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Fourth Circuit Court of Appeals

(Note: You may access the court's opinion by clicking on the case name)

- (1) Officers Were Required to Obtain a Search Warrant to Search the Premises of Defendants on Supervised Release When There Was No Release Condition Permitting a Warrantless Search of Premises**
- (2) Fourth Amendment's Good-Faith Exception Did Not Apply to Admit Evidence Seized as Result of Invalid Dog Sniff**
- (3) Court Remands Case to District Court to Reconsider Applicability of Fourth Amendment's Independent Source Exception**

[United States v. Hill](#), ___ F.3d ___, 2015 WL 151613 (January 13, 2015). Defendant Barker was on federal supervised release for a felony drug conviction. Federal release conditions (1) required him to notify his probation officer if he moved, and (2) allowed probation officers to visit him at home at any time and confiscate contraband in plain view. However, there was not a condition authorizing warrantless home searches.

Law enforcement officers obtained an arrest warrant for a suspected violation of moving without notification and executed it (with probation officers) at Barker's new apartment. Inside, they found Barker and two other defendants who were also on supervised release. After the officers placed all three in custody and completed their protective sweep (which was not challenged on appeal), they conducted a walk-through of the apartment to look for contraband and other evidence of supervised release violations (the walk-through was challenged on appeal). They discovered various drug paraphernalia and pills. Officers then had a drug-detection dog sniff around the apartment (which was challenged on appeal), and the dog alerted to the odor of narcotics above him, and as a result officers saw a plastic bag tucked inside a ceiling tile. Only after the dog alerted did the officers seek a search warrant, and in the ensuing search they found heroin and other items, which resulted in heroin-based convictions in federal district court.

(1) The court, relying on what it called a "remarkably similar" ruling in *United States v. Bradley*, 571 F.2d 787 (4th Cir. 1978) (parole officer's warrantless search of parolee's room violated Fourth Amendment when parole condition allowed parole officer to visit his home but did not require him to consent to searches), held that the warrantless walk-through of the defendants' premises and the dog search violated the Fourth Amendment because a search warrant was required. The defendants' release conditions only authorized a visit to the home and confiscation of contraband in plain view, but they did not authorize warrantless searches. The court distinguished three post-*Bradley* United States Supreme Court cases: *Griffin v. Wisconsin*, 483 U.S. 868 (1987), *United States v. Knights*, 534 U.S. 112 (2001), and *Samson v. California*, 547 U.S. 843 (2006). The court noted that *Griffin* involved an express regulation authorizing a warrantless search of a probationer's home, *Knights* involved a warrantless search probation condition, and *Samson* involved a California statute requiring a prisoner eligible for release on parole to agree to warrantless searches.

In footnote three of its opinion, the court noted that two other federal circuits have taken a broader view of these cases: *United States v. Keith*, 375 F.3d 346, 350 (5th Cir. 2004) ("we cannot read *Knights* or *Griffin* as requiring either a written condition of probation or an explicit regulation permitting the search of a probationer's home on reasonable suspicion"), and *United States v. Yuknavich*, 419 F.3d 1302 (11th Cir. 2005) (similar ruling). But the court stated that it was constrained by *Bradley*.

(2) The court reviewed appellate cases decided before the search in this case and held that the officers could not have reasonably relied on any favorable binding appellate precedent when conducting the dog sniff, and thus the good faith exclusionary rule exception in *Davis v. United States*, 131 S. Ct. 2419 (2011), did not apply.

(3) The court held that the district court erred in how it applied the independent source exception to the exclusionary rule (see *Murray v. United States*, 487 U.S. 533 (1988)) to uphold the seizure of evidence in the premises based on the search warrant obtained after the illegal walk-through and dog sniff searches. The court remanded the case to the district court for reconsideration of the issue based on the court's explication of the proper *Murray* standard.

[Author's note: For North Carolina specific statutory provisions concerning warrantless searches of probationers' premises, see G.S. 15A-1343(b)(13) (regular condition) and 15A-1343(b2)(9) (special condition for sex offenders and others). For post-release supervisees, see G.S. 15A-1368.4(b1)(8). For parolees, see G.S. 15A-1374(b)(11).]