

IN THE SUPREME COURT OF FLORIDA

WILLIAM MICHAEL YULE
PETITIONER,

V

CASE NO SC05-1335
L.T. NO. 2D03-4183

STATE OF FLORIDA,
RESPONDENT.

RESPONDENT'S JURISDICTIONAL BRIEF
ON REVIEW FROM THE SECOND
DISTRICT COURT OF APPEAL
STATE OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

On July 17, 2002, Petitioner was charged of one count, Possession of Methamphetamine, and one count, Possession of Drug Paraphernalia. (R. 25). The evidence was obtained by law enforcement during the course of a warrantless probationary search of a residence shared by Petitioner and his probationer/roommate, Stacy Ellison. Petitioner filed a pre-trial motion to suppress evidence and his statements, arguing law enforcement had committed an unlawful warrantless search and an unlawful investigatory detention in securing the evidence against him. (R. 36-39).

On August 8, 2003, a hearing on Petitioner's motion was held. (R. 42-83). The facts derived at this hearing were undisputed. According to Probation Officer Leticia Jaimes, on June 18, 2002, she searched the residence of probationer Ellison after Jaimes received a report from another probationer Ms. Ellison was dealing drugs out of her residence. (R. 44). Prior to the search, Jaimes requested two county sheriff deputies to assist by securing the probationer's residence while Jaimes conducted the warrantless search. (R. 46).

When the probation officer and the two sheriff deputies arrived at Ellison's residence, they observed the

probationer getting ready to leave in her car. (R. 47). Probation Officer Jaimes told Ellison she needed to search her house as a result of the information Jaimes received that Ellison was selling drugs from her residence. The probationer agreed to the search. (R. 48).

Once inside the residence, Probation Officer Jaimes followed Ellison to her bedroom while the two sheriff deputies entered the residence living room to secure the area. (R. 63). At this point, the deputies made contact with Petitioner and asked him to remain in the room for safety reasons. Thereafter, one of the deputies asked Petitioner if he possessed any weapons on his person. Petitioner responded he had a knife in his pocket. (R. 64). Petitioner then pulled the knife out and handed it to the deputy.

The deputy then asked Petitioner if he possessed any more weapons on his person. To which, Petitioner stated, "no". Immediately thereafter, without any prompting by the deputy, Petitioner proceeded to lift his shirt and turned around to demonstrate he did not have any additional weapons on his person. As Petitioner was doing so, the deputy observed a pen cartridge in plain view sticking one to two inches out of the rear of Petitioner's pocket. The deputy also identified a white residue in the cartridge.

Based upon his training and experience, the deputy concluded the pen cartridge was used to ingest methamphetamine.

After the deputy retrieved the cartridge, he patted Petitioner down and retrieved four other cartridges in Petitioner's pocket. (R. 64). Petitioner was then arrested and read his Miranda rights. Thereafter, Petitioner stated there was a tinfoil "boat" commonly used to smoke methamphetamine under the couch. (R. 65). Petitioner also stated he had smoked methamphetamine earlier that day with a straw and the tinfoil.

On August 13, 2003, the trial court issued a written order granting Petitioner's motion to suppress. (R. 86-88). In that order, the trial court determined that although the warrantless search of Petitioner's residence was a valid probationary search, the search was limited to a search for probation violations. Therefore, the trial court concluded that evidence obtained in the search would be admissible in a probation revocation proceeding but not to prove a new criminal offense, citing Croteau v. State, 334 So.2d 577 (Fla. 1976), and Grubbs v. State, 373 So.2d 905 (Fla. 1979).

Thereafter, the State appealed the trial court's order. On June 29, 2005, the Second District Court of

Appeal reversed the trial court's order granting Petitioner's motion to suppress in State v. Yule, 905 So.2d 251 (Fla. 2d DCA 2005). In that decision, the majority opined under this Court's decisions in Croteau and Grubbs, supra., as applied to the facts in the present case, law enforcement had the authority to enter the probationer's residence and conduct a probationary search of that residence without a warrant. Moreover, to secure the premises and ensure officer safety, the sheriff deputies properly detained and questioned Petitioner. Thus, at each step along the way, law enforcement's actions were based on proper legal authority.

Thereafter, Petitioner filed notice of intent to seek the discretionary jurisdiction of this Court.

SUMMARY OF THE ARGUMENT

Petitioner argues this Court may exercise its discretionary jurisdiction to review the instant issue considered by the Second District Court of Appeal. Respondent, however, submits the Second District's opinion in State v. Yule, 905 So.2d 251 (Fla. 2d DCA 2005), did not expressly or directly conflict with this Court's holding in Croteau v. State, 334 So.2d 577 (Fla. 1976) and its progeny as alleged by Petitioner. Accordingly, Respondent respectfully requests this Court deny review of the instant case.

ARGUMENT

**WHETHER THE SECOND DISTRICT'S OPINION
IN STATE V. YULE, 905 So.2d 251 (FLA.
2D DCA 2005) DIRECTLY AND EXPRESSLY
CONFLICTS WITH THIS COURT'S DECISION IN
CROTEAU V. STATE, 334 So.2d 577 (FLA.
1976).**

Florida Rule of Appellate Procedure

9.030(a)(2)(A)(iv), allows this Court to exercise its discretionary review of decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal or of this Court on the same question of law. In State v. Yule, 905 So.2d 251 (Fla. 2d DCA 2005), the Second District Court of Appeal reversed the trial court's order granting Petitioner's motion to suppress. In so doing, the Second District applied the facts in the present case to this Court's holding in Croteau v. State, 334 So.2d 577 (Fla. 1976), and Grubbs v. State, 373 So.2d 905 (Fla. 1979).

In those cases, this Court noted a probationer's status gives a probation supervisor standing to be in locations not ordinarily available to law enforcement officers. Accordingly, this Court in Croteau held that a probation officer has the authority to enter upon the living quarters of his probationer to conduct a warrantless

search. See also Grubbs, supra., at 908. It follows, since this authority places a probation supervisor lawfully on the premises of a probationer, the officer can seize contraband or evidence of a crime that is in plain view, and for his own safety, he or a law enforcement officer can stop and frisk a probationer without his consent in accordance with standards of Terry v. Ohio, 392 U.S. 1 (1968). Id.

Based upon the Croteau holding, the Second District in the present case concluded Petitioner's probation supervisor had the authority to enter the residence shared by Petitioner and his co-resident probationer in order to conduct a warrantless probationary search. In addition, the Second District concluded, to secure the premises and ensure officer safety during the probationary search, sheriff deputies were permitted to detain and question Petitioner. At each step along the way, according to the Second District in Yule, law enforcement's actions were based on proper legal authority.

Petitioner argues the Second District's holding in Yule directly and expressly conflicts with this Court's holding in Croteau and its progeny. Specifically, Petitioner contends the Second District abrogated the Croteau holding by permitting admission of evidence to

prosecute new criminal offenses against Petitioner, a non-probationer. In Croteau, this Court held that any evidence discovered during a probationary search would be admissible in probation revocation proceedings although the same evidence would not be admissible to prove a new criminal offense.

Respondent submits the Second District Court's Opinion in State v. Yule, 905 So.2d 251 (Fla. 2d DCA 2005), is not in express or direct conflict with Croteau or its progeny. Importantly, the decision in Yule is factually distinct from those in Croteau. Specifically, as noted by the Second District, the present case has nothing to do with the use of evidence against a probationer in a new criminal proceeding. Instead, this case concerns evidence obtained during the course of a probationary search which implicated someone other than the probationer. Evidence which implicated Petitioner, a non-probationer.

To that end, relying on this Court's holding in Croteau the Second District properly concluded Probation Officer Jaimes legally entered the residence shared by Petitioner and probationer Ellison to determine if Ellison was in violation of her probation. Similarly, the Second District followed this Court's holding in Grubbs, supra., when it concluded sheriff deputies were authorized to

accompany the probation officer into Petitioner's residence during the probationary search as a safety precaution.

Thereafter, once lawfully inside the residence, in order to provide adequate safety for Probation Officer Jaimes, sheriff deputies were justified in their initial detention of Petitioner and their inquiry concerning weapons.

Thereafter, the sheriff deputies seized contraband from Petitioner when observed in plain view and conducted a further patdown in accordance with standards of Terry v. Ohio, 392 U.S. 1 (1968).

In conclusion, Respondent would urge this Court to decline jurisdiction of this case because the Second District's opinion in the instant case does not expressly and directly conflict with this Court's decision in Croteau v. State, 334 So.2d 577 (Fla. 1976) and its progeny as alleged by Petitioner.

CONCLUSION

Respondent respectfully requests that this Honorable Court decline to exercise its jurisdiction in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Kevin Briggs, Assistant Public Defender, Public Defender's Office, Polk County Courthouse, P.O. Box 9000-Drawer PD, Bartow, Florida 33831, on this _____ day of September, 2005.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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