

**ROLL CALL TRAINING  
FROM NORTH CAROLINA'S 24/7 POLICE  
ATTORNEY LAW FIRM**

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**TOPIC:**

WHAT A LAW ENFORCEMENT OFFICER SHOULD DO WHEN THE PROBATIONER'S PROBATION CONDITIONS AUTHORIZE A WARRANTLESS SEARCH OF HIS PERSON OR PROPERTY

**THE CASE**

*U.S. v. Knights*, United States Supreme Court (December 2001).

**DISCUSSION**

This question comes up all the time in the law enforcement community in North Carolina. The United States Supreme Court upheld a warrantless search of a probationer's apartment by a law enforcement officer. The officer was aware that while on probation the probationer had to submit to warrantless searches at any time by a probation or law enforcement officer in California.

BUT, SUCH IS NOT THE LAW IN NORTH CAROLINA FOR LAW ENFORCEMENT OFFICERS. NO! NO! NO!

**WHAT FIRST-LINE SUPERVISORS SHOULD KNOW**

*In North Carolina only a probation officer may make a warrantless search of a probationer under these conditions. A law enforcement officer may not. Under these facts and circumstances, it matters not what the Supreme Court holds as the law. Really.*

Now, in North Carolina G.S. 15A-1343(b1)(7) provides for warrantless searches of a probationer as condition of probation. That section reads as follows:

*(7) Submit at reasonable times to warrantless search by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.*

Thus, if a court orders a probationer to comply with 15A-1343(b1)(7) only a probation officer can conduct the search. Please note that the probation officer does not need reasonable suspicion or probable cause to make this search. It may be, and often is, a completely random search not based on any suspicion.

A LAW ENFORCEMENT OFFICER MAY NOT CONDUCT THIS SEARCH, BUT MAY STANDBY AS A WITNESS AND FOR SECURITY/SAFETY REASONS.

## TWO ISSUES ARE RAISED

The first is whether a probation officer can use force if the probationer forcibly refuses to allow the search or physically denies access to himself or his property. What then? Well, we think the best course of action would be for the probation officer to arrest the probationer for a violation of this condition. If while restrained the probationer calms down, the probation officer should finish the search. We would never advise probation officers to use force to exercise authority under this condition of probation. There are simply too many other remedies available.

The second issue is whether the court can authorize a law enforcement officer to execute these kinds of searches by so stating as a condition of probation. In our opinion, the best reasoned position is that a judge may *not* authorize a law enforcement officer to conduct such a search. It would be in clear contravention of the statute that only authorizes probation officers to conduct searches under this special condition. Should you be in a position where you believe a probationer is in violation of his probation, and the conditions of probation authorize you to search, we strongly advise you to contact the probation officer with the information. If you are asked to standby during the arrest or search, you should act as you have in the past – consider department policy, the facts (as you know them) and the guidance of your supervisor. Remember that you may act as security only in this situation in North Carolina.

## ONE LAST MATTER

How can our state law be different from that stated by the US Supreme Court when it interprets the US Constitution, the “supreme law of the land?”

First, the court was dealing with a case from *California* and a case where the law enforcement officer had reasonable suspicion to search the probationer’s apartment (it was not just a random search).

But mainly because the US Constitution, through its interpretation by the Supreme Court, holds that the states must give its citizens, aliens and defendants certain *minimal* rights.

We can never, as a state, give anyone less than the standards set by constitutional law.

BUT NORTH CAROLINA CAN GIVE OUR CITIZENS, ALIENS AND DEFENDANTS MORE STATUTORY RIGHTS THAN REQUIRED BY CONSTITUTIONAL LAW.

This we have done by the enactment of 15A-1343(b1)(7).

Our federal judges have stated that it is Constitutional if either a probation officer or law enforcement officer conducts a search under these conditions.

Our legislature, to the contrary, stated that *only a probation officer* might search under these conditions.

This is a restriction on law enforcement behavior, but grants greater individual rights to our citizens, aliens and defendants.

Thus it is Constitutional, and must be obeyed.