NO. 19-_____

In the Supreme Court of the United States

JOSHUA TUCKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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APRIL 24, 2020

QUESTION PRESENTED

Whether a probationer has a right to be free from warrantless searches and seizures conducted by law enforcement officials without reason or purpose pursuant to a "Probation Check?"

LIST OF PROCEEDINGS

United States Court of Appeals for the Sixth Circuit

Case No. 19-5105

United States of America, Plaintiff-Appellant v. Joshua Tucker, Defendant-Appellee.

Opinion Date: January 31, 2020

United States District Court, Western District of Tennessee

Case No. 1:17-cr-10067-STA-3

United States of America v Joshua Tucker

Judgment Date: January 24, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

OPINIONS BELOW

The decision by the United States Court of Appeals for the Sixth Circuit affirming the District Court for the Western District of Tennessee is reported as *United States v. Tucker*, 2020 U.S. App. LEXIS 3264, 795 Fed. Appx. 963, 2020 FED App. 0072N (6th Cir. 2020), and included below at App.1a. The District Court entry of judgment is included below at App.6a.

JURISDICTION

On January 31, 2020, the United States Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court for the Western District of Tennessee. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

The Fourth Amendment bars unreasonable searches and seizures by the government. U.S. Const. amend. IV. "A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be 'reasonable.'" *Griffin v. Wisconsin*, 483 U.S. 868, 873, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987). Furthermore, the government bears the burden to show a warrantless search meets constitutional muster. *United States v. Herndon*, 501 F.3d 683, 692 (6th Cir. 2007).

The United States Supreme Court has a general Fourth Amendment approach of examining the "totality of the circumstances" with the probation search condition being a salient circumstance. *Herndon* at 688. When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable. *Id.*

However, a search of a probationer's property must be tested for reasonableness in light of the totality of the circumstances by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests. *Id.* at 690 (emphasis added). The Supreme Court has directed reviewing courts making reasonable suspicion determinations to consider "the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis

for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002); *see also United States v Payne*, 181 F.3d 781 (6th Cir. 1999).

STATEMENT OF THE CASE

An investigation into alleged drug activity was initiated by Agent James Mayo, a task force officer with the Drug Enforcement Administration. (Trial Transcript September 26, 2018, Page ID 2447). During the investigation a suspect by the name of Kevin Smith was developed. A long-term investigation was commenced. (Trial Transcript September 26, 2018, Page ID 2449). That during the course of the investigation a wiretap warrant was obtained, initiating on February 6, 2017. (Trial Transcript September 26, 2018, Page ID 2461). The wiretap continued until March 7, 2017, and an extension was requested and approved. (Trial Transcript September 26, 2018 Page ID 2461-2462). The wiretap then continued from March 8, 2017, to March 24, 2017, and was terminated on that date due to the arrest of Kevin Smith. (Trial Transcript September 26, 2017, Page ID 2462). That between the dates of February 6, 2017, and continuing through March 24, 2017, law enforcement monitored wire telephone conversations between Kevin Smith and Phillip Steely.

The conversations between Kevin Smith and Phillip Steely were alleged to have involved drug transactions. It was further alleged that immediately following some of the conversations between Kevin Smith and Phillip Steely; Steely would then call

the Petitioner, Joshua Tucker. It is alleged that Steely contacted Tucker for the purpose of obtaining drugs in order for Steely to sell those drugs to Smith. Although there are no recordings of any communications involving Tucker, Agent Mayo testified that the purpose of the phone calls from Steely to Tucker was for the purpose of conducting drug transactions. During the course of the trial, phone records were introduced reflecting the phone numbers of Kevin Smith, Phillip Steely and Joshua Tucker. That said records also showed dates and times that these phones were used. These phone records were introduced to support the testimony of Agent Mayo. (Trial Transcript September 26, 2018, Page ID 2524).

That while the investigation was ongoing Agent Mayo advised McNairy Narcotics Unit to keep Tucker on their radar. (Trial Transcript September 26, 2018, Page ID 2478). Agent Mayo did not reveal the details of the investigation but he inquired if McNairy County Law Enforcement knew Joshua Tucker and then he advised that Tucker was "going to be a person of interest." (Trial Transcript September 26, 2018, Page ID 2478-79). Officer Kim Holley with the McNairy County Narcotics Unit corroborated and testified that he was told by Agent Mayo that they needed to keep Tucker "on our radar". (Trial Transcript Suppression Hearing, Page ID 2031-2032). There was no further information provided.

This communication between Agent Mayo and Officer Kim Holley occurred a month or two before the warrantless search was conducted on April 27, 2017. (Trial Transcript Suppression Page ID 2051). On April 27, 2017, the residence occupied by Tucker was searched. The search was based off the terms of Tucker's probationary

agreement from a separate case. That during the warrantless search two firearms were discovered. (Trial Transcript Suppression Page ID 2000). The firearms were found in a bedroom alleged to be occupied by Tucker and a female named Veronica Cross. (Trial Transcript Suppression, Page ID 2149). That during said search, a safe was also discovered in the same bedroom. (Trial Transcript Suppression, Page ID 2044).

Although the officers were already in the home and searching pursuant to the terms of Tucker's probationary agreement, the discovery of the safe caused law enforcement to then determine that a search warrant was necessary. That law enforcement used information obtained from the warrantless search to support their request for a warrant. (Trial Transcript Suppression, Page ID 2044-2045).

That on April 27 2017, Tucker was on probation. That Tucker entered into a probationary agreement permitting his residence to be searched. (Trial Transcript Suppression Page ID # 1995-1996). That the decision to utilize the authority through the probationary agreement to search Tucker's residence was based on a two-month old generalized statement from a Federal Agent to keep Tucker "on the radar" and the fact that Tucker had been served with two separate warrants for violation of probation resulting in Tucker posting two separate bonds. It is important to note that detailed information was never provided by the Drug Enforcement Agency to McNairy County Law Enforcement and there was no effort made to determine the source of money for Tucker's bonds.

In the case at bar, the search warrant was issued as a direct result of what was alleged to have been seen by officers during a warrantless search disguised as a probation check. Some evidence was discovered without the existence of a search warrant. Furthermore, that discovered evidence was the sole reason of probable cause to obtain the search warrant for the remaining discovered evidence. While it is true that Tucker was on probation at the time of the officer's check, and consented to being checked as a condition of his probation, there were no facts or circumstances to create reasonable suspicion to warrant a search of his residence. Because the search was conducted without reasonable suspicion, it was in violation of Tucker's constitutional rights and therefore all evidence obtained, with or without a warrant, should be excluded. Tucker would respectfully request this Honorable Court grant the Motion to Suppress.

McNairy County Sheriff's Office had no reasonable suspicion, nor reasonable cause to conduct a probation check at Tucker's residence. The United States Supreme Court has a general Fourth Amendment approach of examining the "totality of the circumstances" with the probation search condition being a salient circumstance. *United States v. Herndon*, 501 F.3d 683, 688 (6th Cir. 2007). When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable. *Id.* However, a search of a probationer's property must be tested for reasonableness in light of the totality of the circumstances by assessing, on the one

hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests. *Id.* at 690. The Supreme Court has directed reviewing courts making reasonable suspicion determinations to consider "the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. at 273; *see also United States v Payne*, 181 F.3d 781 (6th Cir. 1999).

In denying Tucker's Motion to Suppress the District Court and Sixth Circuit relied in part on *United States v Tessier*, 814 F.3d 432 (6th Cir. 2016). The *Tessier* opinion does acknowledge that "[A] probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be reasonable." *Griffin v. Wisconsin*, 483 U.S. 868, 873, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987). In addition, it goes on to hold that probationers are subjected to a lesser degree of privacy interest by the very nature of their probationary status. However, Tucker is distinguished from *Tessier* in that the *Tessier* opinion involved a convicted sex offender. *United States v. Tessier*, 814 F.3d 432 (6th Cir. 2016). The search was a part of "Operation Sonic Boom," a joint operation between the United States Marshal's Service, the Metro Nashville Police Department, and the Davidson County Probation Office. During the three-day operation, officers searched all residences of known sex offenders in Davidson County. Defendant, along with the sentencing judge, executed a "Probation Order," as well as "Special Probation Conditions for Sex Offenders."

Probation is a much more stringent program for a sex offender; to which the case at bar did not involve a sex offense probation. In addition, the probationary search that took place in *Tessier* was a county wide operation designed to search every residence. Whereas, here in this case, it was an individually targeted search. In the facts of *Tessier*, it appears that law enforcement never intended to single out a specific individual; but rather issue a generalized protective sweep for the community. There was not an abuse of the provision under the probationary search in *Tessier*, because everyone was treated the same.

While it is true that Tucker was on probation at the time of the officer's check, and this probation condition provided consent to being searched, there were no facts or circumstances to create reasonable suspicion to warrant a search of his residence. That because the search was conducted without reasonable suspicion, it was in violation of Tucker's constitutional rights and therefore all evidence obtained, with or without a warrant, should be excluded.

Tucker signed a document entitled "Correction Management Corporation, Community Correction Rules." (D.E. 515, Suppression Transcript Page ID 1994). The actual probation document signed by Tucker was attached as an exhibit to the government's response to Tucker's motion to suppress. (App. 1, Correction Management Corporation, Community Correction Rules). Paragraph 16 of this document states as follows:

> "Offender will allow the case officer to visit his or her home, employment site or elsewhere at any time during the day or night and shall carry out all instructions given by the case officer, whether oral and in writing. Offenders will allow their case officer and law enforcement officer to conduct a search

> of their residence, automobile, personal belongings or their person upon request to control contraband or locate missing or stolen property without the necessity of a search warrant." (emphasis added)

The government relied heavily on the case of *United States v. Tessier*, 814 F.3d 432 (6th Cir. 2016) in support of its' position that the warrantless probationer search was proper. In *Tessier*, the probationer also signed an agreement wherein the relevant language in the document read as follows:

> "I agree, to a search, without a warrant, of my person, vehicle, property, or place of residence by any probation/parole officer or law enforcement officer, at any time."

(D.E. 515, Suppression Transcript Page ID 2061-62; D.E. 308 Order Page ID 548-49).

The language regarding searches is significantly different between the two documents. This was acknowledged by the District Court in its' ruling on Tucker's motion to suppress. In the District Court's ruling denying Tucker's Motion to Suppress, it made the following finding: "There is a significant factual distinction between *Tessier* and the present case that places it outside the binding authority of *Tessier* and merits further discussion. None the less, the *Tessier* court's reasoning is persuasive, and the court believes such reasoning should be extended to the present case." (D.E. 308, Order Denying Motion to Suppress, Page ID 557).

That upon considering the analysis set forth in *Tessier*, the District Court concluded its' ruling on the denial of Tucker's Motion to Suppress as follows: "Considering all of these factors together, the Court cannot say that such a search, even if no reasonable suspicion existed, was unreasonable." (D.E. 308 Order Denying Motion to Suppress Page ID 552-53). This final determination was made by the

District Court even though the District Court acknowledged in its' ruling there is a "significant factual distinction between *Tessier* and the present case".

There are a number of distinctions between the facts in *Tessier* and the facts in the case at bar. The *Tessier* case involved a convicted sex offender. The search in question was a part of a sting operation named "Operation Sonic Boom," which was a joint operation between the United States Marshal's Service, the Metro Nashville Police Department, and the Davidson County Probation Office. During the three-day operation, officers searched all residences of known sex offenders in Davidson County, Tennessee. The defendant, along with the sentencing judge, executed a "Probation Order," as well as "Special Probation Conditions for Sex Offenders."

Accordingly, the additional probation conditions make it a much more stringent program for a sex offender. In addition, the probationary search that took place in *Tessier* was a county wide operation designed to search every residence. In the facts of *Tessier*, it appears that law enforcement never intended to single out a specific individual; but rather issue a generalized protective sweep for the community. There was not an abuse of the provision under the probationary search in *Tessier*, because everyone was treated the same.

The facts in the case at bar are distinctly different than *Tessier*. Tucker is not a sex offender and the offense for which Tucker was on probation was not a sex offense. Tucker never signed a document entitled "Special Probation Conditions for Sex Offenders" which would have made his probation conditions more stringent. Tucker's residence was not searched as part of a county wide operation designed to search

every residence but instead this search was individually targeted at Tucker. Consequently, law enforcement did not treat everyone the same.

Perhaps, one of the most significant factual distinctions between the agreement signed in *Tessier* and the agreement signed in *Tucker* however, is the term "upon request." This language is included in Tucker's agreement but absent in Tessier's agreement.

The District Court was aware of the condition requiring "upon request" in Tucker's agreement. During the hearing on the Motion to Suppress, the investigator involved in the search testified on behalf of the government. Investigator Matt Rickman was questioned directly by the Court regarding the search. The testimony went as follows:

> The Court: All right. Investigator Rickman, you testified that you called the probation officer?
>
> The Witness: I called, yes. Yes, sir.
>
> The Court: And for what reason did you call the probation officer?
>
> The Witness: To verify the address that he had registered with them.
>
> The Court: Okay. And did you already have information that he was on what you call "searchable probation"?
>
> The Witness: Yes, sir.
>
> The Court: So you already knew that?
>
> The Witness: Yes, sir.
>
> The Court: So you just called the probation officer to verify the address?
>
> The Witness: Address.

The Court: Okay. What were you looking for? When you went to the house, what did you expect to find or what were you looking for?

The Witness: Drugs, methamphetamine, stuff like that.

The Court: And was that based on his prior history or based on – I know you said you spoke with the DEA agent.

The Witness: It's based on the tips that we had on him before, the DEA agents telling we needed to watch him, and just things of that nature, Your Honor.

The Court: So at the time that you initiated the search, it was your own belief – were you in charge? Who was in charge of the search?

The Witness: Investigator Holley actually wrote the case.

The Court: Okay. Well, but you called the probation officer yourself?

The Witness: Yes, sir.

The Court: And was it your belief that there was the possibility at least or probability, whatever it might be, that there were drugs located in the residence?

The Witness: Yes, sir.

The Court: And that was based on the information you had received up to that point?

The Witness: Yes, sir.

The Court: And you said that when you got to the residence, Mr. Tucker was outside, talking to his mother, I believe, you said?

The Witness: Yes, sir.

The Court: And you walked up. And tell me one more time what you said.

The Witness: I said, "You're on searchable probation, right?" And he said, "Yes."

The Court: Okay. Did you say anything else to him?

The Witness: I said, "Well, we're here to search."

The Court: "We're here to search."

The Witness: Yes, sir.

The Court: And did he respond in any way?

The Witness: No, sir.

The Court: Did he walk off, or look at you and frown, or what did he do?

The Witness: Just complied with it.

The Court: So he didn't one way or the other indicate whether he agreed or disagreed?

The Witness: No, sir.

The Court: All right.

(D.E. 515, Suppression Transcript Page ID 2021-2024).

This line of questioning asked by the District Court indicates that it was aware of the language contained in paragraph 16 of Tucker's probation agreement specifically requiring that the search be conducted "upon request." The testimony of Investigator Matt Rickman establishes that a request to search was never made. Furthermore, Rickman's testimony establishes that Tucker never consented to a warrantless search.

Assuming *arguendo*, a request had been made to search and Tucker refused the request, then the remedy would be the filing of a probation violation for failure to comply with paragraph 16 of the probation rules. The remedy is not to proceed with conducting a warrantless search.

The Fourth Amendment bars unreasonable searches and seizures by the government. U.S. Const. amend. IV. "A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be 'reasonable.'" *Griffin v. Wisconsin*, 483 U.S. 868, 873, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987).

Furthermore, the government bears the burden to show a warrantless search meets constitutional muster. *United States v. Herndon*, 501 F.3d 683, 692 (6th Cir. 2007).

The United States Supreme Court has a general Fourth Amendment approach of examining the "totality of the circumstances" with the probation search condition being a salient circumstance. *United States v. Herndon*, 501 F.3d 683, 688 (6th Cir. 2007). When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable. *Id.*

However, a search of a probationer's property must be tested for reasonableness in light of the totality of the circumstances by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests. *Id.* at 690. The Supreme Court has directed reviewing courts making reasonable suspicion determinations to consider "the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002); *see also United States v Payne*, 181 F.3d 781 (6th Cir. 1999).

The District Court erred when it made the finding that "reasonable suspicion is not required for a warrantless search of the property of a probationer who had agreed to warrantless search as part of his probation. (D.E. 308 Order Page ID 551-53). The

search of Tucker's residence began without a warrant and during the middle of the search the officers decided to obtain a warrant. (D.E. 515, Page ID 2036).

In its' brief the government asserted that the officer's acted in good faith. (D.E. 28 (Sixth Circuit Docket) Government Brief, Page *Id.* 26-27). The argument appears to be based on the premise that if the warrantless search conducted by officers is found to be unconstitutional, then the search conducted by the search warrant should be permitted because it was conducted in "good faith". The government has the burden to "to demonstrate the objective reasonableness of the officers' good faith reliance" and challenge any claim that binding precedent allowed the unlawful search. *See United States v. Ganias,* 755 F.2d 125, 140 (2d Cir. 2014).

In the case at bar, the government addressed the issue of "good faith" exception in its response to Tucker's Motion to Suppress. (D.E. 245 Response Page ID 384-85). During the hearing before the District Court the issues were set out which included the government's position that the good faith exception applied. (D.E. 515 Suppression Transcript Page ID 1986). This matter was readdressed by the government at its' closing argument. (D.E. 515 Suppression Transcript Page ID 2066). The District Court took the matter under advisement and in its' ruling denying the Motion to Suppress on April 13, 2018, it did not make a ruling or even address the good faith exception. (D.E. 308 Order Denying Motion to Suppress Page ID 546-53). Accordingly, the District Court did not render an opinion on the issue of the good faith exception. Accordingly, there is no indication that the District Court found that the government had met its burden of demonstrating the officers' good faith reliance.

In *United States v. McGough*, 412 F.3d 1232, 1239-40 (11th Cir. 2005), the circuit court ruled that the good faith exception is not applicable to warrantless searches for which officers later obtain a warrant. In the case at bar, the investigator, Matt Rickman, testified that during the warrantless search an AR-15 assault rifle, and a pistol, a meth pipe, and digital scales were found. (D.E. 515 page ID 2014 suppression transcript). Investigator Rickman testified further as follows:

> Q. Okay. Based on having found those items, were those the reasons why you then stopped and sought to get a search warrant?
>
> A. Yes, Sir. to get into the safe.
>
> Q. Correct. My question back again was that if you were on the belief that or of the belief that it was searchable probation, why was it necessary to get the warrant?
>
> A. We just believed it was the best thing to do at that point.

D.E. 515 Suppression Transcript Page ID 2015.

Rickman's testimony establishes the ability to get a search warrant was based on the items found during a warrantless search. Once law enforcement made the decision to enter Tucker's home, and conduct a warrantless search, they cannot use this tainted evidence to support their application for a search warrant. See, *id United States v. McGough.* Consequently, any evidence obtained through execution of the search warrant is part of the fruit of the poisonous tree and should also be excluded.

The searching officers relied on a DEA Agent's hunch founded on a phone record. This was not a phone recording, event sighting, or information provided, but rather a phone record with Tucker's phone number on it. Although law enforcement testified in the suppression hearing that Tucker posted a bond previous to the warrantless

search and that the posting of the bond was an additional reason for Officer's to initiate the search, there was never a source hearing or anything testified to as to how the funds for the bond were procured. In the case at bar, the bond was actually posted for Tucker by Veronica Cross. Because the search was conducted without reasonable suspicion, it was in violation of Tucker's constitutional rights and therefore all evidence obtained, with or without a warrant, should be excluded.

REASON FOR GRANTING THE WRIT

I. TO AVOID ERRONEOUS SEARCHES, CONDUCTED BY LAW ENFORCEMENT OFFICIALS, THIS COURT SHOULD CLARIFY THE MEANING OF A PERMISSIBLE "PROBATION CHECK" AND THE RIGHTS OF PROBATIONERS TO BE FREE FROM WARRANTLESS SEARCHES AND SEIZURES WITH ILLEGITIMATE PURPOSE.

In this case, Tucker fell victim to an illegal search and seizure in violation of the Fourth Amendment of the United States Constitution. "A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be 'reasonable.'" *Griffin v. Wisconsin*, 483 U.S. 868, 873, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987). Furthermore, the government bears the burden to show a warrantless search meets constitutional muster. *United States v. Herndon*, 501 F.3d 683, 692 (6th Cir. 2007).

The United States Supreme Court has a general Fourth Amendment approach of examining the "totality of the circumstances" with the probation search condition being a salient circumstance. *United States v. Herndon*, 501 F.3d 683, 688 (6th Cir. 2007). When an officer has reasonable suspicion that a probationer subject to a search

condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable. *Id.*

However, a search of a probationer's property must be tested for reasonableness in light of the totality of the circumstances by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests. *Id.* at 690. The Supreme Court has directed reviewing courts making reasonable suspicion determinations to consider "the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002); *see also United States v Payne*, 181 F.3d 781 (6th Cir. 1999).

The District Court erred when it made the finding that "reasonable suspicion is not required for a warrantless search of the property of a probationer who had agreed to warrantless search as part of his probation. The search of Tucker's residence began without a warrant and during the middle of the search the officers decided to obtain a warrant. The Sixth Circuit indicates that, "Tucker's consent to warrantless searches as a condition of his probation "significantly diminished [his] reasonable expectation of privacy." *United States v. Tucker*, 2020 U.S. App. LEXIS 3264, 795 Fed. Appx. 963, 2020 FED App. 0072N (6th Cir.) quoting *United States v. Knights*, 534 U.S. 112, 120 (2001). However, "diminished" does not mean completely stricken. There is still a test; however, this test fails to carry consistent application. It is

entirely based on speculation *i.e.* cash for bond (without a source hearing conducted), probationary status yielding further criminal conduct, etc.

Furthermore, the lower courts are trending towards zero need for reason before checking the home of a probationer. The Government cites a Tennessee Supreme Court Case allowing virtually unfettered discretion for law enforcement to conduct searches of probationer's homes. *State v. Hamm*, 589 S.W.3d 765, 2019 Tenn. LEXIS 507 (Tenn. 2019). This opens the door to a very real and dangerous risk of violation of a person being secured in their persons, houses, papers, and effects, against unreasonable searches and seizures.

This case presents this Court with an opportunity to eradicate erroneous searches, conducted by law enforcement officials, and clarify the meaning of a permissible "probation check" and the rights of probationers to be free from warrantless searches and seizures with illegitimate purpose**.** The treatment by the lower courts as to this issue is in disarray and varies by State. Thus, this is an issue of national importance and is in need of review by the Supreme Court.

CONCLUSION

For the aforementioned facts and law, Joshua Tucker would respectfully request this Honorable Court grant the Petition for Writ of Certiorari.

Submitted this the 23rd day of April, 2020.

Respectfully submitted,

/s/ David W. Camp

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