

**FILED**

MAR 14, 2014

Court of Appeals  
Division III  
State of Washington

No. 31308-5-III

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON

DIVISION III

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STATE OF WASHINGTON,

Appellant,

vs.

FELIPE RONALDO JARDINEZ,

Respondent.

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APPEAL FROM THE SUPERIOR COURT  
OF YAKIMA COUNTY, WASHINGTON

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THE HONORABLE BLAIN GIBSON, JUDGE

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APPELLANT'S REPLY BRIEF

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**A. ARGUMENT IN REPLY**

**1. A probation officer's search of a parolee's iPod based on a well founded suspicion that a probation violation has occurred does not violate the Fourth Amendment.**

Jardinez argues that State v. Parris, 163 Wn. App. 110, 259 P.3d 331 (2011), and U.S. v. Conway, 122 F.3d 841 (9th Cir. 1997), certiorari denied 522 U.S. 1065, 118 S. Ct. 730, 139 L. Ed. 2d 668 (1998), are not to be considered authority for finding the search in this case reasonable under the Fourth Amendment. The Defendant argues that those cases “fly in the face of the Fourth Amendment requirement.” However, there is no real argument advanced as to why those cases should be overruled.

He cites two cases, including State v. Webster, 20 Wn. App. 128, 579 P.2d 985 (1978), that indicate that searches must be reasonable. But as noted in Webster, “whether a particular action is reasonable depends upon a balancing of the interests involved, i.e. the need to search against the resulting intrusion.” 20 Wn. App. at 136. Jardinez provides no argument why this balancing test should lean in his favor where a probation officer has a well founded suspicion that he has violated the terms of his probation.

Jardinez also cites State v. Patterson, 51 Wn. App. 202, 752 P.2d 945 (1988), for the concept that a parolee's privacy interest must be balanced with public safety interests. However, after balancing the

competing interests, the court concluded that “[t]he societal interest in suspending the parole of a felon who has violated the conditions of parole is sufficient to outweigh the privacy interest of the parolee.” 51 Wn. App. at 208. The court also reiterated the standard required for a warrantless search: a well founded suspicion that “a probation violation *has* occurred.” Id. at 204-05 (citing State v. Lampman, 45 Wn. App. 228, 233, 724 P.2d 1092 (1986), State v. Coahran, 27 Wn. App. 664, 666, 620 P.2d 116 (1980), and State v. Simms, 10 Wn. App. 75, 516 P.2d 1088 (1973), review denied, 83 Wn.2d 1007 (1974)) (emphasis added).

**2. Article 1, section 7 of the Washington State Constitution does not provide greater protections to parolees in this context than the Fourth Amendment.**

Jardinez argues that article 1, section 7 of the Washington State Constitution provides greater protections than the Fourth Amendment, citing State v. Valdez, 167 Wn.2d. 761, 224 P.3d 751 (2009). However, Valdez does not address searches of parolees. Valdez dealt with an automobile search under the search incident to arrest exception. 167 Wn.2d at 767-68. The court held that a warrantless search was permissible in this context “when necessary to preserve officer safety or prevent the destruction or concealment of evidence of the crime of arrest.” Id. at 779. The case says nothing about article 1, section 7 in the context

of parolee searches by a probation officer. Nor does Jardinez cite any authority that indicates that the privacy protections of article 1, section 7 are more extensive than the Fourth Amendment in the context of a probation officer's search.

In fact, case law is contrary to the Defendant's argument. As stated in Parris, "[a]lthough in some circumstances article I, section 7 provides broader protections than its federal counterpart, Washington law recognizes that probationers and parolees have a diminished right of privacy..." 163 Wn. App. at 117.

Jardinez tries to distinguish Parris, claiming that the "opinion recites at length facts showing that...the officer...had a reasonable belief that evidence relating to these violations might be found in the electronic storage devices..." A close look at the case reveals that the facts are quite to the contrary. In Parris, the probation officer "did not know what information might be on the USB drives and memory cards but, thinking they *might* show Parris's violation of probation, she seized them." 163 Wn. App. at 115 (emphasis added). The content of the memory cards was not readily apparent based on a visual inspection and no one had provided any information to the probation officer about their content. But based on violations that had already occurred (drug use, curfew violation, and contact with a minor), the court found that she had a "reasonable suspicion

that the memory cards might contain evidence of **additional** violations...”  
Id. at 120 (emphasis added).

The case at bar is analogous to Parris. Here, the probation officer also had no specific information as to what was on the iPod. And the probation officer was not required to have that sort of specific information. “Washington law does not require that the search be necessary to confirm the suspicion of impermissible activity, or that it cease once the suspicion has been confirmed. Parris, 163 Wn. App. at 122 (citing U.S. v. Conway, 122 F.3d 841, 843 (9th Cir. 1997)). Given Jardinez’s status as a probationer, the iPod was subject to search under RCW 9.94A.631(1). “The statute itself diminishes the probationer’s expectation of privacy.” Id. at 123. Like Parris, Jardinez had no reasonable expectation of privacy in his iPod in this situation, and thus, no separate warrant was required to search it.

## **B. CONCLUSION**

The search in this case was not in violation of the Fourth Amendment, nor article 1, section 7 of the Washington State Constitution. The trial court misinterpreted case law by requiring that the probation officer have a reasonable suspicion that evidence of criminal activity would be located on the iPod. Based on the foregoing points and authorities, this court should reverse the trial court’s order suppressing

evidence, and remand this case to the superior court for further proceedings.

Respectfully submitted this 14th day of March, 2014,

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