

NOTE: ON MAY 14, 2001, THE UNITED STATES SUPREME COURT DECIDED TO REVIEW THIS CASE (CERTIORARI GRANTED).

United States v. Knights

(August 3, 2000) ___ F.3d ___

ISSUE

Was a probation search of a bombing suspect's apartment unlawful because deputies were interested in solving a crime, rather than rehabilitating the suspect?

FACTS

Napa County sheriff's deputies who were investigating a string of pipe-bombings and other vandalism against PG&E facilities had good reason to believe the people responsible were Knights and his friend Simoneau. The deputies also learned that Knights was on state probation with a search clause; specifically, 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."

Deputies decided to conduct a probation search of Knights' apartment. During the search, they found, among other things, detonation cord, ammunition, unidentified liquid chemicals, bolt cutters, telephone pole-climbing spurs, drug paraphernalia, a brass padlock stamped "PG&E," and photographs and blueprints stolen from a building that had been burglarized and pipe-bombed.

Knights was subsequently charged in federal court with conspiracy to commit arson, possession of an unregistered destructive device, and for being a felon in possession of ammunition.

DISCUSSION

Knights contended the search of his apartment was unlawful. Although the court acknowledged that Knights "did consent to searches when he agreed to the terms of his probation," it went on to say that such searches must be undertaken for probation purposes-not for law enforcement purposes. In the words of the court, "[W]e have made it clear that his consent [to search] must be seen as limited to probation searches, and must stop short of investigation searches."

The court then announced it had determined the deputies' search of Knights's apartment was not, in fact, conducted for a probationary purpose; that the deputies were not interested in rehabilitating Knights or trying to convince him that bombing PG&E substations is an activity that, at least arguably, violates the terms of his probation. Instead, said the court, the deputies' motive was to determine whether Knights was, in fact, committing acts of terrorism against a public utility---a motive that, according to the court, clearly rendered the search unconstitutional: 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.

DA's COMMENT

First, it should be noted that *Knights* is at odds with California law which permits warrantless probation searches so long as they are not conducted for purposes of harassment or for some arbitrary reason.⁽¹⁾ The court in *Knights* acknowledged this when it noted, "Perhaps the California courts will admit the fruits of the search of Knights' residence; we will not."

Finally, something needs to be said about the tone of this opinion. As noted, it refers to the detective "and his cohorts." Surely, the people whom society relies upon to protect them and investigate such things as pipe-bombings are something more than "cohorts."

But the writer's use of the term is instructive. Throughout this overblown opinion, the writer exhibits fierce moral outrage at the conduct of these deputies. And what did they do to deserve it? They had the audacity to believe the judge who placed Knights on probation actually meant what he said!-that Knights' apartment could be searched without a warrant.

It is sincerely hoped that the Ninth Circuit will grant *en banc* review of this case.

(1) See *People v. Bravo* (1987) 43 Cal.3d 600, 610; *People v. Robles* (2000) __ Cal.4th __; *People v. Clower* (1993) 16 Cal.App.4th 1737, 1741-3; *In re Anthony S.* (1992) 4 Cal.App.4th 1000; *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 142; *People v. Woods* (1999) 21 Cal.4th 668, 682.