

Probation Search Rules

May Become Clearer

On May 14, 2001, the United States Supreme Court announced it would review the Ninth Circuit's opinion in *U.S. v. Knights*.¹ This comes as good news because *Knights* and another Ninth Circuit case, *U.S. v. Ooley*,² have been causing a lot of confusion as to the circumstances under which state and federal law enforcement officers may conduct probation searches.

The facts in *Knights* illustrate the scope of this problem. There was a string of pipe-bombings and other vandalism against PG&E facilities in Napa County. As things developed, sheriff's deputies began to suspect Knights. They also learned he was on probation in a state case in which he had agreed to "submit his person, property, place of residence, vehicle, personal effects, to search at anytime, with or without a search warrant, warrant of arrest or reasonable cause by any probation officer or law enforcement officer."

Based on the clear language of the probation order, deputies conducted a probation search of Knights' apartment. During the search, they found evidence linking him to the bombings. Knights was charged in federal court with conspiracy to commit arson, possession of an unregistered destructive device, and for being a felon in possession of ammunition.

Although the search was specifically authorized by the terms of Knights' probation, the Ninth Circuit ruled the search was illegal. Why? The reason was almost comical: The deputies were motivated by a desire to apprehend the bomber, not rehabilitate him. Said the court, "[The sheriff's detective] and his cohorts, were not a bit interested in Knights' rehabilitation. They were interested in investigating and ending the string of crimes of which Knights was thought to be the perpetrator. . . . True, a probation officer may also wish to end wrongdoing by a probationer, but there was no 'also' about [the detective's] purpose. He was performing his duty as a law enforcement officer and [he] was using the probation term as a subterfuge to enable to him search Knights' home without a warrant." For this reason, the court ruled the search was unlawful, and that the evidence seized in Knights' apartment must be suppressed.

As we stated in the Fall 2000 edition, *Knights* was an overblown and poorly reasoned decision that should have been intercepted by way of *en banc* review before it could do any harm. The Ninth Circuit balked—and now the matter is in the hands of the U.S. Supreme Court. Whatever the Court decides, its ruling will, we hope, eliminate the much of the confusion that currently surrounds this important subject.

¹ (9th Cir. 2000) 219 F.3d 1138.

² (9th Cir. 1997) 116 F.3d 370.