

## **Joshua Tucker v. United States of America**

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NOT RECOMMENDED FOR PUBLICATION  
File Name: 20a0072n.06

No. 19-5105

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

JOSHUA TUCKER,

Defendant-Appellee.

**FILED**  
Jan 31, 2020  
DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE  
UNITED STATES DISTRICT  
COURT FOR THE WESTERN  
DISTRICT OF TENNESSEE

BEFORE: GILMAN, McKEAGUE, and KETHLEDGE, Circuit Judges.

KETHLEDGE, Circuit Judge. Joshua Tucker argues that the district court erred by denying his motion to suppress evidence seized during a warrantless search of his house and by precluding him from introducing the record of his felony conviction at trial. We reject his arguments and affirm.

I.

In 2016, Tucker pleaded guilty to aggravated burglary, a felony in Tennessee. He was sentenced to a three-year prison term, most of which was suspended. As part of his probation, Tucker agreed to allow his case officer or any law enforcement officer to search his house “upon request” and without a search warrant.

In early 2017, a DEA agent saw that Tucker’s phone number was among those called by a suspected drug dealer. The agent told officers with McNairy County’s Narcotics Unit, including officers Matt Rickman and Kim Holley, that they should put Tucker “on their radar.”

Before long Tucker was arrested for a probation violation (the record does not specify what the violation was). Tucker managed to post a \$50,000 bond, even though he was apparently unemployed at the time. Within two weeks he was arrested for another probation violation, but that same day he posted a \$75,000 bond. Rickman and Holley were suspicious about Tucker’s source of funds, so they listened to his jailhouse calls. During one call, Tucker told his girlfriend to pay the bail-bond company up to \$7,500 in cash for the bonds.

That same day, Rickman and Holley went to Tucker’s house to do a probation search. Tucker was outside when they arrived. Rickman asked, “You’re on searchable probation, right?” Tucker answered, “Yeah.” Rickman responded, “Well, we’re here to search.” The officers then entered Tucker’s house, where they found two guns, a meth pipe, and a locked safe. Holley asked Tucker and his girlfriend (who was also there) for the safe’s combination, but they claimed not to know it.

The officers left to get a search warrant for the safe; Tucker fled the scene. Rickman filled out the warrant application, which recited the items found in Tucker’s house. Warrant in hand, the officers returned to the house and opened the safe, wherein they found drugs and cash.

Tucker was later arrested. A federal grand jury indicted him on the following offenses: conspiracy to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1); aiding and abetting the distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2; distribution of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846; being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1); and possessing a firearm in

furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924 (c)(1)(A). Tucker pleaded not guilty across the board.

Before trial, Tucker moved to suppress the evidence seized during the search of his house. He argued that, despite his status as a probationer, the search was unlawful because the officers lacked reasonable suspicion to support it. The district court denied the motion.

At trial, Tucker and the government stipulated to his felony conviction. Yet Tucker sought to introduce a certified copy of that conviction, which would have informed the jury that he had been convicted of aggravated burglary in particular. The district court sustained the government's objection to that evidence. The jury convicted Tucker on all counts, and the district court sentenced him to 300 months in prison. This appeal followed.

## II.

Tucker argues that, despite his status as a probationer, the district court should have suppressed the evidence seized during the warrantless search of his house. We review the district court's legal conclusions *de novo* and factual findings for clear error. *United States v. Hinojosa*, 606 F.3d 875, 880 (6th Cir. 2018). In doing so, we consider the evidence in the light most favorable to the district court's decision. *See United States v. Freeman*, 209 F.3d 464, 466 (6th Cir. 2000).

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]” U.S. Const. amend. IV. Generally stated, whether a search is reasonable depends “on the one hand, on the degree to which it intrudes on the individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.” *United States v. Knights*, 534 U.S. 112, 119 (2001). Here, as in *Knights*, Tucker’s “status as a probationer subject to a search condition informs both sides of that balance.” *Id.* Moreover, in *United States v. Tessier*, 814 F.3d 432, 433-34 (6th

Cir. 2016), we answered yes to the question “[w]hether, under the Fourth Amendment, a probationer whose probation order contains a search condition may be subjected to a search in the absence of reasonable suspicion.”

Here, Tucker’s consent to warrantless searches as a condition of his probation “significantly diminished [his] reasonable expectation of privacy.” *Knights*, 534 U.S. at 120. Opposing that diminished interest is the state’s interest in preventing recidivism, *see id.*, which for two reasons is especially strong here. First, Tucker had recently been arrested twice in less than two weeks for violations of his probation conditions—indeed violations serious enough to require him to post bonds totaling \$125,000. Second, Tucker was in fact able to post those bonds, despite lacking any known legitimate source of income. That gave the officers reason to think he had an illegitimate source of cash. On these facts, the government’s interest in preventing Tucker from committing yet another probation violation outweighed his diminished interest in privacy—which is to say the search was reasonable. *See Tessier*, 814 F.3d at 433.

Tucker also challenges the district court’s exclusion at trial of a certified copy of his prior felony conviction. We review the exclusion for an abuse of discretion. *See United States v. Cleveland*, 907 F.3d 423, 435 (6th Cir. 2018). The parties had already stipulated that Tucker was a felon for purposes of the felon-in-possession charge. Thus, the excluded evidence would have done nothing more than inform the jury that Tucker’s prior conviction had been for aggravated burglary under Tennessee law. That fact was plainly irrelevant to any element or defense relating to the felon-in-possession charge or any other charge at trial. *See generally* Fed. R. Evid. 401. Indeed, the court’s jury instructions would have told the jury to disregard that fact (and to consider only the fact of Tucker’s felony) had the copy of his conviction been admitted. Nor do we see

any prejudice to Tucker resulting from the jury's ignorance of his status as an aggravated burglar.

The district court did not abuse its discretion.

The district court's judgment is affirmed.

# UNITED STATES DISTRICT COURT

## Western District of Tennessee

UNITED STATES OF AMERICA ) **JUDGMENT IN A CRIMINAL CASE**  
v. )  
JOSHUA TUCKER ) Case Number: 1:17-cr-10067-STA-3  
 ) USM Number: 30330-076  
 ) David Camp  
 ) Defendant's Attorney

## THE DEFENDANT:

pleaded guilty to count(s) \_\_\_\_\_

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) 1,2,6,7-8,9-10  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C.§ 841(a)(1) and 846	Conspiracy to Distribute & Possess w/ the Intent to Distribute 50 Grams or More of Actual Methamphetamine	4/27/2017	1
21 U.S.C.§ 841(a)(1)	Aiding & Abetting: Distribution, Attempt to Distribute,	4/27/2017	2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) \_\_\_\_\_ is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/24/2019  
Date of Imposition of Judgment

s/S. Thomas Anderson  
Signature of Judge

S. Thomas Anderson, Chief U.S. District Judge  
Name and Title of Judge

1/28/2019  
Date

DEFENDANT: JOSHUA TUCKER  
CASE NUMBER: 1:17-cr-10067-STA-3

## ADDITIONAL COUNTS OF CONVICTION

DEFENDANT: JOSHUA TUCKER  
CASE NUMBER: 1:17-cr-10067-STA-3

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

240 months custody of BOP as to Counts 1,2,6; to run concurrently. 120 months custody of BOP as to Counts 7-8 to run concurrently. 60 months custody of BOP as to Counts 9-10; to run consecutively. TOTAL BOP SENTENCE: 300 months custody of BOP.

The court makes the following recommendations to the Bureau of Prisons:

Defendant participate in the BOP program.

Defendant be placed at BOP facility as close to West TN as possible.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSHUA TUCKER  
CASE NUMBER: 1:17-cr-10067-STA-3**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of :

TOTAL of 5 years supervised release.

**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7.  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: JOSHUA TUCKER  
CASE NUMBER: 1:17-cr-10067-STA-3

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: JOSHUA TUCKER  
CASE NUMBER: 1:17-cr-10067-STA-3

### **ADDITIONAL STANDARD CONDITIONS OF SUPERVISION**

The defendant shall participate in the collection of DNA as directed by the probation officer.

The defendant shall participate in drug testing and treatment as directed by the probation officer.

The defendant shall participate in mental health treatment as directed by the probation officer.

The defendant shall participate in a cognitive behavioral therapy program as directed by the probation officer.

The defendant shall participate in vocational training as directed by the probation officer.

The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. §1030(e)(1)), other electronic communication or data storage or media, or office to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

Defendant shall possess no firearms.

DEFENDANT: JOSHUA TUCKER  
CASE NUMBER: 1:17-cr-10067-STA-3

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<u>TOTALS</u>	<u>Assessment</u> \$ 700.00	<u>JVTA Assessment*</u> \$	<u>Fine</u> \$	<u>Restitution</u> \$
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The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>TOTALS</b>	\$ 0.00	\$ 0.00	

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOSHUA TUCKER  
CASE NUMBER: 1:17-cr-10067-STA-3

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance with  C,  D,  E, or  F below; or

B  Payment to begin immediately (may be combined with  C,  D, or  F below); or

C  Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (*e.g., months or years*), to commence \_\_\_\_\_ (*e.g., 30 or 60 days*) after the date of this judgment; or

D  Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (*e.g., months or years*), to commence \_\_\_\_\_ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or

E  Payment during the term of supervised release will commence within \_\_\_\_\_ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:  
2 firearms(AR-15 rifle and 9mm pistol), 5 vehicles, drugs, cash money.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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UNITED STATES OF AMERICA, )  
                                  )  
Plaintiff,                   )  
                                  )  
vs.                            )                                   **No. 1:17-cr-10067-STA-3**  
                                  )  
JOSHUA TUCKER,             )  
                                  )  
Defendant.                   )

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**ORDER DENYING MOTION TO SUPPRESS**

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Before the Court is Defendant Joshua Tucker's Motion to Suppress (ECF No. 227). Defendant seeks the suppression of all evidence obtained through a warrantless search conducted by the McNairy County Sheriff's Office at Defendant's residence on or about April 27, 2017. Although Defendant was on probation, Defendant asserts that the search was unlawful because the searching officers had neither probable cause nor reasonable suspicion. The Government, however, maintains that the search was lawful because Defendant's probation order authorized a warrantless search of his residence and therefore reasonable suspicion was not required. For the reasons that follow, Defendant's Motion is **DENIED**.

**I. BACKGROUND**

Defendant pleaded guilty to aggravated burglary and was sentenced to three years of incarceration. But Defendant's sentence was suspended in favor of probation for that same time. The terms of Defendant's probation, however, included a provision whereby Defendant agreed to

be subject to warrantless searches.<sup>1</sup> Defendant was on probation, and therefore subject to the aforementioned term, when, on April 27, 2017, law enforcement officers conducted a probation check at Defendant's residence. This probation check followed Defendant's arrest for two separate probation violations. Defendant had posted bond with money that officers believed to be drug proceeds. At Defendant's residence, the officers recovered firearms and located a safe. When asked to open the safe, Defendant stated that he did not know the combination. The officers then sought a warrant, and Defendant left the scene. After obtaining a warrant, the officers opened the safe. Inside, the officers found methamphetamine, related paraphernalia, and \$5,677.75 in cash. Defendant now seeks to suppress all evidence obtained at his residence as the result of this warrantless probation check, which he maintains was unlawful.

## II. DISCUSSION

The issue presented to the Court is whether reasonable suspicion is required for law enforcement officers to conduct a warrantless search of the property of a probationer convicted of a felony who has agreed to warrantless searches as part of his probation. The Court finds that reasonable suspicion is not required. Therefore, Defendant's Motion is **DENIED**.

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects[] against unreasonable searches . . .” U.S. Const., amend. IV. “At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” *Kyllo v. United States*, 533

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<sup>1</sup> “Offenders will allow their Case Officer and/or any 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.” Corrections Management Corporation Community Corrections Rules, ¶ 16, June 8, 2016, ECF No. 245-1.

U.S. 27, 31 (2001) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)) (internal quotation marks omitted). And indeed, “the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.” *Payton v. New York*, 445 U.S. 573, 590 (1980). Nonetheless, it is well-settled that mere reasonable suspicion will support the warrantless search of a probationer’s residence. *United States v. Herndon*, 501 F.3d 683, 688 (6th Cir. 2007) (quoting *United States v. Knights*, 534 U.S. 112, 121 (2001)). Reasoning that a probationer is more likely to engage in criminal conduct than the average member of the general public and that a probationer has “significantly diminished privacy interests,” the Supreme Court held that no more than reasonable suspicion of criminal activity was required for an officer to search the residence of a “probationer subject to a search condition.” *Knights*, 534 U.S. at 120–21. But was reasonable suspicion required at all?

Relying on a decision of the United States Court of Appeals for the Sixth Circuit (the “Sixth Circuit”), the Government asserts that, in cases where a probationer has signed an agreement allowing for a search at any time without a warrant, a so-called “suspicionless” search is permissible. United States’ Resp. to Def.’s Mot. to Suppress Evidence, at 3–4, Feb. 2, 2018, ECF No. 245 (citing *United States v. Tessier*, 814 F.3d 432, 433–34 (6th Cir. 2016)). In *Tessier*, the Sixth Circuit fully adopted the trial court’s reasoning and affirmed its denial of the motion to suppress evidence obtained from a suspicionless search. 814 F.3d at 433 (citing *United States v. Tessier*, 2014 U.S. Dist. LEXIS 137301 (M.D. Tenn. Sept. 29, 2014)). The defendant in *Tessier*

was on probation for a September 2011 state conviction for possession of child pornography. . . . [He] receive[d] a suspended six-year sentence and [was] placed on supervised probation for six years. . . . [He], along with the sentencing judge, executed a “Probation Order,” as well as “Special Probation Conditions for Sex Offenders,” on September 30, 2011, that set forth the terms and conditions of [his]

probation. So far as germane to the pending Motion to Suppress, the Probation Order provided:

“6. I will allow my Probation Officer to visit my home, employment site, or elsewhere, will carry out all lawful instructions he or she gives, [and] will report to my Probation Officer as instructed. . . .

7. 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.”

*Tessier*, 2014 U.S. Dist. LEXIS 137301, at \*2, 4–5 (citation omitted). The Special Probation Conditions for Sex Offenders further prohibited the purchase or possession of pornographic material, access to the internet without written permission, and use of any electronic device for a “sexually oriented purpose.” *Id.* at \*5. Subsequently, the officers performed a search of the *Tessier* defendant’s residence. *Id.* at \*6. The parties in that case agreed that the search lacked reasonable suspicion. *Tessier*, 814 F.3d at 433. And in the course of their search of the defendant’s residence, the officers identified “questionable photos” on the defendant’s cellphone and a laptop in the defendant’s bedroom. *Tessier*, 2014 U.S. Dist. LEXIS 137301, at \*7–8. One of the officers at the scene had experience investigating child pornography and identified a website in a cursory search of the laptop’s internet history that contained “both adult and child pornography.” *Id.* at \*8. The officers then arrested the defendant. *Id.*

The trial court determined that “a probationer who has been convicted of a felony and who has executed a probation order in which he agree[d] to a search[] without a warrant [may] be subjected to a search in the absence of reasonable suspicion.” *Id.* at \*8–9 (internal quotation marks omitted). Employing a totality-of-the-circumstances analysis, the trial court first noted that while “[a] probationer’s home, like anyone else’s, is protected by the Fourth Amendment[,] . . . *Knights* teaches . . . that probationers ‘do not enjoy the absolute liberty to which every citizen is entitled.’” *Id.* at \*17–18 (quoting *Knights*, 534 U.S. at 119; *Griffin v. Wisconsin*, 483 U.S.

868, 873 (1987)). The court then acknowledged the significance of the government's interest: "it must be remembered that the very assumption of the institution of probation is that the probationer is more likely than the ordinary citizen to violate the law." *Id.* at \*19 (quoting *Knights*, 534 U.S. at 120) (internal quotation marks omitted). Next, although the defendant had not been convicted of a violent felony, the court agreed with the Government's representations that "the State's interest in protecting its young is paramount" and that "[c]hild pornography is, without qualification, a serious crime." *Id.* at \*21 (citing *United States v. Schultz*, 733 F.3d 616, 620 (6th Cir. 2013); *United States v. Robinson*, 669 F.3d 767, 776 (6th Cir. 2012)). And finally, the *Tessier* court highlighted the presence of "the 'dual concerns' of the State[] as expressed in *Knights*. *Id.* at \*21 (quoting *Knights*, 534 U.S. at 120–21). In *Knights* and in *Tessier*, the State had "(1) the hope that [defendant] will successfully complete probation and be integrated back into the community; and (2) the concern, quite justified, that he will be more likely to engage in criminal conduct than an ordinary member of the community." *Id.* (alteration in original) (internal quotation marks omitted). Thus, the trial court concluded on balance that the suspicionless search had not violated the Fourth Amendment. *Id.* at \*17.

In this case, Defendant was convicted of aggravated burglary. Aggravated burglary is a Class C felony in Tennessee. Tenn. Code Ann. § 39-14-403(b). Defendant agreed to the terms of his probation, which included a provision permitting officers to conduct a search of Defendant's residence without a search warrant. The Government represents that the State was again concerned with Defendant's integration back into the community and the greater likelihood that he would engage in criminal activity compared to the ordinary member of the community. And the Government ultimately argues that, as was the case in *Tessier*, the State's concerns outweighed any expectation of privacy on Defendant's part. The Court is not bound in this

instance by the *Tessier* trial court’s reasoning, however, even though it was adopted by the Sixth Circuit. 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. Nonetheless, the *Tessier* court’s reasoning is persuasive, and the Court believes such reasoning should be extended to the present case.

Notably, Defendant was not convicted of a violent felony or a felony that exploited children. *See Tessier*, 2014 U.S. Dist. LEXIS 137301, at \*21. *United States v. King*, 736 F.3d 805 (9th Cir. 2013), was one of the earliest decisions to uphold a suspicionless search and was therefore utilized in the *Tessier* court’s analysis. *Tessier*, 2014 U.S. Dist. LEXIS 137301, at \*15–17, 21. The defendant in *King* was on probation following a conviction for domestic abuse. *King*, 736 F.3d at 806 (citing Cal. Pen. Code § 273.5). The United States Court of Appeals for the Ninth Circuit (the “Ninth Circuit”) expressly limited its holding to *violent* felons. *Id.* at 810 (“We hold only that a suspicionless search, conducted pursuant to a suspicionless-search condition of a violent felon’s probation agreement, does not violate the Fourth Amendment.”). As this Court discussed above, the *Tessier* court considered the seriousness of child pornography and the magnitude of the State’s interest in preventing such crimes in its analysis. *Tessier*, 2014 U.S. Dist. LEXIS 137301, at \*21. Therefore, in its statement of the question presented to it, the *Tessier* trial court considered suspicionless searches involving a “probationer who has been convicted of *a felony*.” *Id.* at \*8. This phrasing is assuredly deliberate not only because the conviction underlying the probation in the case before it was not a violent felony but also because the trial court expressly narrowed the issue as formulated by parties. *See id.* at \*8, 21. The litigants had evidently framed the question as to all probationers, but the *Tessier* court limited the scope of its inquiry to probationers who had been *convicted of a felony* and had

executed a probation order in which *they agreed to warrantless searches*. *Id.* at \*8. Thus, unlike the Ninth Circuit in *King*, the Sixth Circuit has not cabined reasonable, suspicionless searches to probationers convicted of violent felonies. Nothing in the Sixth Circuit's opinion suggests any deviation from the lower court when the appellate court adopted the trial court's reasoning. *See generally Tessier*, 814 F.3d 432. Therefore, the Court concludes that the nature of the felony is simply one consideration that weighs in the balance of the totality-of-the-circumstances test.

The events surrounding Defendant's aggravated-burglary conviction were not made known to the Court by the parties for this Motion. But if Defendant had committed violence in the perpetration of his crime, he almost certainly would have been convicted of "especially aggravated burglary" rather than "aggravated burglary." *Compare* Tenn. Code Ann. § 39-14-403, *with* Tenn. Code Ann. § 39-14-404. The Court therefore presumes Defendant was not convicted of a violent felony. The question then is whether the reduction in concern over a felony that did not involve violence or the exploitation of children is sufficient to tip the balance of reasonableness concerning a suspicionless search. And the Court holds that is not. While not so grave as the crimes of the defendants in *King* and *Tessier*, aggravated burglary remains a serious matter and is a crime that can often lead to violence against the inhabitants of the residence broken into. The State was most assuredly concerned with successfully integrating Defendant back into society while at the same time aware that he was more likely to commit a crime than the average citizen. And Defendant expressly gave law enforcement permission to search his residence as a part of the terms of his probation.<sup>2</sup> Considering all of these factors

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<sup>2</sup> One might argue that such permission was not freely given as it was a condition of his parole rather than Defendant's independent choice. But the *Tessier* court addressed this concern too: "even though entering into a probation order allows the possibility of home searches, the alternative is likely imprisonment and constant surveillance, a far greater encroachment on

together, the Court cannot say that such a search, even if no reasonable suspicion existed, was unreasonable.

### **III. CONCLUSION**

For the foregoing reasons, Defendant's Motion to Suppress is **DENIED**.

**IT IS SO ORDERED.**

**s/ S. Thomas Anderson**  
S. THOMAS ANDERSON  
CHIEF UNITED STATES DISTRICT JUDGE

Date: April 13, 2018.

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Fourth Amendment rights.” *Tessier*, 2014 U.S. Dist. LEXIS 137301, at \*14–15 (citing *Hudson v. Palmer*, 468 U.S. 517, 525–26 (6th Cir. 2004)).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

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

JOSHUA TUCKER,  
Defendant.

**MOTION TO SUPPRESS**

BEFORE THE HONORABLE S. THOMAS ANDERSON

MARCH 6, 2018

CATHY BEST, RPR  
Official Court Reporter  
100 Main Street, Suite 422  
Nashville, Tennessee 38103

UNREDACTED TRANSCRIPT

1 APPEARANCES  
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3  
4

5 For the Plaintiff:  
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12  
13 TAYLOR M. ESKRIDGE, ESQ.  
14 U.S. Attorney's Office  
15 109 South Highland Avenue, Suite 300  
16 Jackson, Tennessee 383019  
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11 For the Defendant:  
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20 DAVID W. CAMP, ESQ.  
21 Law Offices of David Camp, PLLC  
22 403 North Parkway, Suite 201  
23 Jackson, Tennessee 38305  
24  
25

DIRECT - MATT RICKMAN

17

1 understanding?

2 A. Yes, ma'am.

3 Q. I'm going to pass forward a document to you. Let  
4 me know if you recognize it.

5 A. Yes, ma'am, that's the Correction Management  
6 Corporation, Community Correction rules, which  
7 paragraph 16 shows that he must submit to law enforcement  
8 searches, probation searches.

9 Q. Is there a name signed at the bottom of it?

10 A. The offender Josh Tucker and case officer, looks  
11 like, Lisa Denning (phonetic).

12 Q. You cited briefly a rule. What rule number were  
13 you reading?

14 A. Sixteen.

15 Q. Is that sometimes what you guys refer to as the  
16 rule regarding search --

17 A. Yes, ma'am.

18 Q. -- or lack thereof?

19 A. Yes, ma'am.

20 Q. Can you read paragraph 16 out loud for the Court?

21 A. Sure. "The offender will allow case officer to  
22 visit his or her home, employment site, or elsewhere  
23 anytime during the day or night and shall carry out all  
24 instructions" --

25 **THE COURT:** Officer Rickman, slow down just a

UNREDACTED TRANSCRIPT

App.24a

CROSS - MATT RICKMAN

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1                   **THE COURT:** That's okay. You're fine.

2                   **MR. CAMP:** I'm sorry. Do you want me to  
3 repeat the question?

4                   **THE COURT:** Repeat your question.

5                   **MR. CAMP:** Glad to.

6                   **BY MR. CAMP:**

7                   Q. All right. There was contraband -- I'll just  
8 repeat but allow me to lead in, if the Court will permit.  
9 I'll change the question up a bit, not to confuse things  
10 but to clarify.

11                  When entrance was made into the home, based on your  
12 provision that there's a searchable probation, there was  
13 contraband found?

14                  A. Yes, sir.

15                  Q. That was not contraband in the safe at that point?

16                  A. Not at that time.

17                  Q. As far as you know?

18                  A. As far as I know, yeah.

19                  Q. Okay. And what was found when they entered the  
20 home, if you know?

21                  A. I believe it was an AR-15 assault rifle, and a  
22 pistol, a meth pipe, and digital scales.

23                  Q. Okay. And those items were found after entrance  
24 was made into the home because of the belief there was  
25 searchable probation?

CROSS - MATT RICKMAN

38

1 A. Yes, sir.

2 Q. Okay. Based on having found those items, were  
3 those the reasons why you then stopped and sought to get  
4 a search warrant?

5 A. Yes, sir, to get into the safe.

6 Q. Correct. My question back again was that if you  
7 were on the belief that or of the belief that it was  
8 searchable probation, why was it necessary to get the  
9 warrant?

10 A. We just believed it was the best thing to do at  
11 that point.

12 Q. And would you agree with me that had you not found  
13 those items of contraband, there would not have been  
14 sufficient grounds to have gone and searched and gotten a  
15 search warrant anyway?

16 A. No, sir, we'd probably left.

17 Q. I'm sorry?

18 A. We'd probably left if we didn't find anything.

19 Q. You would have never entered the safe?

20 A. No.

21 Q. Except for the fact that you found those items?

22 A. Right.

23 Q. Is that correct?

24 A. Yes, sir.

25 Q. Okay. Did you use the fact that you found those

CROSS - MATT RICKMAN

44

1 Q. Was it the same day?

2 A. Yes, sir, it was the same day.

3 Q. Okay. So there was a very close proximity of time  
4 between the time you heard the call and the time you went  
5 out there?

6 A. Yes, sir.

7 Q. All right.

8 **MR. CAMP:** Judge, I think that may be it. If  
9 the Court would give me just one more second, please.

10 That's all I have, Judge.

11 **THE COURT:** Hold on just one minute,  
12 Ms. Eskridge.

13 Is it Officer or Investigator?

14 **THE WITNESS:** Investigator, sir.

15 **THE COURT:** All right. Investigator Rickman,  
16 you testified that you called the probation officer?

17 **THE WITNESS:** I called, yes. Yes, sir.

18 **THE COURT:** And for what reason did you call  
19 the probation officer?

20 **THE WITNESS:** To verify the address that he  
21 had registered with them.

22 **THE COURT:** Okay. And did you already have  
23 information that he was on what you call "searchable  
24 probation"?

25 **THE WITNESS:** Yes, sir.

1 THE COURT: So you already knew that?

2 THE WITNESS: Yes, sir.

5 THE WITNESS: Address.

24 THE WITNESS: Yes, sir.

25 || THE COURT: And was it your belief that there  
UNREDACTED TRANSCRIPT

1       was the possibility at least or probability, whatever it  
2       might be, that there were drugs located in the residence?

3           **THE WITNESS:** Yes, sir.

4           **THE COURT:** And that was based on the  
5       information you had received up to that point?

6           **THE WITNESS:** Yes, sir.

7           **THE COURT:** And you said that when you got to  
8       the residence, Mr. Tucker was outside, talking to his  
9       mother, I believe, you said?

10          **THE WITNESS:** Yes, sir.

11          **THE COURT:** And you walked up. And tell me  
12       one more time what you said.

13          **THE WITNESS:** I said, "You're on searchable  
14       probation, right?" And he said, "Yes."

15          **THE COURT:** Okay. Did you say anything else  
16       to him?

17          **THE WITNESS:** I said, "Well, we're here to  
18       search."

19          **THE COURT:** "We're here to search."

20          **THE WITNESS:** Yes, sir.

21          **THE COURT:** And did he respond in any way?

22          **THE WITNESS:** No, sir.

23          **THE COURT:** Did he walk off, or look at you  
24       and frown, or what did he do?

25          **THE WITNESS:** Just complied with it.

REDIRECT - MATT RICKMAN

47

1                   **THE COURT:** So he didn't one way or the other  
2 indicate whether he agreed or disagreed?

3                   **THE WITNESS:** No, sir.

4                   **THE COURT:** All right. Ms. Eskridge.

5                   **REDIRECT EXAMINATION**

6                   **BY MS. ESKRIDGE:**

7                   Q. May I pass forward a document to you. Let me know  
8 if you recognize it.

9                   A. Yes, ma'am, this is the search warrant that I wrote  
10 for the residence.

11                  **THE COURT:** I'm sorry. I couldn't hear that  
12 last part.

13                  **THE WITNESS:** I'm sorry, sir.

14                  **BY MS. ESKRIDGE:**

15                  Q. Say that a little louder.

16                  A. This is the search warrant I wrote for the  
17 residence.

18                  Q. You're the person who actually wrote the search  
19 warrant for the residence?

20                  A. Yes, ma'am.

21                  Q. You testified to that previously. So you would  
22 have drafted the affidavit?

23                  A. Yes, ma'am.

24                  **MS. ESKRIDGE:** Your Honor, at this time I'll  
25 ask to have this marked and made the next numbered

DIRECT - KIM HOLLEY

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1 A. That's when we just stopped searching and went and  
2 applied for a search warrant.

3 Q. And when you say "we" applied, who did --

4 A. Investigator Rickman left, and went and applied for  
5 a search warrant, and received one.

6 Q. While he was gone presumably getting the search  
7 warrant signed, did Mr. Tucker remain at the home?

8 A. No, he left.

9 Q. Did you continue the search while he was gone?

10 A. No.

11 Q. When, if ever, did you continue the search?

12 A. When Investigator Rickman got back with the search  
13 warrant.

14 Q. Why did you seek a warrant at that point, at the  
15 point of opening the safe?

16 A. Because I knew we could not open the safe without  
17 tearing the safe up.

18 Q. Okay. After the safe was opened, did you find  
19 drugs or drug paraphernalia in the safe or anywhere else?

20 A. There was methamphetamines inside the safe. I  
21 think there were scales inside the safe, another pipe  
22 inside the safe along with cash.

23 Q. Did you also subsequently search the defendant's  
24 car, a Nissan?

25 A. Yes.

1       some testimony about some kind of contraband being found  
2       in a vehicle. As the Court will recall, I think it's  
3       uncontradicted that was found after they seized the  
4       vehicle, and that was found, of course, after they had  
5       gone into the home subsequent to that warrantless search.

6           I would also submit to the Court that anything  
7       found as a result of getting the search warrant also  
8       arose from the product found through the warrantless  
9       search. So it's like a domino effect. The reality of it  
10       is everything after they entered that house at that point  
11       should be excluded and not be permitted to be used  
12       against Mr. Tucker because the recovery of such violated  
13       his constitutional rights in these circumstances. Thank  
14       you.

15           **THE COURT:** Ms. Eskridge.

16           **MS. ESKRIDGE:** Judge, the Tessier case is  
17       clear and directly on point for purposes of our  
18       conversation today, so much so it involves a probationer  
19       who is on probation out of Tennessee using almost the  
20       exact same language, the probation language that  
21       Mr. Tucker signed and agreed to as a part of the terms of  
22       his probation.

23           Your Honor will note that in the Tessier case  
24       the Tennessee probationer agreed to language indicating,  
25       "I agree to a search, without a warrant, of my person,

1       vehicle, property, or place of residence by any  
2       probation/parole officer or law enforcement officer, at  
3       any time."

4                   Similarly, Judge, here, this defendant agreed  
5       to language: "Defendant will allow a case officer to  
6       visit his or her home, employment site, or elsewhere at  
7       any time during the day or night and shall carry out all  
8       instructions given by the case officer, whether oral or  
9       in writing. Officer will allow their case -- offenders  
10      will allow their case officer and/or other law  
11      enforcement officer to conduct a search of their  
12      residence, automobile, personal belongings, or their  
13      person, upon request, to control contraband or locate  
14      missing or stolen property without the necessity of a  
15      warrant."

16                   Very similar language in both cases. Except  
17       in the *Tessier* case, Your Honor, you'll note that there  
18       was no specific information provided as to why the  
19       probation officer and other officers went to search the  
20       defendant's home. That defendant, as a part of the  
21       terms of his probation, was placed on what we have been  
22       calling searchable probation. He changed probation  
23       officers. So the officer went -- the new probation  
24       officer along with police officers went to his home and  
25       began to search.

1                   They took that to the Court, got the judge to  
2 agree to allow them to search the home, and they found  
3 the rest of the items we have today.

4                   Your Honor, my contention to Your Honor  
5 today is that *Tessier* is controlling. There is not any  
6 adverse case law from any district court or the court of  
7 appeals. It's controlling law. The officers were aware  
8 that that was the law in Tennessee, and they relied upon  
9 it.

10                  So I'd either ask Your Honor to find that the  
11 search is authorized under Sixth Circuit law and/or that  
12 if it was not, the good faith exception should apply.

13                  **THE COURT:** All right. Thank you.

14                  All right. I'm going to take it under  
15 advisement. I want to check on a couple things before  
16 I make a ruling. I'll do that and get you an opinion  
17 out, hopefully, sooner rather than later. I would  
18 hope to have the opinion out no later than next week  
19 sometime.

20                  **MR. CAMP:** Your Honor, just as maybe more of a  
21 housekeeping matter, we had filed a motion to continue  
22 the matter set for trial on Monday, March 12th, but I'm  
23 not sure -- I've spoken with Ms. Eskridge -- Mr. Tucker  
24 may very well be the only one left in the indictment,  
25 that we're aware of. I think the others are in the

Original

Judge or Magistrate's Copy

Defendant's copy

### Search Warrant

#### STATE OF TENNESSEE MCNAIRY COUNTY, TENNESSEE

TO: Any authorized officer of the State of Tennessee

Affidavit(s) having been made before me by Investigator Matt Rickman  
that there is probable cause for believing that Joshua Allen Tucker has  
in His/Her or there possession certain evidence to wit: Firearms, Narcotics, drug paraphernalia, and  
any document or electronic records related to the unlawful sale of unlawful narcotics.

contrary to the laws of the State of Tennessee.

To be searched for in accordance with the laws of the State of Tennessee. Upon the  
following described property, namely

147 Cox Drive Selmer, McNairy County Tennessee.

Parcel Number: 099D D 002.00

See attached photos

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

to include the above named person and any others present along with all vehicles, all  
outbuildings, campers, safes, containers and all electronic devices on the premises.

Being the premises occupied by Joshua Allen Tucker

situated in McNairy County, Tennessee. You are hereby commanded to make immediate  
search of the person and premises herein above described for the following property:

Joshua Allen Tucker  
147 Cox Drive Selmer, McNairy County Tennessee.  
Parcel Number: 099D D 002.00  
See attached photos

possessed contrary to the laws of the State of Tennessee.

And if you find the same or any part thereof, to bring, it forthwith before me at my office  
in Selmer, Tennessee of said county and state this 27th day of April 2017

Vin Mcnl

General Sessions Judge.

(Signature of Judge)

Issued on: 04-27- 2017 at 1:55 (a.m./p.m.) To: Investigator Matt Rickman

Executing Officer

App.35a

JT-061

Original

Judge or Magistrate's Copy

Defendant's Copy

### Affidavit

State of Tennessee  
McNairy County

Personally appeared before me Investigator Matt Rickman  
and made oath that he has good ground and belief that Joshua Allen Tucker  
is in possession of the following described property to wit: —  
Firearms, Narcotics, drug paraphernalia, and any document or electronic records related to the unlawful sale of unlawful narcotics.

contrary to the laws of the State of Tennessee.  
To be searched for in accordance with the laws of the State of Tennessee, upon  
the following described premises 147 Cox Drive Selmer, McNairy County Tennessee.

Parcel Number: 099D D 002.00

See attached photos

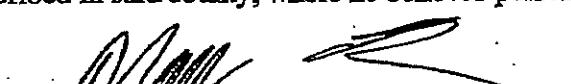
located in McNairy County Tennessee and all persons, vehicles, campers and out buildings  
on said premises. And his reasons for such beliefs are;

On 04-27-2017 Investigators Matt Rickman, Kim Holley, and JP Kellum went to 147 Cox Drive, Selmer  
McNairy County Tennessee to conduct a probation search on Joshua Allen Tucker. Joshua Allen Tucker  
provided the address to his probation officer as his residence. Once on scene Inv. Rickman contacted Mr.  
Tucker in the driveway and told him why officers were there. Inv. Holley and Inv. Kellum searched Mr.  
Tucker's bedroom where Inv. Holley recovered a loaded BushMaster 223 Rifle in Mr. Tucker's bedroom, a  
loaded 9mm Jiminez Pistol which was under the mattress in Mr. Tucker's bedroom. Inv. Holley also located  
a digital scale commonly used in the illegal sale of narcotics in Mr. Tucker's bedroom on the table by the  
bed. Inv. Kellum recovered a glass methamphetamine smoking pipe also in Mr. Tucker's room. Also in Mr.  
Tucker's room is a safe. When Officers asked Mr. Tucker to open the safe he stated he didn't remember the  
combination to the safe and he thought he threw the paperwork away. Mr. Tucker then fled the scene on foot  
to avoid being arrested and is still at large at this time. There is probable cause to believe that there are  
Firearms, Narcotics, drug paraphernalia, and any document or electronic records related to the unlawful sale  
of unlawful narcotics inside the safe and or the residence.

Joshua Allen Tucker is a convicted felon. Mr. Tucker was convicted of Aggravated Burglary on 05-30-2015  
in McNairy County.

Your affiant therefore requests that a warrant be issued to search the afore mentioned  
residence, person(s), vehicles, electronic devices, safes, containers and all outbuildings on said premises. This residence  
occupied by Joshua Allen Tucker

Above described in said county, where he believes personal property above is now  
possessed.

  
Signature of Affiant

Sworn and subscribed before me this the 27th day of April 2017

Vern M. McDonald

Judge General Sessions Court McNairy County

App.36a  
JT-062

### 13.012 SEARCH AND INVENTORY OF VEHICLES

- A. General -- Vehicles should not be searched until the occupants have been removed, arrested, searched, and are under complete control. Another deputy should be present when conducting a search.
- B. Searches are permissible when:
  - 1. The owner or operator gives permission.
  - 2. An occupant has been arrested, and a search for evidence to that offense
  - 3. A deputy has a search warrant.
  - 4. Probable Cause
- C. Inventories -- In all cases, the contents of a vehicle shall be inventoried to protect any valuables therein. This will include the passenger compartment, glove compartment, any containers, and trunk.
  - 1. Being Towed.
  - 2. Released to another party.
  - 3. Left legally parked at scene.
- D. Disposition of articles taken from vehicles:
  - 1. Whether the property taken is evidence or personal property, each item shall be properly marked, identified, and stored at headquarters.
  - 2. If evidence is to be sent to the laboratory for processing, it shall be handled in accordance with direction from the Sheriff.

**EXHIBIT 1**

**CORRECTIONS MANAGEMENT CORPORATION**  
**COMMUNITY CORRECTIONS RULES**

1. "All offenders will be required to enter into and complete a written Behavioral Contract Agreement with Corrections Management Corporation, which will determine obligations to be met and general conduct while under Community Corrections supervision."
2. "All Offenders under house arrest will be required to remain at home unless performing community service, working, attending classes or counseling."
3. "The offender must secure and hold permanent, acceptable employment within the community. You must secure employment within 30 days from the day you enter the Community Corrections program. If you do not have a regular job, your Case Officer will schedule you time to seek employment."
4. "As long as you are in the program, you will make some type of payment to the Court Clerk as part of your case plan. Payments will be made until all court costs, fines, & restitution (if any) are paid in full."
5. "If you receive a check and do not make your payments to the Court and on supervision fees as scheduled, your Case Officer will have the right to issue a wage assignment and make the proper disbursement of funds as set out in the contract, using his sole judgment as to the needs of the offender."
6. "Offenders will not use or possess intoxicants, inhalants, narcotic drugs or controlled substances, nor visit business establishments where alcoholic beverages are the primary source of business. Offenders will also be subject to random alcohol and drug screening. Refusal to submit to a drug screen will be an admission of a positive screen and a violation. Offenders will be subject to prosecution for alteration or attempt to alter a drug test pursuant to TCA 39-17-437."
7. "Offenders will not associate with known felons or any person who is known to be involved in criminal activities; nor will offenders be allowed to own or possess any type of firearm or deadly weapon for any reason."
8. "As long as you are in the program, Offenders are not allowed to participate in or have any association with any Security Threat Group, nor have any association with any person who is known to be involved with any Security Threat Group. Offenders will be subject to prosecution for any gang related activity."
9. "Offenders will not assume, contract, or incur financial obligations while in the program without prior approval of their supervising case officer."
10. "All offenders will report in person to their supervising Case Officer as directed at a pre-designated meeting place. At this meeting, the Case Officer and Offender will develop a weekly activity schedule which the offender must follow and complete."
11. "Offender must report any deviation from their weekly schedule to the Case Officer immediately. This includes absences from work and school."
12. "All Offenders will be responsible for payment of a supervision fee in the amount of \$45.00 per month pursuant to TCA 40-36-306 and shall be payable in the form of a money order only and mailed to Corrections Management Corporation, P.O. Box 325, Whiteville, TN 38075. These fees are payable on a monthly basis. If intake date is after the twentieth of the month, you will begin payments on the first day of the following month and on the first of each month thereafter as long as you are on the program."

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01/25/2018 09:43 Corrections Management (FAX) 731 254 8923 P.003/003

13. "Offenders will obey all of the laws of the State of Tennessee, United States, or any state in which he/she may be in, as well as any municipal ordinances. Any violation of the law shall be reported to the Case Officer within 24 hours. This includes traffic violations. Failure to report will be a serious infraction of the rules."

14. "Offenders must procure the consent of his/her Case Officer before changing his/her residence or employment or before leaving the county of his/her residence."

15. "Offenders will not be allowed to leave the State of Tennessee for any reason without a written order from the Court."

16. "Offender will allow the Case Officer to visit his/her home, employment site, or elsewhere at any time during the day or night and shall carry out all instructions given by their Case Officer whether oral or in writing. Offenders will allow their Case Officer and/or any 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."

17. "All Offenders will be responsible for a one-time payment of \$37.00 DNA analysis pursuant to TCA 40-35-321, to be performed by Corrections Management Corporation personnel. This payment shall be in the form of a money order only to Corrections Management Corporation."

18. "All Offenders will complete a minimum of 100 hours of community service work as ordered by the sentencing Court. Any permanent or temporary disability claimed by an offender for exemption from the Community Service must be verified by medical records and a written statement from a doctor."

19. "Violations - Any violation of the rules is a serious matter and could result in the revocation of your community corrections program. Your Case Officer has the option to alter your program to deal with your violations or to have you committed to jail."

20. "All Offenders will conduct themselves in an appropriate manner when meeting with CMC personnel or speaking with them via telephone. Any behavior deemed inappropriate will be dealt with on an individual basis."

21. "If you have any questions about the rules or any of your activities, contact your Case Officer before doing anything. If you cannot contact your Case Officer, Do Not Do It."

I have read, or have had read to me, the above Community Corrections Rules and I fully understand them and agree to comply with them. I have also received a copy of same.

John Smith  
Offender

R. Denry  
Case Officer

6-8-16

Date

06/08/16

Date