

## Barry's Boundaries: When Probable Cause Meets Probation Search Conditions

### Description

In a recent case decided by the United States Court of Appeals for the Ninth Circuit recently rendered a decision in *United States v. Barry*, a case that examines the application of Fourth Amendment protections against unreasonable searches and seizures in the context of probation conditions allowing warrantless searches when residence is established.<sup>1</sup> The decision highlights how courts assess whether probable cause had been sufficiently established to justify a warrantless search of a probationer's suspected residence based on evaluating the totality of the circumstances.

### Factual Background

In November 2018, police received an anonymous tip, suggesting someone named "Ryan" was trafficking drugs out of an apartment on Emelita Avenue and drove a red Ford Mustang convertible. Officer Giovanni Espinoza, the assigned officer, identified Ryan Barry as a potential suspect and began investigating. Barry was on probation for felony drug and firearm charges and subject to warrantless search conditions as part of his probation terms, allowing his "person, property, and residence to be searched without a warrant." Officer Espinoza had Barry surveilled and noticed him leaving the Emelita apartment in a red convertible Mustang. He followed Barry to a nearby gas station, stopped him, and asked him to get out of the car. Barry complied, and Officer Espinoza noticed a clear plastic bag in Barry's hand and requested that he turn it over. He believed the bagged substance looked like methamphetamine, handcuffed Barry, and searched the car, discovering "several pouches containing illegal drugs, a scale with drug residue, and a loaded pistol." Believing that Barry's probation conditions permitted such a search if they had probable cause to think he resided there, Officer Espinoza told Barry that the Emelita apartment would be searched next. His suspicion that Barry lived at this apartment stemmed from the combination of the anonymous tip's information, surveillance, and observations. Barry never denied living there or acted shocked. Instead, he requested not to scare his sleeping girlfriend while entering. To do so, Officer Espinoza asked for Barry's keys. Barry pointed out his keychain and showed him the front door apartment key. Inside the apartment, Officer Espinoza discovered additional firearms, ammunition, illegal drugs, and drug paraphernalia. Barry then admitted to selling drugs out of the Emelita apartment while living there with his girlfriend for about a month. Ultimately, Barry was charged with possession with intent to distribute the narcotics found in his car and apartment, possession of a firearm in furtherance of drug trafficking; and being a felon in possession of firearms and ammunition."

At district court, Barry moved to suppress all evidence seized from both his car and the apartment. He argued that the search of the Emelita apartment violated his Fourth Amendment rights because Officer Espinoza lacked probable cause to believe he lived there – a requirement to justify a warrantless search under his probation conditions. The court rejected this argument, which led to Barry's appeal to the Ninth Circuit, challenging the validity of the search of the Emelita apartment. The key question on appeal whether the officers had probable cause to believe that Barry, who was on probation and subject to warrantless search conditions, actually resided at the Emelita apartment.

### United States Court of Appeals for the Ninth Circuit

The Ninth Circuit affirmed the district court's denial of Barry's motion to suppress the evidence found in the warrantless search of his apartment. The Court began by reiterating the foundational principles that guided its' analysis here. Citing the Fourth Amendment protection from unreasonable searches and seizures, the Court then explained that exceptions may exist in a case involving probationers, due to a probationer's reduced expectation of privacy, as compared to the general public. Commonly known as "Fourth waiver," courts frequently require individuals to consent to warrantless searches by law enforcement or probation officers as a condition of probation since probation is an alternative to incarceration. Established by the Supreme Court of the United States in *United States v. Knights* in 2001, a probationer's consent to warrantless searches does not need probable cause or a warrant when included as a condition of probation but must still be "reasonable" under the totality of the circumstances. The standard for these searches is generally lower than for the public—often "reasonable suspicion" rather than "probable cause" due to governmental interest in supervising probationers justifying this reduced privacy protection.

The Ninth Circuit expanded the search condition exception of parolees in *United States v. Grandberry*. In 2013, they established that a search-condition exception of parolees can only apply under California law when "law enforcement officers...have probable cause to believe that the parolee is a resident of the house to be searched." This standard includes probationers and is based on whether a reasonably prudent person would believe that the probationer would be a resident of the house. Addressing the question of probable cause, Barry argued that the officer did not have enough evidence to believe he lived there, which was necessary to justify the warrantless search under his probation terms. Under the *Grandberry* framework, the court looked at the totality of the circumstances and ultimately disagreed. Based on the combination of the tip, the officer's observations, the evidence found, and Barry's own admission, the court found there was sufficient probable cause to believe Barry resided there. Weighing all these factors, the court found that Officer Espinoza acted lawfully within the scope of the Fourth Amendment given the facts that he had at the time and that was also consistent with the terms of Barry's probation. The Ninth Circuit therefore upheld both the search and Barry's conviction.

## Key Takeaways

*Barry* reinforces the standard that probable cause is assessed based on the totality of the circumstances and reminds law enforcement that to establish a sufficient showing, officers need to carefully document all interactions and statements that may suggest a suspect's residence. Detailed reports are essential to support the basis for probable cause and to demonstrate the lawfulness of law enforcement actions.

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