



ELEVENTH CIRCUIT UPHOLDS WARRANTLESS SEARCH OF PROBATIONER'S RESIDENCE

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On March 27, 2017, the Eleventh Circuit Court of Appeals decided the *United States v. Collins*¹, in which the court discussed whether a warrantless search of a probationer's residence was lawful under the Fourth Amendment. The relevant facts of Collins, taken directly from the case are as follows:

On April 21, 2015, Mr. Collins was convicted in Florida of fraudulent use of a credit card and personal information and was sentenced to a one-year term of probation. Mr. Collins signed a temporary order of supervision and an instruction sheet provided by the Florida Department of Corrections, each detailing the conditions of his supervised release. The temporary order required Mr. Collins to refrain from possessing firearms or associating with persons engaged in criminal activity, and instructed him to cooperate with his probation officer and allow the officer to visit his home. The instruction sheet gave Mr. Collins notice that probation officers had the right to search his residence.

Probation Officer Alyssia Paul began supervising Mr. Collins in May of 2015. She was familiar with Mr. Collins' criminal history, which included numerous violations of previous terms of supervised release. Officer Paul visited Mr. Collins, who was cooperative and compliant, at his home twice in May and once in early June without incident. On June 9, 2015, Agent Dino Balos with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, acting upon information he received from the Manatee County Sheriff's Office, informed Officer Paul that Mr. Collins had been associating with suspects in a shooting.

In response to this information, on June 11, 2015, Officer Paul, accompanied by another probation officer, officers of the Sarasota Police Department, and the ATF, conducted an unannounced compliance search of Mr. Collins' home. An unknown gentleman answered the door and told the officers that Mr. Collins did not live at the residence. When the door opened, one of the probation officers, Kristie Duff, smelled marijuana. Officer Paul asked to speak with Mr. Collins' girlfriend, Amber Teed, who then came to the door and told the officers that Mr. Collins did in fact stay there, but was out at the moment. While Officers Paul and Duff were speaking to Ms. Teed, the other law enforcement officers saw Mr.

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Collins flee out of the back of the house on foot. The officers apprehended Mr. Collins shortly thereafter, and brought him back to his residence.

At this point, the probation officers conducted a search of the house and discovered a rifle in Mr. Collins' bedroom. Mr. Collins was then arrested for violating his supervised release conditions. The police officers returned at a later time to search the home pursuant to a valid warrant, and found ammunition and other contraband.ⁱⁱ

Collins was subsequently indicted for federal firearms violations. He filed a motion to suppress and the district court denied the motion. The district court then found Collins guilty at a bench trial. Collins appealed the denial of his motion to suppress to Eleventh Circuit Court of Appeals.

On appeal, Collins argued that the probation officers lacked sufficient reasonable suspicion to conduct a warrantless search of his residence.

The court first examined legal principals relevant to the issue in this case. The court defined the legal principals as follows:

- A probationer's expectation of privacy is reduced when he is subject to a probation condition requiring him to answer all inquiries made by his probation officer and requiring him to submit to home visits by his probation officer. See *United States v. Carter*, 566 F.3d 970, 974-75 (11th Cir. 2009).ⁱⁱⁱ
- **When a probationer has a condition of probation reducing his expectation of privacy, and the government has a higher interest in monitoring the probationer due to the nature of his criminal history, a search can be permissible when supported only by reasonable suspicion.** See *Carter*, 566 F.3d at 975 (applying the balancing test articulated in *Knights*).^{iv} [emphasis added]
- To establish reasonable suspicion, there must be "a sufficiently high probability that criminal conduct is occurring to make the intrusion on the individual's privacy interest reasonable." *United States v. Yuknavich*, 419 F.3d 1302, 1311 (11th Cir. 2005) (internal quotation marks and citation omitted). **The court "must look at the totality of the circumstances of each case" to determine whether the officer had a "particularized and objective basis for suspecting legal wrongdoing." *Id.* The officer must indicate "specific and articulable facts which, taken together with rational inferences from those facts," justify the search. *Id.*^v [emphasis added]**

It is important to remember that this "reasonable suspicion" standard is lower than probable cause, which is what is required for a search warrant. However, because the government's interest in supervising probationers outweighs privacy interests, a search can proceed on reasonable suspicion, without a warrant.

The court then looked at the totality of the circumstances of Collins's case to determine if reasonable suspicion was present. First, the court observed that Collins had history of violating the terms of his supervised release. Second, law enforcement officers reported to the probation officers that they believed that Collins was associating with people involved in a shooting. Third, on the day of the search,

Collins's girlfriend and a male lied to the probation officers about Collins' location. Fourth, a probation officer smelled the odor of marijuana emanating from inside the residence. Lastly, Collins fled from the house and was chased and caught by officers. The court further noted that some of these facts, standing alone, such as the odor of marijuana and flight, would be sufficient to establish reasonable suspicion to conduct a warrantless search of Collins and his residence.^{vi}

As such, the court stated

Taken together, the facts and the rational inferences that follow indicate the high probability that Mr. Collins was violating the conditions of his supervised release at the time of the search. In light of his criminal history, the information from the ATF, and the events of the day of the search—especially given his previous compliance with Officer Paul—the probation officers had a "particularized and objective basis" to suspect that Mr. Collins was engaged in misconduct.^{vii}

Therefore, the officers had reasonable suspicion to justify the warrantless search under the Fourth Amendment.

ⁱ No. 16-13204 (11th Cir. Decided March 27, 2017 Unpublished)

ⁱⁱ Id. at 2-4

ⁱⁱⁱ Id. at 5

^{iv} Id. at 6

^v Id.

^{vi} Id. at 8 (*See, e.g., United States v. White*, 593 F.3d 1199, 1203 (11th Cir. 2010) (explaining that the smell of marijuana alone may provide reasonable suspicion justifying further investigation of possible criminal conduct); *United States v. Franklin*, 323 F.3d 1298, 1302 (11th Cir. 2003) (stating that "flight is a relevant consideration for a finding of reasonable suspicion" and is indicative of wrongdoing).

^{vii} Id.