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# Would You Use the “Stalking Horse” Maneuver?

By **Daigle Law Group**

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Today’s case arises from the Seventh Circuit and introduces new terminology in the context of parolee rights. The distinguishable context of parolee rights is justified by the notion that insists- if you have broken the law once; the state has a special interest and right to check in on the individual, to assure the prevention of repeat offending instances.

In *Griffin v. Wisconsin*, the Supreme Court **upheld the warrantless search of a probationer’s residence after probation officers established reasonable grounds to believe that the probationer was unlawfully in possession of firearms.** The court explained, because supervision of probationers is a “special need” of the State, it was reasonable under the Fourth Amendment for the State to “depart from the usual warrant and probable cause requirements.”

In the aftermath of *Griffin*, warrantless searches of probationers seemingly needed to be justified by a showing of the “special needs” of the state’s probation system, as opposed to the situation in which a police officer uses a parole officer as a “stalking horse” to assist and further an unrelated investigation. A search under the stalking horse theory **occurs when a parole or probationary search is conducted as “a subterfuge for a criminal investigation” to evade the Fourth Amendment’s warrant and probable cause requirements, a violation of the Fourth Amendment.** Subterfuge in this context is defined as a special maneuver or strategy.

However, in the context of this discussion, it is necessary to remember two cases: *United States v. Knights* (2001), and *Samson v. California* (2006). In those cases, the Supreme Court held that **warrantless probation and parole searches need not be based on “special needs,” but can also be evaluated under the Fourth Amendment’s reasonableness inquiry, by considering the totality of the circumstances.**

Below, we will consider how the aforementioned cases apply to the suspect in the case before us.

## FACTS

On October 10<sup>th</sup>, 2018, Mark Price visited a gun store and ordered a Ruger rifle magazine. Consistent with store policy, an employee ran a background check on Price which revealed that Price had prior felony convictions. After receiving this information, the employee contacted Special Agent Brian Clancy of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

On October 16th, Price went to the gun store to pick up the Ruger rifle magazine that he had ordered. Unknown to Price, his order with the store's distributor had never been placed. Instead of an operable rifle magazine, the employee provided Price with an inoperable magazine shell. While at the store, Price purchased a box of .40 caliber ammunition and a holster. Price later called the store and complained that the magazine did not fit his firearm, stating that he would return to the store. The employee contacted SA Clancy and informed him of Price's purchases and plan.

On October 17th, Price, accompanied by a friend, arrived at the store in a Ford Escape. SA Clancy posed undercover as the store clerk, while two other ATF agents hid in the back of the store. Price expressed irritation that the magazine he had picked up the day before did not work. He also stated that he and his friend wished to use the shooting range. Price added that he was interested in renting a firearm because, "his 40 was too much" for his friend to wield. While examining rental firearms, Price took possession of one of the weapons and examined it, bringing the gun into a shooting position, and then handed it back to the undercover agent. At that point, SA Clancy escorted Price to a back room where ATF agents were waiting and arrested him.

Knowing that Price was on parole, SA Clancy contacted the Indiana Department of Correction and told them that Price was in custody. SA Clancy had previously informed parole officers that he was investigating Price, therefore the Department was aware of Price's attempt to purchase the rifle magazine. After contacting state authorities, three parole officers arrived at the gun store. As authorized by Price's parole agreement, the officer searched the Ford Escape that remained in the parking lot of the store. In the center console, the officers discovered a loaded .40 caliber pistol which they determined as stolen.

Following the search of the Ford Escape, the officers drove Price to his residence and initiated a search of the premises in the presence of the defendant. During that search, the officers recovered ammunition from inside his home. Based on this fact, SA Clancy obtained and then executed a warrant to search both Price's home and a van parked in the driveway. Pursuant to the search warrant, the officers found additional ammunition in the house and discovered a Ruger rifle located in the van.

The government charged the felon with one count of possession of the .40 caliber ammunition he bought at the gun store, and two counts of unlawful possession of a firearm for the .40 caliber pistol found in the center console of the Ford Escape and the Ruger rifle discovered in the van. Price filed a motion to suppress the evidence seized from the Ford Escape and from both searches that took place at his home. The district court denied the motion, and upon conviction Price appealed.

## **SEVENTH CIRCUIT COURT OPINION**

The Seventh Circuit Court of Appeals recognized that parolees have a reduced expectation of privacy and that states have an “overwhelming” interest in supervising them, as parolees are more likely to commit future criminal offenses. Accordingly, Price’s parole agreement included a provision that permitted parole officers to conduct searches of his “residence or property under his control” based on “reasonable cause,” rather than the Fourth Amendment’s stringent “probable cause standard.” In this case, when the officers searched Price’s vehicle and residence, they knew that Price had likely violated the terms of his parole agreement. After all, Price purchased .40 caliber ammunition and a magazine, traveled to a gun store to use the shooting range, and was arrested by SA Clancy. Consequently, the court held that the parole officers did not violate the Fourth Amendment by conducting a warrantless search of the Ford Escape and of Price’s home. The court added, that evidence seized during the second search of Price’s home by SA Clancy was authorized by a search warrant independent of the parole agreement.

In affirming the district court’s denial of Price’s motion to suppress, the court rejected Price’s argument that the evidence seized during the warrantless searches of his vehicle and home should be suppressed under the “stalking horse” theory.

In this case, Price claimed that SA Clancy violated his Fourth Amendment rights when he called the parole officers and recruited them to conduct a search, arrive at the scene of the arrest, and prompted them to conduct a warrantless search under the parole agreement that SA Clancy was not himself authorized to conduct.

Significantly, the court noted that Price did not point to a single Federal appellate decision, in which a search was invalidated under the stalking horse theory, since the Court’s rulings in *Knights* and *Samson*. In addition, the court found that each Circuit that has discussed the theory since the *Knights* case **has either rejected it, or, limited its applicability to circumstances where the government relies solely on the “special needs” of a state’s probationary or parole system as the basis for a search.**

In this case, because the government did not rely on the “special needs” of Indiana’s parole system to justify the searches of Price’s property and residence, it was irrelevant whether parole officers initiated their searches of Price’s vehicle and residence of their own volition or at SA Clancy’s request.

## **TAKEAWAYS**

As we have said before, parolee rights are distinguishable from the rights afforded to a citizen who has a clean criminal record. This case depicts the successful result of when the background check system and law enforcement agents work together. Here, the gun store clerk alerted ATF and ATF maintained

contact with corrections. Communication between agencies is crucial to enhance our ability to solve cases quickly and seamlessly, which in turn is beneficial to the US Court system. Just like the Trojan Horse, more men and women working together means a better stalking horse maneuver in the long run.

**United States v. Price, 28 F.4th 739 (7th Cir. 2022)**

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