Not All Warrantless Searches of Probationers Are "Directly Related" to Probation Supervision

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Since 2009, all North Carolina probationers are subject to a regular condition of probation allowing warrantless searches of their person, vehicle, and premises by a probation officer. Under legislation passed that year, those searches must be for purposes "directly related to the probation supervision." G.S. 15A-1343(b)(13). How related to probation must a search be to be "directly related"? A recent case sheds some light.

The case is State v. Powell. Danny Powell was on probation for felony breaking or entering. Like all probationers, he was subject to warrantless searches by his probation officer. In 2015, he was one of seven or eight probationers identified by local probation authorities as targets to be searched by an interagency task force led by the U.S. Marshals Service.

One evening, a team made up of three North Carolina probation officers (none of whom was Powell's supervising officer), a police officer, and two or three marshals searched Powell's home. They found two guns. Powell was indicted and tried for possession of firearm by a felon.

At trial, the defendant filed a motion to suppress evidence of the firearm, arguing that the warrantless search violated his Fourth Amendment rights and G.S. 15A-1343(b)(13) because it was not directly related to his probation. The trial court denied the motion and Powell was convicted.

On appeal, Powell argued that the trial court erred by denying his motion to suppress, because the State did not meet its burden of showing that the search was for a purpose allowed under the warrantless search condition.

The court of appeals agreed. To evaluate the purpose of the search, the court reviewed the trial testimony of the officers who conducted it. In particular, the court noted that one officer stated that his purpose that evening was to "conduct[] an operation with the U.S. Marshal's task force service." Slip op. at 20. When asked why Powell specifically was searched, the same officer replied, "Not any particular reason." *Id.* at 9.

Those answers, coupled with the fact that the defendant's own probation officer apparently was not "notified—much less consulted—regarding the search," *id.* at 21 n. 3, were enough for the court to conclude that the State did not meet its burden of showing that the search was *directly related* to Powell's probation. Though "directly related" is undefined, the court inferred that "the General Assembly intended to impose a *higher* burden on the State in attempting to justify a warrantless search of a probationer's home than that existing under the former language of this statutory provision," *id.* at 14—which is to say the "reasonably related" language in place before the 2009 statutory amendments. The court reversed the trial court's order denying the defendant's motion to suppress and vacated his conviction.

Powell is the second recent case noted on this blog invalidating a warrantless search of a supervised offender. In United States v. Irons, No. 7:16-CR-00055-F-1, 2016 WL 7174648 (E.D.N.C. Dec. 7, 2016) (discussed here), a federal judge in the Eastern District concluded that a search of a post-release supervisee was not even "reasonably related" to the offender's supervision. What do *Irons* and *Powell* have in common? Both cases involved searches conducted by interagency task forces. And in both cases, the offender's actual supervising officer was not directly involved.

Notwithstanding these cases, any reports of the death of warrantless searches would—to paraphrase Mark Twain—be greatly exaggerated. In *Powell*, the unanimous panel was careful to limit its opinion to "the specific facts of this case," slip op. at 22, and to note that its "opinion today should not be construed as diminishing any of the authority conferred upon probation officers by [G.S.] 15A-1343(b)(13) to conduct warrantless searches of probationers' homes or to utilize the assistance of law enforcement officer in conducting such searches," *id.*

I also think the court might have reached a different result if the testifying officers had made some link between the task force search and the defendant's "commit no criminal offense" and "possess no firearm" conditions. As long as a search is focused on finding evidence of those things (new crimes or guns), and not merely on, say, finding information about others who might be living with a probationer, then I think there's a case to be made that the search has a direct relation to the defendant's probation. Even so, it would probably make sense for Community Corrections to reevaluate its approach to task force participation, perhaps instituting a requirement that any target offender's actual supervising officer be present for the search—or at least kept in the loop about it.

Finally, I should point out pending House Bill 369, which would remove the "directly related" language from G.S. 15A-1343(b)(13) altogether. Constitutional issues may remain, but the statutory analysis in *Powell* would obviously be different if that bill became law.