prepared Ritalin and Methadone for intravenous use and used syringes the night the woman alleged that defendant stole her Ritalin. Although defendant asserts that he preserved this issue for appeal by timely objecting to the testimony at issue, he objected to other testimony on the grounds that it was inadmissible under MRE 404(b). No objection was made to the testimony that described how the drugs were prepared. Because a defendant must first raise an objection with the trial court, this issue is not preserved. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). Thus, our review is limited to plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant challenges the testimony on two grounds. First, defendant contends that the testimony exceeded the scope of the prosecutor's MRE 404(b) notice. We disagree. The prosecutor explicitly stated in his amended MRE 404(b) notice that he intended to introduce "evidence that defendant prepared and shot up Ritalin and Methadone." Moreover, the testimony was part of the res gestae of the charged offense. Res gestae evidence is an exception to MRE 404(b). *People v Robinson*, 128 Mich App 338, 340; 340 NW2d 303 (1983). "Normally the facts and circumstances surrounding the commission of a crime are properly admissible as part of the res gestae." *People v Shannon*, 88 Mich App 138, 146; 276 NW2d 546 (1979). Evidence of a defendant's other criminal acts that are blended or connected to the crime for which defendant is charged is generally admissible to explain the circumstances of the crime charged so that the jury can hear the "complete story." *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). Here, the evidence was part of the res gestae because it described the events that led to the belief that defendant had violated the terms of his probation. See *id.*; *Shannon*, 88 Mich App at 146.

Second, defendant contends that the testimony's probative value was substantially outweighed by the danger of unfair prejudice. We do not find plain error in this regard. Evidence is not unfairly prejudicial merely because it damages a party's case. *People v Vasher*, 449 Mich 494, 501; 537 NW2d 168 (1995). Rather, undue prejudice refers to "an undue tendency to move the tribunal to decide on an improper basis." *Id.* The testimony about how defendant prepared the drugs for intravenous use was probative because it explained the significance of the spoons, syringes, pill crusher, and Q-tips that were found in defendant's residence. The testimony supported the prosecutor's theory that defendant was not lawfully prescribed the crushed Methadone that was found in his possession. The probative value of this testimony was not substantially outweighed by the danger of unfair prejudice because it did not move the jury to decide the case on an improper basis. See *id.*

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro