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Can Law Enforcement Officers conduct Warrantless Searches of Probationers?

By Sue Frens

North Carolina General Statute 15A-1343(b1) allows a court to impose special conditions on the probation of a defendant. One of those conditions requires the probationer to “submit at reasonable times to warrantless searches by a *probation officer* of his or her person and of his or her vehicle and premises ...” So, what happens

if a probation officer requests the assistance of law enforcement to conduct this warrantless search? Is the law enforcement officer in violation of the statute if they agree to participate?

Not according to the Fourth Circuit in the recent decision of *United States v. Midgette*, 478 F.3d 616 (2007). The police had received a reliable tip that Midgette may be in possession of a firearm, a violation of his probation terms. The police approached Midgette's probation officer with the tip and suggested a search at Midgette's next probation session. The search uncovered no evidence, but the probation officer suggested searching Midgette's car. The search of the car uncovered a pistol with live ammunition in the glove compartment. This led the probation officer to suggest searching Midgette's home. The search of the home uncovered several firearms and Midgette was arrested for possession by a felon of firearms; possession of an unregistered firearm; and possession of marijuana. The probation officer was present at each of these searches.

In upholding the warrantless search, the Court reiterated the validity of the statute allowing warrantless searches: North Carolina's need to supervise probationers' compliance with their probation conditions to promote their rehabilitation and protect the safety of the public. To that end, the statute is narrowly drawn. The searches must be conducted during a reasonable time; the probationer must be present during the search; the search must be conducted for purposes specified by the court in the conditions of probation; and the search must be reasonably related to the probationer's supervision.

Although the statute specifically authorizes only probation officers to conduct warrantless searches, this authorization does not preclude the probation officers from obtaining help from the police department to conduct the search. A police officer may even suggest the search be conducted if they received a reliable tip that the probationer may be in possession of evidence in conflict with his terms of probation. A police officer may assist, as long as the warrantless search is authorized and directed by the probation officer.

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The Fourth Circuit offered rationale in support of the police assisting probation officers in conducting these searches. The Court reasoned that if a probation officer were not allowed to call the police for backup, they may hesitate to conduct searches of particularly dangerous probationers. This would undermine the probation officer's ability to supervise probationers effectively.

In summary, under North Carolina statute, a court may order a probationer to submit to warrantless searches of his person, vehicle and premises. These searches must be authorized and directed by a probation officer. The probation officer may request the assistance of law enforcement to conduct the search. The law enforcement officer may even suggest the search, but the search must be authorized and directed by the probation officer.

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