IN THE SUPREME COURT OF FLORIDA

CASE NO. 86,284

JUAN SOCA,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON JURISDICTION

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INTRODUCTION

The Petitioner, JUAN SOCA, was the defendant and probationer in the trial court and appellant in the Third District Court of Appeal. The Respondent, the State, was the prosecution in the trial court and the appellee in the District Court. The decision, motion for certification, and order denying certification, along with other pertinent decisions, are included in the Appendix, which will be designated herein as "App. ___."

STATEMENT OF THE CASE AND FACTS

The defendant was convicted of cocaine trafficking on the basis of evidence obtained from a non-exigent, warrantless search of his residence. Soca v. State, 656 So. 2d 536 (Fla. 3d DCA 1995) (App. at 2.)

The defendant, on probation, resided in a trailer in Monroe County with his parents. (Id.) Based upon information which caused him to believe that the defendant was in possession of a large quantity of cocaine, rather than obtaining a search warrant a state attorney's investigator contacted the defendant's probation officer; there followed a non-exigent, warrantless search by probation officers of the defendant's residence trailer, resulting in the discovery of cocaine hidden under the floor of a hallway closet. (Id.)

The evidence obtained from the warrantless search was admitted against the defendant not merely in the probation revocation proceeding, but, over denied motion to suppress, in the new substantive case, resulting in conviction. (Id.)

Upon the defendant's timely appeal, a panel of the Third District Court of Appeal, rejecting the defendant's contention that (as will be set forth in the argument portion of this brief) the decisions of this Court permit the result of warrantless searches to be used only in evidence in probation revocation proceedings but not in the new substantive case, affirmed on the basis that under an obscure eight-year-old United States Supreme Court decision, Griffin v. Wisconsin, 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987) and Article I, Section 12 of the Florida Constitution, the case of Grubbs v. State, 373 So. 2d 905 (Fla. 1979) was in pertinent part effectively nullified. 656 So. 2d at 537-541. (App. at 2-6.)

The defendant timely moved that the district court certify as one of great public importance the following question or one of similar import:

> Does the decision in Griffin v. Wisconsin, 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987), in conjunction with Article I, § 12 of the Florida Constitution as amended effective January 4, 1983, signify that the holding in pertinent part of Grubbs v. State, 373 So. 2d 905 (Fla. 1979) and its progeny, that evidence obtained from warrantless (non-exigent) searches of probationers is inadmissible in substantive criminal proceedings, is a nullity or of no longer continuing vitality in Florida?

[App. at 7.]

The motion for certification was summarily denied on July 19, 1995 (App. at 9), and the defendant thereupon filed timely notice to invoke the discretionary review jurisdiction of this Court.

SUMMARY OF ARGUMENT

The lower court's decision, holding that under an eight-year-old United States Supreme Court decision and Article I, Section 12, of the Florida Constitution, the pertinent portion of the decision in Grubbs v. State, 373 So. 2d 905 (Fla. 1979), which held that the results of warrantless searches of probationers are not admissible in substantive criminal proceedings, is no longer controlling, conflicts with Grubbs; with Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973), in which this court pronounced the proper roles of district courts of appeal; and with the decision in Braxton v. State, 524 So. 2d 1141 (Fla. 2d DCA 1988), which held that the results of a warrantless search of a community controllee's residence were inadmissible in the substantive case.

ARGUMENT

THE DECISION OF THE LOWER COURT, ALLOWING THE RESULTS OF NONEXIGENT WARRANTLESS SEARCHES TO BE ADMITTED AGAINST PROBATIONERS IN NEW SUBSTANTIVE CASES, CONFLICTS WITH THE DECISIONS OF THIS COURT IN GRUBBS v. STATE, 373 So. 2d 905 (Fla. 1979) AND HOFFMAN v. JONES, 280 So. 2d 431 (Fla. 1973), AND WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL IN BRAXTON v. STATE, 524 So. 2d 1141 (Fla. 2d DCA 1988).

The panel of the lower court has boldly undertaken to displace this Court's own role in ascertaining the vitality of this Court's own precedents, and, in so doing, has declined to certify such a notable result. Not only, as will be momentarily discussed, does the relatively obscure United States Supreme Court decision not accomplish the result so posited to it by the lower court, but, even if it were to be construed to do so, that is a matter to be pronounced by this Court, not by the lower court. Where, as in the instant case, it is at minimum far from evident that the asserted United States Supreme Court decision has the ascribed effect, the controlling precedential principle is that stated by this Court in Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973):

> [T]he District Courts of Appeal are [not] powerless to seek change; they are free to certify questions of great public importance to this Court for consideration, and even to state their reasons for advocating change. They are, however, bound to follow the case law set forth by this Court.

Id. at 434.

This Court's decisions constitute the settled law in Florida as to the rights of a probationer in relation to searches and seizures. Evidence obtained from an illegal search or seizure is inadmissible either in a probation revocation proceeding, State v. Dodd, 419 So. 2d 333 (Fla. 1982), or in a substantive criminal case. Grubbs v. State, 373 So. 2d 905, 909-10 (Fla. 1979); Croteau v. State, 334 So. 2d 577, 580

(Fla. 1976).[1] A nonexigent warrantless search of a probationer is lawful only to the extent the evidence is admitted in probation revocation proceedings alone, and is not lawful with respect to use of evidence in a new substantive case. Grubbs v. State, id. at 907, 909.

The amendment of Article I, § 12 of the Florida Constitution, effective January 4, 1993,[2] has no impact on the foregoing structure of law, i.e., has no impact on a search, seizure or exclusionary rule issue, unless the United States Supreme Court has squarely ruled on the issue. State v. Cross, 487 So. 2d 1056, 1057-58 (Fla. 1986) (deciding that notwithstanding amendment of Article I, § 12, the pre-existent Dodd holding is of continuing vitality: "[N]o United States Supreme Court decision specifically holds the exclusionary rule inapplicable to probation revocation proceedings. . . . The United States Supreme Court has not ruled on the issue presently before us. Therefore, it is not necessary to interpret the amendment to article I, section 12."), cert. dismissed, 479 U.S. 805, 107 S. Ct. 248, 93 L. Ed. 2d 172 (1986).

The lower court's conclusion that Griffin v. Wisconsin, 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987) ruled upon any issue which, for purposes of Florida law, alters the foregoing structure, is erroneous. Pursuant to a statute which placed probationers in the custody of a particular state agency and made them

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[1] The statement in Croteau to the effect that the exclusionary rule does not apply in probation revocation proceedings, id. at 580, was recognized as dictum and as invalid by this Court in State v. Dodd, id. at 335 & n.2.

[2] That amendment provided in pertinent part that the "right [provided in the article] shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution."

"subject . . . to . . . conditions set by the court and rules and regulations established by the department[,]" a regulation which permitted a warrantless search of a probationer's home by a probation officer upon "reasonable grounds" was upheld as constitutional. Griffin, 107 S. Ct. at 3166-67, 3171.[3] In so holding, the United States Supreme Court was actually passing upon a higher standard of justification than required by this Court of searches by probation officers with respect to probation revocation proceedings; this Court has recognized such searches as an implicit condition of any probation, but "valid to the extent that the evidence discovered is used only in probation violation proceedings[.]" Grubbs v. State, id. at 907.

Therefore, as a definitional matter, the search upheld as legal by the state court in Griffin v. Wisconsin, and which was declared by the United States Supreme Court under the Wisconsin regulatory scheme to satisfy constitutional standards, is not valid in Florida with respect to a substantive offense. Grubbs, id. at 907, 910.

The lower court's straining to reach the result it desired, and thereby to supplant this Court's proper role, is evident, inter alia, from its "broader analysis of all legal authority[.]" 656 So. 2d at 539-41. (App. at 4-6.) This Court has settled

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[3] The Supreme Court expressly refrained from reaching the question of whether "any search of a probationer's home by a probation officer satisfies the Fourth Amendment as long as the information . . . satisfies a federal 'reasonable grounds' standard[,]" and decided only that the "regulation . . . itself satisfies the Fourth Amendment's reasonableness requirement[.]" 107 S. Ct. at 3167. It was for the Wisconsin Supreme Court to determine whether the state law requirements had been met. Id. at 3171 n.8. The Supreme Court expressly took the "regulation as it has been interpreted by . . . state courts. . . . [T]he Wisconsin Supreme Court [is] the ultimate authority on issues of Wisconsin law." Id. at 3169.

It is, of course, equally true that this Court is the ultimate authority on issues of Florida law, and it has defined a warrantless search by a probation officer as lawful only with respect to a probation revocation hearing. Grubbs v. State, id. at 907. This is a holding that lower courts are not free to alter or disregard. Hoffman v. Jones, 280 So. 2d 431, 440 (Fla. 1973).

that an express search condition in an order of probation is irrelevant, i.e., is not needed, to justify a warrantless search of a probationer. Grubbs, id. at 907. The lower court, however, irrelevantly, and incorrectly, reasoned that the right of a probation officer to effect an arrest of an probationer, in conjunction with the right to visit him at his home, and the particular condition in this case to submit to a chemical test, confers the right to search a residence and, tautologically, because such search is "lawful," it is admissible in a substantive criminal case. 656 So. 2d at 539-41. (App. at 4-6.) However, as seen, the right of a probation officer to conduct a warrantless related search is not related to or dependent upon the provisions cited by the lower court, inasmuch as this Court has already declared such a search legitimate, but, it again must be stated, only to the extent the proceeds are utilized in the probation revocation proceeding alone. Grubbs, id. at 907.

Moreover, as noted, the Griffin court took the "regulation as it has been interpreted . . . by state courts. . . . [T]he Wisconsin Supreme Court [is] the ultimate authority on issues of Wisconsin law." Id. at 3169. By a process of circular reasoning, the lower court took the decision in which this express recognition appears, and utilized it to displace this Court's "ultimate authority on issues of [Florida] law."

If Griffin had the effect imparted to it by the lower court, then Braxton v. State, 524 So. 2d 1141 (Fla. 2d DCA 1988), decided subsequent to Griffin, would have to have been incorrect. Braxton held that a warrantless search, in which a community control officer participated, of a community controlee's residence could result in evidence utilizable in a revocation hearing, but not, under Grubbs, to prove a new criminal offense. Id. at 1141.

To the extent the lower court's opinion attempts to unsuccessfully distinguish

Braxton (656 So. 2d at 541 n.2),[4] that is, of course, irrelevant for purposes of a prima facie conflict; a conflict is presented both by the application of a materially different rule of law, and, in any event, by a directly opposed result on materially identical facts. Nielsen v. Sarasota, 117 So. 2d 731, 734 (Fla. 1960).

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[4] The lower court stated that Braxton "apparently involved a search conducted by officers other than the defendant's community control officer, and the opinion did not engage in a Griffin analysis." Id. However, Braxton itself stated that the search "was conducted by officers including defendant's community control officer." 524 So. 2d at 1141. If it were presumed there were regular law enforcement officers also involved in Braxton (although the Braxton opinion does not so specify), the instant search, conducted by probation officers, was instigated by regular law enforcement, the state attorney's office. 656 So. 2d at 537. There is no relevant factual distinction between the two cases.

Moreover, the Braxton court, as any other court, is presumed to know (and apply) the relevant law. Absence of discussion of Griffin signified an implicit conclusion by the Braxton court of its irrelevance, and the Braxton result (which is contrary to that reached below) expressly rests upon an analysis necessarily opposed to that employed by the lower court.

CONCLUSION

Based on the foregoing, the decision below is in express and direct conflict with the controlling decisions of this Court, as well as with the decision of the Second District in Braxton. Accordingly, review should be granted, and the lower court's decision quashed.

Respectfully submitted,

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By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Michael J. Neimand, Office of the Attorney General, 401 Northwest 2nd Avenue, Miami, Florida 33128, this 28th day of August, 1995.

_____
BRUCE A. ROSENTHAL
Assistant Public Defender

IN THE SUPREME COURT OF FLORIDA

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JUAN SOCA,

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Respondent.

_____/

APPENDIX TO BRIEF OF PETITIONER ON JURISDICTION

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AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

STONE and FARMER, JJ., concur.

Juan SOCA, Appellant,

v.

The STATE of Florida, Appellee.

No. 94-1214.

District Court of Appeal of Florida, Third District.

June 7, 1995.

Defendant was convicted in the Circuit Court, Monroe County, Richard J. Fowler, J., of cocaine possession and he pleaded guilty to two counts of violating probation. Defendant appealed. The District Court of Appeal, Levy, J., held that probation officer's warrantless search of defendant's home was valid.

Affirmed.

1. Searches and Seizures ⇐12

State constitutional article governing searches and seizures is to be interpreted in conformity with the Fourth Amendment and may not be read to provide any greater protections. U.S.C.A. Const.Amend. 4; West's F.S.A. Const. Art. 1, § 12.

2. Criminal Law ⇐394.4(1)

Due to fact that state constitutional article governing searches and seizures is to be interpreted in conformity with Fourth Amendment, an exclusionary rule that was once constitutionally mandated in Florida can now be eliminated by judicial decision of the United States Supreme Court; however, where the United States Supreme Court has not ruled on a particular search and seizure issue, it is appropriate to rely upon previous Florida cases. U.S.C.A. Const.Amend. 4; West's F.S.A. Const. Art 1, § 12.

3. Criminal Law ⇐982.8

In conducting analysis of whether warrantless search of probationer is valid under Supreme Court's decision in *Griffin* upholding warrantless search of probationer's home after probation officer received information from police that probationer had contraband in his home, District Court of Appeal was not limited to consideration of only statutes and administrative regulations; rather, court could engage in broader analysis of all legal authority, including applicable state case law and defendant's probation conditions, which may have served to provide regulatory frame work for a search of defendant's home by probation officer.

4. Criminal Law ⇐982.8

Probationer's residence was properly searched without warrant by his probation officer, and evidence found in search properly admitted in a new criminal proceeding, if officer had reasonable grounds to believe search would reveal evidence of material violation of probation given statute permitting probation officer to make a warrantless arrest of probationer if there are reasonable grounds to believe probationer violated probation, statute permitting court to determine terms and conditions of probation and include among them that probationer shall permit probation officers to visit him at his home or elsewhere, and given probation conditions allowing home visit and authorizing drug tests. West's F.S.A. §§ 948.03(1)(b), 948.06(1).

5. Criminal Law ⇐982.8

Probation officer had reasonable grounds to believe that search of probationer's home would reveal evidence of material violation of probation and, accordingly, warrantless search was valid and evidence found in search could be admitted in new criminal proceeding, where officer had received detailed information from confidential informant that probationer had been dealing cocaine, confidential informant made controlled purchase of cocaine while in probationer's presence, investigator was able to indepen-

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Bennett H. Brumme
and Bruce A. Rosenthal,
er, for appellant.

Robert A. Butterwo
Michael J. Neimand, A
appellee.

Before LEVY, GERS
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LEVY, Judge.

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dently confirm that purchase, probation officer was aware that probationer had recently had a urinalysis test which was positive for cocaine, and informant later told authorities that probationer had just received a large amount of cocaine. U.S.C.A. Const.Amend. 4; West's F.S.A. Const. Art. 1, § 12; West's F.S.A. §§ 948.03(1)(b), 948.06(1).

Bennett H. Brummer, Public Defender, and Bruce A. Rosenthal, Asst. Public Defender, for appellant.

Robert A. Butterworth, Atty. Gen., and Michael J. Neimand, Asst. Atty. Gen., for appellee.

Before LEVY, GERSTEN and GREEN, JJ.

LEVY, Judge.

The defendant appeals his conviction for cocaine possession, challenging the denial of his motion to suppress evidence found during a warrantless search of his residence by his probation officer. Because we find the search constitutional, we affirm.

I.

The defendant, Juan Soca, was on probation from two previous criminal convictions, and was living in a trailer in Monroe County with his parents. An investigator from the Monroe State Attorney's office obtained information from a confidential informant that the defendant was dealing cocaine. The investigator set up a controlled purchase, at which the informant purchased cocaine from another individual while in the presence of the defendant. The investigator was nearby at the time, and was able to independently confirm that a purchase had been made. The informant later reported that the defendant was in possession of a large quantity of cocaine which had just come in from Miami. The investigator contacted the defendant's probation officer, and relayed what his investigation had revealed. The probation officer indicated that the defendant had recently undergone urinalysis, and had tested positive for cocaine. Based upon this information, the probation officer consulted with his supervisor, who instructed the officer to search the defendant's residence for contraband which might indicate that the defendant had violated the terms of his probation.

The probation officer and the investigator went to the defendant's trailer. The defendant was not home, but his father beeped him and he appeared within 20 minutes. The probation officer informed the defendant that he was going to search the trailer in order to monitor compliance with the terms of the defendant's probation, and the defendant told him to go ahead and search. The probation officer conducted the search himself; the investigator did not participate. The search revealed cocaine hidden under the floor of a hallway closet in the trailer. No search warrant was ever sought or obtained.

The defendant was charged with possession of over 400 grams of cocaine, in violation of Florida Statutes Section 893.135. He moved to suppress the cocaine, arguing that the search of his trailer was warrantless and unconstitutional. In his motion, the defendant admitted that the evidence found during the search could be used against him in a probation revocation proceeding, but argued that it could not be used to support the independent criminal charge of cocaine possession.

The defendant's motion was denied. The trial court found that the probation officer had a reasonable suspicion that contraband would be found in the trailer. Therefore, the trial court concluded that the search was legal, considering the defendant's probationary status, as well as the other circumstances of the case. The defendant was later convicted by a jury, and sentenced to 15 years imprisonment. He subsequently pled guilty to two counts of violating probation, and was sentenced to one year on each violation, with all sentences to run concurrently. The defendant now appeals, challenging only the trial court's denial of his motion to suppress.

II.

[1, 2] The legality of this search is governed by Article I, Section 12 of the Florida Constitution, which deals with searches and seizures. As amended by the electorate in 1982, Article I, Section 12 requires us to

follow the United States Constitution's Fourth Amendment, as interpreted, in all past and future decisions, by the United States Supreme Court. *See Perez v. State*, 620 So.2d 1256, 1258 (Fla.1993); *Bernie v. State*, 524 So.2d 988, 990–91 (Fla.1988). Article I, Section 12 is to be interpreted in conformity with the Fourth Amendment, and may not be read to provide any greater protections. *See* Art. I, § 12, Fla. Const.; *Jones v. State*, 648 So.2d 669, 674 (Fla.1994); *Perez*, 620 So.2d at 1258; *Bernie*, 524 So.2d at 990–91. "Indeed, an exclusionary rule that was once constitutionally mandated in Florida can now be eliminated by judicial decision of the United States Supreme Court." *Bernie*, 524 So.2d at 991. However, where the United States Supreme Court has not ruled on a particular search and seizure issue, it is appropriate to rely upon previous Florida cases, *see State v. Cross*, 487 So.2d 1056, 1057 (Fla.), *cert. dismissed*, 479 U.S. 805, 107 S.Ct. 248, 93 L.Ed.2d 172 (1986), and cases from other jurisdictions, *see Jones*, 648 So.2d at 674. With this structure in mind, it is necessary to briefly review, in chronological order, the caselaw upon which the State and the defendant rely.

III.

In *Grubbs v. State*, 373 So.2d 905 (Fla. 1979), the Florida Supreme Court found unconstitutional, under the old version of Article I, Section 12, a condition of probation which required the probationer to consent to a warrantless search of his home at any time by any law enforcement officer. *Grubbs*, 373 So.2d at 910. In discussing the issue, the *Grubbs* court distinguished situations where evidence was sought to be used in a probation revocation proceeding from situations where evidence was sought to be used to support a new, independent criminal charge. With respect to probation revocation proceedings, *Grubbs* held that "[t]he search of a probationer's person or residence by a probation supervisor without a warrant is, in our view, a reasonable search and absolutely necessary for the proper supervision of probationers." *Grubbs*, 373 So.2d at 909. However, with respect to new criminal charges, *Grubbs* held that ordinary search and seizure law applied, although a probationer's status could be taken into account in making a probable cause determination. *Grubbs*, 373 So.2d at 910. Thus, the result of *Grubbs* was to allow certain evidence, which would be excluded from a substantive case because it was illegally seized, to be nonetheless admitted in a probation revocation proceeding.

In *State v. Dodd*, 419 So.2d 333 (Fla.1982), the Florida Supreme Court further clarified that under the old version of Article I, Section 12, the exclusionary rule applied equally to probation revocation proceedings as it did to regular prosecutions: "A person's status as a probationer may be taken into consideration in determining whether a search or seizure is unreasonable for constitutional purposes, but in *Grubbs* this Court unequivocally repudiated the notion that the article I, section 12 exclusionary rule may simply be ignored at a probation revocation hearing." *Dodd*, 419 So.2d at 335 (footnote omitted). *Dodd* therefore left intact the holding of *Grubbs* that "a warrantless search of a probationer's person or residence by a probation supervisor is valid to the extent that the evidence discovered is used only in probation violation proceedings." *Grubbs*, 373 So.2d at 907.

Shortly after the decision in *Dodd*, the previously-mentioned amendment to Article I, Section 12 was adopted. The amendment became effective January 4, 1983.

Three years later, the Florida Supreme Court held that *Dodd* was still controlling law in regards to the admissibility of illegally obtained evidence at a probation revocation hearing. *See Cross*, 487 So.2d at 1058. In holding that *Dodd* was still controlling precedent, the Florida Supreme Court pointed out that there was no United States Supreme Court precedent on the issue. *Cross*, 487 So.2d at 1057.

Subsequent to *Cross*, however, the United States Supreme Court issued its decision in *Griffin v. Wisconsin*, 483 U.S. 868, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987). In *Griffin*, a probationer's home was searched by probation officers (accompanied by police) after a probation officer received information from police that the probationer had contraband in his home. *Griffin*, 483 U.S. at 871, 107 S.Ct.

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at 3167. The search was conducted pursuant to a Wisconsin statute which allowed a warrantless search of a probationer's home if there were "reasonable grounds" to believe that contraband was present. *Griffin*, 483 U.S. at 870–71, 107 S.Ct. at 3166–67. A gun was found, the probationer was charged with possession of a gun by a felon, and the probationer moved to suppress the gun. The motion was denied, and the probationer was convicted. *Griffin*, 483 U.S. at 872, 107 S.Ct. at 3167. On review, the United States Supreme Court found that Wisconsin's statutory scheme for the supervision of probationers was constitutional. The Court stated that there had been no constitutional infringement because the search of the probationer's residence was conducted pursuant to a constitutional, statutory system for monitoring probationers. *Griffin*, 483 U.S. at 873, 107 S.Ct. at 3168. The search was approved despite the absence of either probable cause or a warrant. The Court explicitly refrained, however, from holding that *all* probationer searches based upon "reasonable grounds" were valid. *Griffin*, 483 U.S. at 880, 107 S.Ct. at 3172. The validity of the search was tied to the validity of the statutory system for monitoring probationers.

It is from these precedents that both sides construct their arguments.

IV.

The defendant argues that *Griffin* is inapplicable to this case because the United States Supreme Court only approved the search in that case because of Wisconsin's regulatory scheme, and, he further argues, there is no such similar scheme in Florida. Accordingly, the defendant argues that this case is controlled by *Grubbs*, and that the cocaine was only admissible in a probation revocation proceeding, but not in this new, substantive criminal case. In support of this contention, the defendant relies upon the post-*Griffin* case of *Braxton v. State*, 524 So.2d 1141 (Fla. 2d DCA 1988). In *Braxton*, the defendant was on community control when his home was searched without a warrant and a gun was found. Citing *Grubbs*, the Second District held that the gun should have been suppressed because "the product of a warrantless search of a probationer's home is not admissible to prove a new criminal offense." *Braxton*, 524 So.2d at 1141.

The State argues that the search herein was reasonable and should be upheld under *Griffin*, even though Florida does not have as detailed a statutory scheme regulating probation supervision as was upheld in *Griffin*. The State specifically contends that because probation supervision is a "special need" situation, a warrantless search is permissible. The State further contends that the statute which authorizes a warrantless arrest of a probationer (section 948.06) also supports a warrantless search of a probationer under *Griffin*.

V.

The defendant has conceded that the cocaine was admissible for purposes of a probation revocation hearing. Consequently, the only issue is whether the cocaine was admissible on the new criminal charges. Therefore, pursuant to Article I, Section 12 (as amended), we must look to the United States Supreme Court precedents. We agree with the State that the controlling precedent is *Griffin*, and pursuant thereto, we find that the search conducted in this case was constitutional.

[3] In conducting our *Griffin* analysis, we are not limited to consideration of only the statutes and administrative regulations. Rather, we may engage in a broader analysis of all legal authority, including applicable state caselaw and the defendant's probation conditions, which may serve to provide a regulatory framework for a search of a probationer by a probation officer. *See United States v. Giannetta*, 909 F.2d 571 (1st Cir. 1990) (approving a search of a probationer's residence under *Griffin* where there was no regulatory scheme, but only a probation condition authorizing such a search); *United States v. Schoenrock*, 868 F.2d 289 (8th Cir. 1989) (upholding a warrantless search of a probationer's residence under *Griffin* based solely upon a condition of probation).

A.

[4] First, we find Florida Statutes Section 948.06(1) to be pertinent. It states:

> Whenever within the period of probation ... there are *reasonable grounds* to believe that a probationer ... has violated his probation ... in a material respect, any parole or probation supervisor may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant....

§ 948.06(1), Fla.Stat. (1993) (emphasis added). This statute authorizes a warrantless arrest by a probation officer upon "reasonable grounds." While the statute does not explicitly authorize a warrantless search, it does constitute a legislative endorsement of the "reasonable grounds" standard as a basis for an imposition upon a probationer's privacy. This "reasonable grounds" standard is *identical* to the standard approved as constitutional in *Griffin*. Moreover, Section 948.06(1) constitutes an implicit approval of a search based upon "reasonable grounds" because the Legislature certainly was aware that an arrest by a probation officer would authorize a search of the probationer incident to arrest, *see United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973), and might justify an inventory search, *see Illinois v. Lafayette*, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983), or even a protective sweep of the premises, *see Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990).

Second, Florida Statutes Section 948.03 regulates the terms and conditions of probation, and states, "[t]he court shall determine the terms and conditions of probation ... and may include among them the following, that the probationer ... shall: ... [p]ermit ... [probation] supervisors to visit him at his home or elsewhere." § 948.03(1)(b), Fla. Stat. (1993). This statute is significant in two respects. First, it allows a visit to a probationer's home, which is obviously a necessary predicate to a search of the home, and would allow for the observation of any items in "plain view." In fact, just such a condition was a part of the defendant's probation in this case.[1] Second, the statute contains a grant of authority to sentencing judges to set special terms of probation. In this case, an additional condition of the defendant's probation was that the defendant "submit to urinalysis, breathalyzer or blood test[s] at any time requested by your probation officer." While nothing in the defendant's probation order specifically authorized a search of the defendant's residence, these two conditions—allowing a home visit and authorizing a drug test—provided the defendant's probation officer with an adequate framework within which to conduct the search at issue here, which was a search of the defendant's home for drugs. *Cf. Grubbs*, 373 So.2d at 910 ("We emphasize that the authority of probation supervisors and law enforcement officers to conduct warrantless searches of probationers in accordance with the views set forth in this opinion is not dependent upon a search condition expressly set forth in the order of probation."). Consequently, we find that the parameters derived from Sections 948.06 and 948.03 provided a sufficient regulatory scheme so as to uphold the search in this case under *Griffin*. Additionally, the defendant has not contradicted the probation supervisor's testimony in this case indicating that Department of Corrections "regulations" were followed in conducting the search of the defendant's residence.

Third, *Grubbs* itself adds to the regulatory framework, for *Grubbs* specifically held that, "[t]he search of a probationer's person or residence by a probation supervisor without a warrant is, in our view, a reasonable search and absolutely necessary for the proper supervision of probationers." 373 So.2d at 909. This statement has long-guided probation personnel in the conduct of their duties, and may well be the reason that submission to a residential search was not specifically included in the defendant's conditions of probation. In the immediate wake of *Grubbs*, courts of this state repeatedly approved of a condition of probation which required a probationer to consent to a search by his probation officer at any time, regardless of the justification for the search. *See Elkins v. State*, 388 So.2d 1314 (Fla. 5th DCA 1980) (upholding a condition of probation to the extent it required the

1. Because this condition is specifically enumerated in the statute, we would not consider the absence of such a condition from the defendant's probation order significant with respect to our *Griffin* analysis.

probationer to submit to a search of his residence at any time by his probation officer); *Smith v. State*, 383 So.2d 991 (Fla. 5th DCA 1980) (same); *Jessee v. State*, 375 So.2d 881 (Fla. 2d DCA 1979) (same). If such a condition is permissible, then it is also permissible for a search to be conducted, absent such a condition, when the probation officer has "reasonable grounds" to believe the search will reveal evidence of a probation violation. Moreover, when such a search is based upon reasonable grounds, the fruits of the search are admissible in any subsequent legal proceeding.[2]

Therefore, we find that the applicable statutes, the conditions of the defendant's probation, and *Grubbs* itself provided an adequate framework under *Griffin* to validate the search. Consequently, the defendant's residence was properly searched without a warrant by his probation officer, and the evidence found in the search was properly admitted in a new criminal proceeding, if the officer had reasonable grounds to believe that the search would reveal evidence of a material violation of probation.

B.

[5] We now address the legality of the search in this case. Several facts gave the probation officer reasonable grounds to search the defendant's residence. First, the officer had received detailed information from a confidential informant that the defendant had been dealing cocaine. Second, the confidential informant made a controlled purchase of cocaine while in the defendant's presence, and the investigator was able to independently confirm this. Third, the informant later informed authorities that the defendant had just received a large amount of cocaine from Miami. Fourth, the probation officer was aware that the defendant had recently had a urinalysis test which was positive for cocaine. These circumstances were more than sufficient to give the probation officer "reasonable grounds" to believe that the search would reveal evidence of a violation of probation. Therefore, the search was legal, and the cocaine which was discovered during it was properly admitted below.

VI.

In conclusion, we hold that the defendant's motion to suppress was properly denied. The defendant's conviction and sentence are affirmed.

2. We distinguish *Braxton v. State*, 524 So.2d 1141 (Fla. 2d DCA 1988). That case apparently involved a search conducted by officers other than the defendant's community control officer, and the opinion did not engage in a *Griffin* analysis.

PRESTIGE RENT–A–CAR, INC., etc., Appellant,

v.

ADVANTAGE CAR RENTAL AND SALES, INC. (ACRS), Appellee.

No. 94–2064.

District Court of Appeal of Florida, Fifth District.

June 9, 1995.

In action by lessor for replevin of automobiles leased to lessee, the Circuit Court, Orange County, William C. Gridley, J., issued prejudgment writ upon plaintiff's posting bond of $113,230. Defendant appealed. The District Court of Appeal, W. Sharp, J., held that: (1) New York choice of forum clause did not preclude action in Florida for replevin; (2) dismissal of replevin action in New York did not preclude subsequent replevin action in Florida; (3) any error in issuing writ was harmless; (4) defenses of setoff or credit were insufficient; (5) motion to dissolve writ was supported by sufficient evidence; and (6) bond amount was correct.

Affirmed.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

CASE NO. 94-1214

JUAN SOCA,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

_____/

MOTION FOR CERTIFICATION

This Court, by its decision issued June 7, 1995, has held, in ruling that evidence obtained from a warrantless search of a probationer is admissible in a substantive criminal case, that the holding of the Florida Supreme Court otherwise, Grubbs v. State, 373 So. 2d 905, 907 (Fla. 1979), is no longer controlling authority.

In light of the conclusion that a present rule obtains in significant departure from existing jurisprudence, and in light of the obvious importance of the issue, the Appellant requests that this Court certify to the Florida Supreme Court the following question or one of similar import:

> Does the decision in Griffin v. Wisconsin, 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987), in conjunction with Article I, § 12 of the Florida Constitution as amended effective January 4, 1983, signify that the holding in pertinent part of Grubbs v. State, 373 So. 2d 905 (Fla. 1979) and its progeny, that evidence obtained from warrantless (non-exigent) searches of probationers is inadmissible in substantive criminal proceedings, is a nullity or of no longer continuing vitality in Florida?

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of
Florida
1320 Northwest 14th Street
Miami, Florida 33125

By: _____
BRUCE A. ROSENTHAL
Assistant Public Defender
Florida Bar No. 227218

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Michael Neimand, Assistant Attorney General, Office of Attorney General, 401 Northwest 2nd Avenue, Miami, Florida 33128, this 21 day of June, 1995.

BRUCE A. ROSENTHAL
Assistant Public Defender

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1995

WEDNESDAY, JULY 19, 1995

JUAN SOCA,	**	
Appellant,	**	
vs.	**	CASE NO. 94-1214
THE STATE OF FLORIDA,	**	
Appellee.	**	

Upon consideration, appellant's motion for certification is hereby denied. Levy, Gersten and Green, JJ., concur.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk District Court of
Appeal, Third District

By _____
Deputy Clerk

cc: Bruce A. Rosenthal Michael Neimand

/NB

killing of a human being by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another," it is legally impossible to prove a vehicular homicide without also proving the reckless operation of a motor vehicle, and thus reckless driving is clearly a lesser included offense of vehicular homicide. According to Chikitus, his previous conviction of reckless driving bars a subsequent prosecution for vehicular homicide based on the same facts.

The respondent argues that Chikitus waived his double jeopardy claim when he pled nolo contendere to the reckless driving charge because there is now no way to determine whether the vehicular homicide offense is based upon the same evidence that would have been used to procure a conviction on the reckless driving charge.

[1, 2] Our recent decisions in *McCreary v. State*, 371 So.2d 1024 (Fla.1979), and *State v. Young*, 371 So.2d 1029 (Fla.1979), hold that vehicular homicide is a lesser included offense of manslaughter by culpable negligence in the operation of a motor vehicle. In *McCreary*, we stated that the legislature did not act in an unreasonable manner when it created vehicular homicide to cover the hiatus between manslaughter and reckless driving. Under our rationale in *McCreary* and *Young*, vehicular homicide cannot be proven without also proving the elements of reckless driving. Accordingly, we hold that reckless driving is a lesser included offense of vehicular homicide and that double jeopardy applies to bar a subsequent prosecution for vehicular homicide when a defendant previously has been convicted of the charge of reckless driving arising from the same facts. We reject respondent's argument that Chikitus waived his double jeopardy claim by pleading nolo contendere because the operation of double jeopardy as a bar to prosecution is triggered, not by the nature of the evidence adduced at the prior trial but by the elements of the previous crime charged.

Respondent also argues that since the offense of reckless driving is a "continuing offense," it may be a completed offense at every point along the route of travel, and therefore it is possible that Chikitus' reckless driving conviction was based on his driving which occurred prior to the impact that caused the deaths. Under such circumstances, respondent argues, double jeopardy would not apply since the charges would not arise out of the same facts. This argument is not supported by the charging documents. The complaint charging reckless driving and the information charging vehicular homicide both allege the accident as the ultimate fact supporting the respective charges. In view of this, we cannot say that the charge of vehicular homicide is based on different facts than the charge of reckless driving so as to prevent the application of double jeopardy. A different situation might be presented and double jeopardy may not apply if the reckless driving complaint had been based upon ultimate facts different from the accident that caused the deaths.

Accordingly, we hold that Chikitus' prior conviction of reckless driving is a bar to his subsequent prosecution for vehicular homicide arising from the same facts. We issue the writ and quash the decision of the Second District and remand the cause for proceedings consistent with this opinion.

It is so ordered.

ENGLAND, C. J., and ADKINS, BOYD, OVERTON and SUNDBERG, JJ., concur.

Johnny Lee GRUBBS, Petitioner,

v.

STATE of Florida, Respondent.

No. 54980.

Supreme Court of Florida.

July 26, 1979.

Certiorari was sought to review a decision of the District Court of Appeal on a

certified question concerning a condition of probation requiring a probationer to consent to a search at any time by any law enforcement officer. The Supreme Court, Overton, J., held, inter alia, that such a condition is unconstitutional.

Remanded for further proceedings.

1. **Criminal Law** ⇐393(1)
Searches and Seizures ⇐7(10)

Individual does not absolutely forfeit protection of Fourth Amendment prohibition of unreasonable searches and seizures merely by assuming status of probationer, nor does probationer totally lose his Fifth Amendment privilege against self-incrimination. U.S.C.A.Const. Amends. 4, 5.

2. **Criminal Law** ⇐982.8

Probation supervisor has authority to visit probationer's home or place of employment without necessity of warrant. U.S.C.A.Const. Amends. 4, 5; West's F.S.A. §§ 948.01 et seq., 948.06.

3. **Criminal Law** ⇐982.5(1)

Probation conditions must be reasonably related to offense and should provide standard of conduct essential to probationer's rehabilitation in addition to protection of public.

4. **Criminal Law** ⇐982.8
Searches and Seizures ⇐7(10)

Search of probationer's person or residence by probation supervisor without warrant is reasonable search and absolutely necessary for proper supervision of probationer; however, granting such general authority to law enforcement officials is not permissible under search and seizure provisions of Florida and United States Constitutions. West's F.S.A.Const. art. 1, § 12; U.S.C.A.Const. Amend. 4.

5. **Arrest** ⇐71.1(1)

Probation officer may act as any other law enforcement officer in exigent circumstances, and may search and seize articles incident to lawful arrest.

6. **Criminal Law** ⇐982.8

Since his authority to visit probationer in his home or place of employment places probation supervisor lawfully on premises, he can seize contraband or evidence of crime that is in plain view.

7. **Criminal Law** ⇐982.8

For his own safety, probation supervisor or law enforcement officer can stop and frisk probationer without his consent in accordance with standards of United States Supreme Court's decision in *Terry v. Ohio.*

8. **Criminal Law** ⇐982.8

When either probation supervisor or law enforcement officer seeks warrant to search certain premises, fact that occupant is probationer is factor which may be considered with other circumstances to establish probable cause for issuance of search warrant.

9. **Criminal Law** ⇐982.5(2)

Condition set forth unilaterally by judge in probation order which requires probationer to consent at any time to warrantless search by law enforcement officer violates Florida and United States Constitutions. West's F.S.A.Const. art. 1, § 12; U.S.C.A.Const. Amend. 4.

Richard L. Jorandby, Public Defender, and Craig S. Barnard, Asst. Public Defender, West Palm Beach, for petitioner.

Jim Smith, Atty. Gen., and Kenneth G. Spillias, Asst. Atty. Gen., West Palm Beach, for respondent.

OVERTON, Justice.

This is a petition for writ of certiorari to review a decision of the Fourth District Court of Appeal upon the following certified question:

> Is a condition of probation requiring a probationer to consent to a search at any time, by any law enforcement officer, violative of the probationer's rights under the Fourth Amendment of the United States Constitution or Article I, Section 12, of the Florida Constitution?

Grubbs v. State, 362 So.2d 396, 397 (Fla. 4th DCA 1978).

11

By its nature, this question therefore concerns not only the validity of any special authority of law enforcement officials but also includes the authority of probation supervisors to search probationers without a warrant in the absence of an approved exception to the warrant requirement. There are numerous factors which must be considered in order to ensure a proper interpretation of our answer to this question. Law enforcement officers and probation supervisors have different responsibilities. Consequently, their authority to search a probationer is not the same although many cases treat their actions similarly without regard to these differing responsibilities. In summary we hold: (1) the authority of law enforcement officers and probation supervisors to conduct a warrantless search of a probationer is not dependent upon the presence of an express search condition in an order of probation; (2) a warrantless search of a probationer's person or residence by a probation supervisor is valid to the extent that the evidence discovered is used only in probation violation proceedings; (3) the use of seized evidence in a new criminal proceeding requires compliance with customary fourth amendment requirements although the opportunity to meet those requirements may be easier because the defendant is a probationer; (4) to the extent it intends to grant greater authority to law enforcement officers to conduct a warrantless search, a unilateral search condition set forth in an order of probation requiring a probationer to consent at any time to a warrantless search is a violation of the fourth amendment to the United States Constitution and article I, section 12, of the Florida Constitution. We have not addressed in this opinion the effect of a consent-to-search condition in a probation order which has been expressly and voluntarily agreed to by a probationer.

The record reflects that the petitioner was found guilty by a jury of one count of robbery with a firearm and one count of attempted robbery. The trial judge sentenced him to life imprisonment for the robbery offense with the provision that after serving eighteen years of confinement he would be placed on probation for life. For the conviction of attempted robbery, the petitioner was placed on probation for a period of fifteen years to run consecutively to the imprisonment imposed for the robbery conviction. The order of probation contained the following condition: "The court retains custody of the person of the probationer and authorizes any Probation Supervisor and any law enforcement officer to search, at any time, the probationer and all vehicles and premises concerning which he has legal standing to give consent to search." The district court held the condition proper, citing *Isaacs v. State*, 351 So.2d 359 (Fla. 4th DCA 1977), and *Pace v. State*, 350 So.2d 1075 (Fla. 4th DCA 1977).

The question of the validity of warrantless searches of a probationer's person or place of residence has produced varying views in state and federal jurisdictions. Clearly a probationer should not enjoy the same status as an ordinary citizen. A probationer has been convicted of a criminal offense but has been granted the privilege of being free on probation conditioned on his supervision by a probation officer. Under these circumstances, the probationer is entitled to some but not all due process rights.

[1] We recognize that an individual does not absolutely forfeit the protection of the fourth amendment prohibition of unreasonable searches and seizures merely by assuming the status of a probationer, *Croteau v. State*, 334 So.2d 577 (Fla.1976), nor does the probationer totally lose his fifth amendment privilege against self-incrimination, *State v. Heath*, 343 So.2d 13 (Fla.), *cert. denied*, 434 U.S. 893, 98 S.Ct. 269, 54 L.Ed.2d 179 (1977). By reason of the probationer's status, however, these rights are qualified rights. An illustration is the distinction that has developed in the application of the exclusionary rule in federal proceedings to evidence offered in probation violation proceedings contrasted with its application to evidence used to prosecute a new criminal charge against a probationer.

Because of the apparent confusion in this area of the law, it is important that we clarify the authority of a probation supervisor to search a probationer.

Use of Evidence in Probation Violation Proceedings

[2] All authorities agree that the probation supervisor has the authority to visit the probationer's home or place of employment without the necessity of a warrant. *United States v. Workman*, 585 F.2d 1205, 1208 (4th Cir. 1978); *Croteau v. State*, 334 So.2d 577, 580 (Fla.1976); *cf. Wyman v. James*, 400 U.S. 309, 317–18, 91 S.Ct. 381, 27 L.Ed.2d 408 (1971) (caseworker's visit to home of welfare recipient is not a search). Chapter 948, Florida Statutes (1977), provides that a defendant placed on probation shall be under the "supervision and control" of the Department of Offender Rehabilitation. It is our view that this statute inherently includes the duty of the probation supervisor to properly supervise the individual on probation to ensure compliance with the probation order. The statute further expressly authorizes the probation supervisor to arrest a probationer without a warrant and to bring the probationer before the court which entered the probation order whenever there is a reasonable ground to believe the probationer has violated his probation. § 948.06, Fla.Stat. (1977).

It would be impossible to properly supervise an individual on probation if the probation supervisor had no authority to enter upon the living quarters of his probationer to observe his lifestyle; to require the probationer to respond to the probation supervisor concerning requests for information including place of residence, employment, identity, to confirm or deny his location at a particular place or at a particular time; to explain his noncriminal conduct; and to permit a reasonable search of his person and quarters by the supervisor. In our view it would be unreasonable to require a probation supervisor to supervise an individual on probation in the absence of such authority.

In *Croteau v. State*, 334 So.2d 577 (Fla. 1976), we held that a probation officer had the authority to enter upon the living quarters of his probationer and to conduct a warrantless search. We further held that any evidence discovered would be admissible in probation revocation proceedings although the same evidence would not be admissible to prove a new criminal offense. In *State v. Heath*, 343 So.2d 13 (Fla.), *cert. denied*, 434 U.S. 893, 98 S.Ct. 269, 54 L.Ed.2d 179 (1977), we held that a probationer, upon a specific request and at periodic intervals, was required to identify himself and provide all information necessary to his supervision. We specifically determined that admissions or statements made by the probationer to his supervisor would be admissible in probation revocation proceedings. In that decision we reiterated the fact that the exclusionary rule for statements obtained in violation of the fifth amendment privilege against self-incrimination would be applicable to statements offered at a trial for a separate criminal offense.

Numerous federal jurisdictions, including the Fifth Circuit Court of Appeals, have considered this issue. In *United States ex rel. Lombardino v. Heyd*, 318 F.Supp. 648 (E.D.La.1970), *aff'd*, 438 F.2d 1027 (5th Cir.), *cert. denied*, 404 U.S. 880, 92 S.Ct. 195, 30 L.Ed.2d 160 (1971), the probationer was stopped and frisked without a warrant by a policeman who had been the arresting officer on the burglary charge for which the probationer was on probation. As a result of the search, a tin of marijuana was discovered. The trial judge held that the search was illegal, finding there were neither reasonable grounds for suspicion that the probationer was armed nor probable cause for arrest. After this hearing, the state dropped charges of possession of marijuana. Subsequently, the same trial judge, at a probation revocation proceeding, found that the probationer had violated conditions of his probation because of the possession of marijuana found in the illegal search. The decision of the trial judge was affirmed, in effect recognizing the differences between a new criminal proceeding and a probation revocation hearing insofar as the applica-

tion of the exclusionary rule is concerned. *See also United States v. Brown*, 488 F.2d 94 (5th Cir. 1973). Other federal circuits also adhere to the view that the exclusionary rule is inapplicable to probation revocation proceedings. *See Latta v. Fitzharris*, 521 F.2d 246 (9th Cir.), *cert. denied*, 423 U.S. 897, 96 S.Ct. 200, 46 L.Ed.2d 130 (1975); *United States v. Farmer*, 512 F.2d 160 (6th Cir.), *cert. denied*, 423 U.S. 987, 96 S.Ct. 397, 46 L.Ed.2d 305 (1975); *United States v. Hill*, 447 F.2d 817 (7th Cir. 1971); *United States ex rel. Sperling v. Fitzpatrick*, 426 F.2d 1161 (2nd Cir. 1970). None of these decisions were conditioned or dependent upon the presence of an express search condition in the order of probation.

Article I, section 12, of the Florida Constitution, prohibiting unreasonable searches and seizures, is more restrictive than its federal counterpart contained in the fourth amendment to the United States Constitution. The Florida Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. . . . Articles or information obtained in violation of this right shall not be admissible in evidence.

The last sentence is an express constitutional exclusionary rule as distinguished from the federal rule which exists by case decision. As a consequence, in Florida for evidence derived from a search or seizure to be admissible in either probation revocation proceedings or a new criminal action, the evidence must be properly or reasonably obtained given the circumstances and the responsibilities of the probation supervisor or a law enforcement official who makes the search and seizure.

[3] It is our opinion that an individual convicted of a criminal offense who is placed on probation should be subject to certain reasonable restrictions on his living in an open society. By his or her conviction, the probationer has already demonstrated a need for supervised control. Probation in certain circumstances is desirable for several reasons. It maximizes the probationer's usefulness in society while still vindicating the authority of the law in protecting the public. Though probation conditions may at times severely restrict a probationer in comparison with an ordinary citizen, they are not nearly as restrictive as imprisonment. Probation conditions must be reasonably related to the offense and should provide the standard of conduct essential to the probationer's rehabilitation in addition to the protection of the public.

[4] Protection of the public is an important and proper consideration by the trial judge when determining whether probation or confinement should be imposed. If proper conditions related to the purpose of probation cannot be imposed by the trial judge or if unreasonable limitations and restrictions are placed on probation supervisors, the use of probation may substantially decline. The sentencing judge must be free to impose conditions of probation that are reasonably related to the offense and the rehabilitation of the offender, and the probation supervisor must be allowed the necessary authority to properly supervise the probationer. The search of a probationer's person or residence by a probation supervisor without a warrant is, in our view, a reasonable search and absolutely necessary for the proper supervision of probationers. However, granting such general authority to law enforcement officials is not permissible under the search and seizure provisions of the Florida or United States Constitutions.

The Use of Discovered Evidence in New Criminal Charges Against a Probationer

[5–8] With reference to new criminal proceedings, the rights available to ordinary citizens are also generally available to probationers subject to certain limitations which result from the probationer's status. It is generally recognized that a probation officer may visit the probationer's home or place of employment without a warrant and that the visit is not a search. *Wyman v. James*, 400 U.S. 309, 91 S.Ct. 381, 27

L.Ed.2d 408 (1971); *United States v. Workman*, 585 F.2d 1205 (4th Cir. 1978); *Latta v. Fitzharris*, 521 F.2d 246 (9th Cir.), *cert. denied*, 423 U.S. 897, 96 S.Ct. 200, 46 L.Ed.2d 130 (1975). Further, a probation officer may act as any other law enforcement officer in exigent circumstances. He may search and seize articles incident to a lawful arrest. *See Martin v. United States*, 183 F.2d 436 (4th Cir. 1950). Since his authority to visit a probationer in his home or place of employment places the probation supervisor lawfully on the premises, he can seize contraband or evidence of crime that is in plain view. For his own safety, he or a law enforcement officer can stop and frisk a probationer without his consent in accordance with standards of *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). When either a probation supervisor or law enforcement officer seeks a warrant to search certain premises, the fact that the occupant is a probationer is a factor which may be considered with other circumstances to establish proper probable cause for issuance of a search warrant. *See United States v. Workman*, 585 F.2d 1205, 1207 (4th Cir. 1978).

In *United States v. Consuelo-Gonzalez*, 521 F.2d 259 (9th Cir. 1975), the court excluded from a criminal trial evidence discovered during an illegal search of a probationer's property by law enforcement officers but noted that the evidence would have been admissible if the search had been conducted by a probation officer. A contrary view is expressed in *United States v. Workman*, 585 F.2d 1205 (4th Cir. 1978), and *United States v. Hallman*, 365 F.2d 289 (3d Cir. 1966).

In summary, the fourth amendment ordinarily applies to a probationer when evidence is used to prove a separate criminal offense although the probationer's status gives the probation supervisor standing to be in locations not ordinarily available to law enforcement officers. Further, when either probation supervisors or law enforcement officers seek a warrant, the probationary status may be used as a factor to establish probable cause.

In many circumstances a probationer consents in open court to the conditions of probation, and, in addition, subsequently signs the written probation order. Because of the nature of this particular sentence of probation, there was no agreement on the record in open court by the petitioner to the condition in the probation order nor was there an express consent given in any other way to the search provision. We therefore have not addressed the effect of the express consent of a probationer given in open court at the time he or she is placed on probation. That issue is not before us and, from our research, has not been specifically addressed in any jurisdiction.

[9] In regard to the specific certified question before us, the search condition set forth unilaterally by the judge in the probation order which requires a probationer to consent at any time to a warrantless search by a law enforcement officer is a violation of article I, section 12, of the Florida Constitution, and the fourth amendment to the United States Constitution. This type of condition, in the manner in which it was imposed, cannot properly establish authority to conduct a warrantless search in the absence of one of the traditional exceptions to the warrant requirement. The question certified must therefore be answered in the affirmative. We emphasize that the authority of probation supervisors and law enforcement officers to conduct warrantless searches of probationers in accordance with the views set forth in this opinion is not dependent upon a search condition expressly set forth in the order of probation.

For the reasons expressed, we quash the opinion of the district court of appeal to the extent it approves the inclusion of an express search condition set forth unilaterally by the trial court in an order of probation requiring a probationer to consent at any time to a warrantless search by a law enforcement officer. This case is remanded for further proceedings consistent with this opinion.

It is so ordered.

ENGLAND, C. J., and ADKINS, BOYD and SUNDBERG, JJ., concur.

Charles BRAXTON, Sr., Appellant,

v.

STATE of Florida, Appellee.

No. 87-1316.

District Court of Appeal of Florida, Second District.

May 13, 1988.

Defendant was convicted of possession of a firearm by convicted felon before the Circuit Court, Manatee County, James S. Parker, J., and defendant appealed. The District Court of Appeal held that defendant did not give up his Fourth Amendment rights simply by being on community control; product of warrantless search of his home was inadmissible.

Reversed.

1. Criminal Law ⇐394.4(10)

While product of warrantless search of a jail cell is admissible in evidence, product of a warrantless search of a probationer's home is not admissible to prove a new criminal offense. U.S.C.A. Const.Amend. 4.

2. Criminal Law ⇐982.8

While community control is harsher and more severe alternative to ordinary probation, for purposes of determining whether warrantless search of defendant's home while on community control violated Fourth Amendment, community control was not equated with incarceration but more akin to parole; defendant under community control does not, by accepting community control, give up his Fourth Amendment rights, and thus gun found in warrantless search was inadmissible. U.S.C.A. Const.Amend. 4.

3. Pardon and Parole ⇐68

Parolee does not, by accepting parole, give up his Fourth Amendment rights. U.S.C.A. Const.Amend. 4.

James Marion Moorman, Public Defender, and Robert F. Moeller, Asst. Public Defender, Bartow, for appellant.

Robert A. Butterworth, Atty. Gen., Tallahassee, and Joseph R. Bryant, Asst. Atty. Gen., Tampa, for appellee.

PER CURIAM.

We reverse defendant's conviction for possession of a firearm by a convicted felon. We agree with defendant's contention that the trial court erred in denying defendant's motion to suppress a firearm found during a warrantless search of his home. Defendant was on community control, and the search was conducted by officers including defendant's community control officer. As a result of the search, defendant was charged with the criminal offense from his conviction for which he is now appealing.

[1-3] While the product of a warrantless search of a jail inmate's cell is admissible in evidence, *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984), the product of a warrantless search of a probationer's home is not admissible to prove a new criminal offense. *Grubbs v. State*, 373 So.2d 905 (Fla.1979); *Croteau v. State*, 334 So.2d 577 (Fla.1976). Community control is "a harsh and more severe alternative to ordinary probation," *State v. Mestas*, 507 So.2d 587, 588 (Fla.1987), but for present purposes we do not equate community control with incarceration. For these purposes we think community control should be considered akin to parole. A parolee does not, by accepting parole, give up his Fourth Amendment rights. *Kinsler v. State*, 360 So.2d 24, 25 (Fla. 2d DCA 1978). "While evidence seized in violation of the Fourth Amendment is admissible at a parole revocation hearing, such evidence is not admissible during a criminal trial." *Id.*, citing *Croteau*.

The conviction is reversed.

SCHOONOVER, A.C.J., and LEHAN and FRANK, JJ., concur.

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real estate. Intelligent, well-informed public officials may in good faith disagree about the validity of specific types of land-use regulation. Even the wisest lawyers would have to acknowledge great uncertainty about the scope of this Court's takings jurisprudence. Yet, because of the Court's remarkable ruling in *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987), local governments and officials must pay the price for the necessarily vague standards in this area of the law.

In his dissent in *San Diego Gas & Electric Co. v. San Diego*, 450 U.S. 621, 101 S.Ct. 1287, 67 L.Ed.2d 551 (1981), Justice BRENNAN proposed a brand new constitutional rule.* He argued that a mistake such as the one that a majority of the Court believes that the California Coastal Commission made in this case should automatically give rise to pecuniary liability for a "temporary taking." *Id.*, at 653–661, 101 S.Ct., at 1304–1309. Notwithstanding the unprecedented chilling effect that such a rule will obviously have on public officials charged with the responsibility for drafting and implementing regulations designed to protect the environment[867] and the public welfare, six Members of the Court recently endorsed Justice BRENNAN's novel proposal. See *First English Evangelical Lutheran Church, supra.*

I write today to identify the severe tension between that dramatic development in the law and the view expressed by Justice BRENNAN's dissent in this case that the public interest is served by encouraging state agencies to exercise considerable flexibility in responding to private desires for development in a way that threatens the preservation of public resources. See *ante*, at 3153–3154. I like the hat that Justice BRENNAN has donned today better than the one he wore in *San Diego*, and I am persuaded that he has the better of the legal arguments here. Even if his position prevailed in this case, however, it would be of little solace to land-use planners who would still be left guessing about how the Court will react to the next case, and the one after that. As this case demonstrates, the rule of liability created by the Court in *First English* is a shortsighted one. Like Justice BRENNAN, I hope that "a broader vision ultimately prevails." *Ante*, at 3161.

I respectfully dissent.

483 U.S. 868, 97 L.Ed.2d 709

[868]**Joseph G. GRIFFIN, Petitioner,**

v.

WISCONSIN.

No. 86–5324.

Argued April 20, 1987.

Decided June 26, 1987.

Probationer was convicted in the Circuit Court, Rock County, J. Richard Long, J., of possession of firearm by a felon, and he appealed. The Court of Appeals, 126 Wis.2d 183, 376 N.W.2d 62, affirmed, and probationer appealed. The Wisconsin Supreme Court, 131 Wis.2d 41, 388 N.W.2d 535, affirmed, and certiorari was granted. The Supreme Court, Justice Scalia, held that search of probationer's home, pursuant to Wisconsin regulation replacing standard of probable cause by "reasonable grounds," satisfied Fourth Amendment.

Affirmed.

* "The constitutional rule I propose requires that, once a court finds that a police power regulation has effected a 'taking,' the government entity must pay just compensation for the period commencing on the date the regulation first effected the 'taking,' and ending on the date the government entity chooses to rescind or otherwise amend the regulation." 450 U.S., at 658, 101 S.Ct., at 1307.

Justice Blackmun filed a dissenting opinion in which Justice Marshall joined and in parts of which Justices Brennan and Stevens joined.

Justice Stevens filed a dissenting opinion in which Justice Marshall joined.

1. **Criminal Law** ⇐982.8

Warrantless search of probationer's home, pursuant to Wisconsin regulation which was valid because special needs of Wisconsin's probation system made warrant requirement impracticable and justified replacement of standard of probable cause by "reasonable grounds," satisfied demands of Fourth Amendment. U.S.C.A. Const.Amend. 4.

2. **Criminal Law** ⇐982.8
Searches and Seizures ⇐25

Probationer's home, like anyone else's, is protected by Fourth Amendment's requirement that searches be reasonable. U.S.C.A. Const.Amend. 4.

3. **Criminal Law** ⇐982.8

Supervision of probationer is a special need of the state permitting degree of infringement upon privacy that would not be constitutional if applied to public at large. U.S.C.A. Const.Amend. 4.

4. **Federal Courts** ⇐381

Supreme Court is bound by state court's interpretation of federal regulation, which is relevant to court's constitutional analysis only insofar as it fixes meaning of the regulation.

5. **Constitutional Law** ⇐270(5)
Criminal Law ⇐982.8

If regulation established standard of conduct to which probationer had to conform on pain of penalty, state court could not constitutionally adopt so unnatural an interpretation of the language that regulation would fail to provide adequate notice. U.S.C.A. Const.Amend. 4.

6. **Criminal Law** ⇐982.8

It is reasonable to permit information provided by police officer, whether or not on the basis of firsthand knowledge, to support search of probationer, and it is enough if information provided indicates only likelihood of facts justifying the search. U.S.C.A. Const.Amend. 4.

Syllabus *

Wisconsin law places probationers in the legal custody of the State Department of Health and Social Services and renders them "subject to ... conditions set by the ... rules and regulations established by the department." One such regulation permits any probation officer to search a probationer's home without a warrant as long as his supervisor approves and as long as there are "reasonable grounds" to believe the presence of contraband. In determining whether "reasonable grounds" exist, an officer must consider a variety of factors, including information provided by an informant, the reliability and specificity of that information, the informant's reliability, the officer's experience with the probationer, and the need to verify compliance with the rules of probation and with the law. Another regulation forbids a probationer to possess a firearm without a probation officer's advance approval. Upon information received from a police detective that there were or might be guns in petitioner probationer's apartment, probation officers searched the apartment and found a handgun. Petitioner was tried and convicted of the felony of possession of a firearm by a convicted felon, the state trial court having denied his motion to suppress the evidence seized during the search after concluding that no warrant was necessary and that the search was reasonable. The State Court of Appeals and the State Supreme Court affirmed.

Held:

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1. The warrantless search of petitioner's residence was "reasonable" within the meaning of the Fourth Amendment because it was conducted pursuant to a regulation that is itself a reasonable response to the "special needs" of a probation system. Pp. 3167–3171.

(a) Supervision of probationers is a "special need" of the State that may justify departures from the usual warrant and probable-cause requirements. Supervision is necessary to ensure that probation restrictions are in fact observed, that the probation serves as a genuine rehabilitation period, and that the community is not harmed by the probationer's being at large. Pp. 3167–3168.

(b) The search regulation is valid because the "special needs" of Wisconsin's probation system make the warrant requirement impracticable and justify replacement of the probable-cause standard with the regulation's "reasonable grounds" standard. It is reasonable to dispense with the warrant requirement here, since such a requirement [869] would interfere to an appreciable degree with the probation system by setting up a magistrate rather than the probation officer as the determiner of how closely the probationer must be supervised, by making it more difficult for probation officials to respond quickly to evidence of misconduct, and by reducing the deterrent effect that the possibility of expeditious searches would otherwise create. Moreover, unlike the police officer who conducts the ordinary search, the probation officer is required to have the probationer's welfare particularly in mind. A probable-cause requirement would unduly disrupt the probation system by reducing the deterrent effect of the supervisory arrangement and by lessening the range of information the probation officer could consider in deciding whether to search. The probation agency must be able to act based upon a lesser degree of certainty in order to intervene before the probationer damages himself or society, and must be able to proceed on the basis of its entire experience with the probationer and to assess probabilities in the light of its knowledge of his life, character, and circumstances. Thus, it is reasonable to permit information provided by a police officer, whether or not on the basis of firsthand knowledge, to support a probationary search. All that is required is that the information provided indicates, as it did here, the likelihood of facts justifying the search. Pp. 3168–3171.

2. The conclusion that the regulation in question was constitutional makes it unnecessary to consider whether *any* search of a probationer's home is lawful when there are "reasonable grounds" to believe contraband is present. P. 3171.

131 Wis.2d 41, 388 N.W.2d 535 (1986), affirmed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, POWELL, and O'CONNOR, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which MARSHALL, J., joined, in Parts I–B and I–C of which BRENNAN, J., joined, and in Part I–C of which STEVENS, J., joined, *post*, p. 3172. STEVENS, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post*, p. 3177.

Alan G. Habermehl, Madison, Wis., for petitioner.

Barry M. Levenson, Madison, Wis., for respondent.

[870] Justice SCALIA delivered the opinion of the Court.

Petitioner Joseph Griffin, who was on probation, had his home searched by probation officers acting without a warrant. The officers found a gun that later served as the basis of Griffin's conviction of a state-law weapons offense. We granted certiorari, 479 U.S. 1005, 107 S.Ct. 643, 93 L.Ed.2d 699 (1986), to consider whether this search violated the Fourth Amendment.

I

On September 4, 1980, Griffin, who had previously been convicted of a felony, was convicted in Wisconsin state court of resisting arrest, disorderly conduct, and obstructing an officer. He was placed on probation.

Wisconsin law puts probationers in the legal custody of the State Department of Health and Social Services and renders them "subject ... to ... conditions set by the court and rules and regulations established by the department." Wis.Stat. § 973.10(1) (1985–1986). One of the Department's regulations permits any probation officer to search a probationer's 871 home without a warrant as long as his supervisor approves and as long as there are "reasonable grounds" to believe the presence of contraband—including any item that the probationer cannot possess under the probation conditions. Wis.Admin.Code HSS §§ 328.21(4), 328.16(1) (1981).[1] The rule provides that an officer should consider a variety of factors in determining whether "reasonable grounds" exist, among which are information provided by an informant, the reliability and specificity of that information, the reliability of the informant (including whether the informant has any incentive to supply inaccurate information), the officer's own experience with the probationer, and the "need to verify compliance with rules of supervision and state and federal law." HSS § 328.21(7). Another regulation makes it a violation of the terms of probation to refuse to consent to a home search. HSS § 328.04(3)(k). And still another forbids a probationer to possess a firearm without advance approval from a probation officer. HSS § 328.04(3)(j).

On April 5, 1983, while Griffin was still on probation, Michael Lew, the supervisor of Griffin's probation officer, received information from a detective on the Beloit Police Department that there were or might be guns in Griffin's apartment. Unable to secure the assistance of Griffin's own probation officer, Lew, accompanied by another probation officer and three plainclothes policemen, went to the apartment. When Griffin answered the door, Lew told him who they were and informed him that they were going to search his home. During the subsequent search—carried out entirely by the probation officers under the authority of Wisconsin's probation regulation—they found a handgun.

872 Griffin was charged with possession of a firearm by a convicted felon, which is itself a felony. Wis.Stat. § 941.29(2) (1985–1986). He moved to suppress the evidence seized during the search. The trial court denied the motion, concluding that no warrant was necessary and that the search was reasonable. A jury convicted Griffin of the firearms violation, and he was sentenced to two years' imprisonment. The conviction was affirmed by the Wisconsin Court of Appeals, 126 Wis.2d 183, 376 N.W.2d 62 (1985).

On further appeal, the Wisconsin Supreme Court also affirmed. It found denial of the suppression motion proper because probation diminishes a probationer's reasonable expectation of privacy—so that a probation officer may, consistent with the Fourth Amendment, search a probationer's home without a warrant, and with only "reasonable grounds" (not probable cause) to believe that contraband is present. It held that the "reasonable grounds" standard of Wisconsin's search regulation satisfied this "reasonable grounds" standard of the Federal Constitution, and that the detective's tip established "reasonable grounds" within the meaning of the regulation, since it came from someone who had no reason to supply inaccurate information,

1. HSS § 328 was promulgated in December 1981 and became effective on January 1, 1982. Effective May 1, 1986, HSS § 328.21 was repealed and repromulgated with somewhat different numbering and without relevant substantive changes. See 131 Wis.2d 41, 60, n. 7, 388 N.W.2d 535, 542, n. 7 (1986). This opinion will cite the old version of § 328.21, which was in effect at the time of the search.

specifically identified Griffin, and suggested a need to verify Griffin's compliance with state law. 131 Wis.2d 41, 52–64, 388 N.W.2d 535, 539–544 (1986).

II

[1] We think the Wisconsin Supreme Court correctly concluded that this warrantless search did not violate the Fourth Amendment. To reach that result, however, we find it unnecessary to embrace a new principle of law, as the Wisconsin court evidently did, that any search of a probationer's home by a probation officer satisfies the Fourth Amendment as long as the information possessed by the officer satisfies a federal "reasonable grounds" standard. As his sentence for the commission of a crime, Griffin was committed to the legal custody of the Wisconsin State Department of Health and 1873Social Services, and thereby made subject to that Department's rules and regulations. The search of Griffin's home satisfied the demands of the Fourth Amendment because it was carried out pursuant to a regulation that itself satisfies the Fourth Amendment's reasonableness requirement under well-established principles.

A

[2] A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be "reasonable." Although we usually require that a search be undertaken only pursuant to a warrant (and thus supported by probable cause, as the Constitution says warrants must be), see, *e.g.*, *Payton v. New York*, 445 U.S. 573, 586, 100 S.Ct. 1371, 1380, 63 L.Ed.2d 639 (1980), we have permitted exceptions when "special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." *New Jersey v. T.L.O.*, 469 U.S. 325, 351, 105 S.Ct. 733, 748, 83 L.Ed.2d 720 (1985) (BLACKMUN, J., concurring in judgment). Thus, we have held that government employers and supervisors may conduct warrantless, work-related searches of employees' desks and offices without probable cause, *O'Connor v. Ortega*, 480 U.S. 709, 107 S.Ct. 1492, 94 L.Ed.2d 714 (1987), and that school officials may conduct warrantless searches of some student property, also without probable cause, *New Jersey v. T.L.O.*, *supra*. We have also held, for similar reasons, that in certain circumstances government investigators conducting searches pursuant to a regulatory scheme need not adhere to the usual warrant or probable-cause requirements as long as their searches meet "reasonable legislative or administrative standards." *Camara v. Municipal Court*, 387 U.S. 523, 538, 87 S.Ct. 1727, 1736, 18 L.Ed.2d 930 (1967). See *New York v. Burger*, 482 U.S. 691, 702–703, 107 S.Ct. 2636, 2643–2644, 96 L.Ed.2d 601 (1987); *Donovan v. Dewey*, 452 U.S. 594, 602, 101 S.Ct. 2534, 2539, 69 L.Ed.2d 262 (1981); *United States v. Biswell*, 406 U.S. 311, 316, 92 S.Ct. 1593, 1596, 32 L.Ed.2d 87 (1972).

A State's operation of a probation system, like its operation of a school, government office or prison, or its supervision of a regulated industry, likewise presents "special 1874needs" beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements. Probation, like incarceration, is "a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty." G. Killinger, H. Kerper, & P. Cromwell, Probation and Parole in the Criminal Justice System 14 (1976); see also 18 U.S.C. § 3651 (1982 ed. and Supp. III) (probation imposed instead of imprisonment); Wis.Stat. § 973.09 (1985–1986) (same).[2] Probation is

2. We have recently held that prison regulations allegedly infringing constitutional rights are themselves constitutional as long as they are "'reasonably related to legitimate penological interests.'" *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349, 107 S.Ct. 2400, 2404, 96 L.Ed.2d 282 (1987) (quoting *Turner v. Safley*, 482 U.S. 78, 89, 107 S.Ct. 2254, 2261, 96 L.Ed.2d 64 (1987)). We have no occasion in this case to

simply one point (or, more accurately, one set of points) on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service. A number of different options lie between those extremes, including confinement in a medium- or minimum-security facility, work-release programs, "halfway houses," and probation—which can itself be more or less confining depending upon the number and severity of restrictions imposed. See, *e.g.*, 18 U.S.C. § 3563 (1982 ed., Supp. III) (effective Nov. 1, 1987) (probation conditions authorized in federal system include requiring probationers to avoid commission of other crimes; to pursue employment; to avoid certain occupations, places, and people; to spend evenings or weekends in prison; and to avoid narcotics or excessive use of alcohol). To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy "the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions." *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972).

[3] 875These restrictions are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large. See *State v. Tarrell*, 74 Wis.2d 647, 652–653, 247 N.W.2d 696, 700 (1976). These same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed. Recent research suggests that more intensive supervision can reduce recidivism, see Petersilia, Probation and Felony Offenders, 49 Fed. Probation 9 (June 1985), and the importance of supervision has grown as probation has become an increasingly common sentence for those convicted of serious crimes, see *id.*, at 4. Supervision, then, is a "special need" of the State permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large. That permissible degree is not unlimited, however, so we next turn to whether it has been exceeded here.

B

[4, 5] In determining whether the "special needs" of its probation system justify Wisconsin's search regulation, we must take that regulation as it has been interpreted by state corrections officials and state courts. As already noted, the Wisconsin Supreme Court—the ultimate authority on issues of Wisconsin law—has held that a tip from a police detective that Griffin "had" or "may have had" an illegal weapon at his home constituted the requisite "reasonable grounds." See 131 Wis.2d, at 64, 388 N.W.2d, at 544. Whether or not we would choose to interpret a similarly worded federal regulation in that fashion, we are bound by the state court's interpretation, which is relevant to our constitutional analysis only insofar as it fixes the meaning of the regulation.[3] We 876think it clear that the special needs of Wisconsin's probation system make the warrant requirement impracticable and jus-

decide whether, as a general matter, that test applies to probation regulations as well.

3. If the regulation in question established a standard of conduct to which the probationer had to conform on pain of penalty—*e.g.*, a restriction on his movements—the state court could not constitutionally adopt so unnatural an interpretation of the language that the regulation would fail to provide adequate notice. Cf. *Kolender v. Lawson*, 461 U.S. 352, 357–358, 103 S.Ct. 1855, 1858–1859, 75 L.Ed.2d 903 (1983); *Lambert v. California*, 355 U.S. 225, 228, 78 S.Ct. 240, 242, 2 L.Ed.2d 228 (1957). That is not an issue here since, even though the petitioner would be in violation of his probation conditions (and subject to the penalties that entails) if he failed to consent to any search that the regulation authorized, see HSS § 328.04(3)(k), nothing in the regulation or elsewhere required him to be advised, at the time of the request for search, what the probation officer's "reasonable grounds" were, any more than the ordinary citizen has to be notified of the grounds for "probable cause" or "exigent circumstances" searches before they may be undertaken.

tify replacement of the standard of probable cause by "reasonable grounds," as defined by the Wisconsin Supreme Court.

A warrant requirement would interfere to an appreciable degree with the probation system, setting up a magistrate rather than the probation officer as the judge of how close a supervision the probationer requires. Moreover, the delay inherent in obtaining a warrant would make it more difficult for probation officials to respond quickly to evidence of misconduct, see *New Jersey v. T.L.O.*, 469 U.S., at 340, 105 S.Ct., at 743, and would reduce the deterrent effect that the possibility of expeditious searches would otherwise create, see *New York v. Burger*, 482 U.S., at 710, 107 S.Ct., at 2648; *United States v. Biswell*, 406 U.S., at 316, 92 S.Ct., at 1596. By way of analogy, one might contemplate how parental custodial authority would be impaired by requiring judicial approval for search of a minor child's room. And on the other side of the equation—the effect of dispensing with a warrant upon the probationer: Although a probation officer is not an impartial magistrate, neither is he the police officer who normally conducts searches against the ordinary citizen. He is an employee of the State Department of Health and Social Services who, while assuredly charged with protecting the public interest, is also supposed to have in mind the welfare of the probationer (who in the regulations is called a "client," HSS § 328.03(5)). The applicable regulations require him, for example, to "[p]rovid[e] individualized counseling designed to foster growth and development of the client as necessary," HSS § 328.04(2)(i), and "[m]onito[r] the |877client's progress where services are provided by another agency and evaluat[e] the need for continuation of the services," HSS § 328.04(2)(o). In such a setting, we think it reasonable to dispense with the warrant requirement.

Justice BLACKMUN's dissent would retain a judicial warrant requirement, though agreeing with our subsequent conclusion that reasonableness of the search does not require probable cause. This, however, is a combination that neither the text of the Constitution nor any of our prior decisions permits. While it is possible to say that Fourth Amendment reasonableness demands probable cause without a judicial warrant, the reverse runs up against the constitutional provision that "no Warrants shall issue, but upon probable cause." Amdt. 4. The Constitution prescribes, in other words, that where the matter is of such a nature as to require a judicial warrant, it is also of such a nature as to require probable cause. Although we have arguably come to permit an exception to that prescription for administrative search warrants,[4] which may but do not necessarily have to be issued by courts,[5] we have never done so for constitutionally mandated judicial |878warrants. There it remains true that "[i]f a search warrant be constitutionally required, the requirement cannot

4. In the administrative search context, we formally require that administrative warrants be supported by "probable cause," because in that context we use that term as referring not to a quantum of evidence, but merely to a requirement of reasonableness. See, *e.g., Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320, 98 S.Ct. 1816, 1824, 56 L.Ed.2d 305 (1978); *Camara v. Municipal Court*, 387 U.S. 523, 528, 87 S.Ct. 1727, 1730, 18 L.Ed.2d 930 (1967). In other contexts, however, we use "probable cause" to refer to a quantum of evidence for the belief justifying the search, to be distinguished from a lesser quantum such as "reasonable suspicion." See *O'Connor v. Ortega*, 480 U.S. 709, 724, 107 S.Ct. 1492, 1501, 94 L.Ed.2d 714 (1987) (plurality); *New Jersey v. T.L.O.*, 469 U.S. 325, 341–342, 105 S.Ct. 733, 742–743, 83 L.Ed.2d 720 (1985). It is plainly in this sense that the dissent uses the term. See, *e.g., post*, at 3172–3173 (less than probable cause means "a reduced level of suspicion").

5. See *Marshall v. Barlow's, Inc., supra*, 436 U.S., at 307, 98 S.Ct., at 1816 ("We hold that ... the Act is unconstitutional insofar as it purports to authorize inspections without warrant or its equivalent"). The "neutral magistrate," *Camara, supra*, 387 U.S., at 532, 87 S.Ct., at 1732, or "neutral officer," *Marshall v. Barlow's, Inc., supra*, 436 U.S., at 323, 98 S.Ct., at 1826, envisioned by our administrative search cases is not necessarily the "neutral judge," *post*, at 3175, envisioned by the dissent.

be flexibly interpreted to dispense with the rigorous constitutional restrictions for its issue." *Frank v. Maryland*, 359 U.S. 360, 373, 79 S.Ct. 804, 812, 3 L.Ed.2d 877 (1959). Justice BLACKMUN neither gives a justification for departure from that principle nor considers its implications for the body of Fourth Amendment law.

We think that the probation regime would also be unduly disrupted by a requirement of probable cause. To take the facts of the present case, it is most unlikely that the unauthenticated tip of a police officer—bearing, as far as the record shows, no indication whether its basis was firsthand knowledge or, if not, whether the firsthand source was reliable, and merely stating that Griffin "had or might have" guns in his residence, not that he certainly had them—would meet the ordinary requirement of probable cause. But this is different from the ordinary case in two related respects: First, even more than the requirement of a warrant, a probable-cause requirement would reduce the deterrent effect of the supervisory arrangement. The probationer would be assured that so long as his illegal (and perhaps socially dangerous) activities were sufficiently concealed as to give rise to no more than reasonable suspicion, they would go undetected and uncorrected. The second difference is well reflected in the regulation specifying what is to be considered "[i]n deciding whether there are reasonable grounds to believe . . . a client's living quarters or property contain contraband," HSS § 328.21(7). The factors include not only the usual elements that a police officer or magistrate would consider, such as the detail and consistency of the information suggesting the presence of contraband and the reliability and motivation to dissemble of the informant, HSS §§ 328.21(7)(c), (d), but also "[i]nformation provided by the client which is relevant to whether the client possesses contraband," and "[t]he experience of a staff member with that client or in a [879] similar circumstance." HSS §§ 328.21(7)(f), (g). As was true, then, in *O'Connor v. Ortega*, 480 U.S. 709, 107 S.Ct. 1492, 94 L.Ed.2d 714 (1987), and *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), we deal with a situation in which there is an ongoing supervisory relationship—and one that is not, or at least not entirely, adversarial—between the object of the search and the decisionmaker.[6]

In such circumstances it is both unrealistic and destructive of the whole object of the continuing probation relationship to insist upon the same degree of demonstrable reliability of particular items of supporting data, and upon the same degree of certainty of violation, as is required in other contexts. In some cases—especially those involving drugs or illegal weapons—the probation agency must be able to act based upon a lesser degree of certainty than the Fourth Amendment would otherwise require in order to intervene before a probationer does damage to himself or society. The agency, moreover, must be able to proceed on the basis of its entire experience with the probationer, and to assess probabilities in the light of its knowledge of his life, character, and circumstances.

[6] To allow adequate play for such factors, we think it reasonable to permit information provided by a police officer,[7]

6. It is irrelevant whether the probation authorities relied upon any peculiar knowledge which they possessed of petitioner in deciding to conduct the present search. Our discussion pertains to the reasons generally supporting the proposition that the search decision should be left to the expertise of probation authorities rather than a magistrate, and should be supportable by a lesser quantum of concrete evidence justifying suspicion than would be required to establish probable cause. That those reasons may not obtain in a particular case is of no consequence. We may note, nonetheless, that the dissenters are in error to assert as a fact that the probation authorities made no use of special knowledge in the present case, *post*, at 3177. All we know for certain is that the petitioner's probation officer could not be reached; whether any material contained in petitioner's probation file was used does not appear.

7. The dissenters speculate that the information might not have come from the police at all, "but from someone impersonating an officer." *Post*,

[880]whether or not on the basis of firsthand knowledge, to support a probationer search. The same conclusion is suggested by the fact that the police may be unwilling to disclose their confidential sources to probation personnel. For the same reason, and also because it is the very assumption of the institution of probation that the probationer is in need of rehabilitation and is more likely than the ordinary citizen to violate the law, we think it enough if the information provided indicates, as it did here, only the likelihood ("had or might have guns") of facts justifying the search.[8]

The search of Griffin's residence was "reasonable" within the meaning of the Fourth Amendment because it was conducted pursuant to a valid regulation governing probationers. This conclusion makes it unnecessary to consider whether, as the court below held and the State urges, *any* search of a probationer's home by a probation officer is lawful when there are "reasonable grounds" to believe contraband is present. For the foregoing reasons, the judgment of the Wisconsin Supreme Court is

Affirmed.

[881]Justice BLACKMUN, with whom Justice MARSHALL joins and, as to Parts I–B and I–C, Justice BRENNAN joins and, as to Part I–C, Justice STEVENS joins, dissenting.

In ruling that the home of a probationer may be searched by a probation officer without a warrant, the Court today takes another step that diminishes the protection given by the Fourth Amendment to the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In my view, petitioner's probationary status provides no reason to abandon the warrant requirement. The probation system's special law enforcement needs may justify a search by a probation officer on the basis of "reasonable suspicion," but even that standard was not met in this case.

I

The need for supervision in probation presents one of the "exceptional circumstances in which special needs, beyond the normal need for law enforcement," *New Jersey v. T.L.O.*, 469 U.S. 325, 351, 105 S.Ct. 733, 749, 83 L.Ed.2d 720 (1985) (opinion concurring in judgment), justify an application of the Court's balancing test and an examination of the practicality of the warrant and probable-cause requirements. The Court, however, fails to recognize that this is a *threshold* determination of special law enforcement needs. The warrant and probable-cause requirements provide the normal standard for "reasonable" searches. "[O]nly when the practical realities of a particular situation suggest that a government official cannot obtain a warrant based upon probable cause without sacrificing the ultimate goals to which a search would contribute, does the Court turn to a 'balancing' test to formulate a standard of reasonableness for this context." *O'Connor v. Ortega*, 480 U.S. 709, 741, 107 S.Ct. 1492, 1510, 94 L.Ed.2d 714 (1987) (dissenting opinion). The presence of special law enforcement needs justifies resort to the

at 3176. The trial court, however, found as a matter of fact that Lew received the tip on which he relied from a police officer. See 131 Wis.2d, at 62, 388 N.W.2d, at 543. The Wisconsin Supreme Court affirmed that finding, *ibid.*, and neither the petitioner nor the dissenters assert that it is clearly erroneous.

8. The dissenters assert that the search did not comport with all the governing Wisconsin regulations. There are reasonable grounds on which the Wisconsin court could find that it did. But we need not belabor those here, since the only regulation upon which we rely for our constitutional decision is that which permits a warrantless search on "reasonable grounds." The Wisconsin Supreme Court found the requirement of "reasonable grounds" to have been met on the facts of this case and, as discussed earlier, we hold that such a requirement, so interpreted, meets constitutional minimum standards as well. That the procedures followed, although establishing "reasonable grounds" under Wisconsin law, and adequate under federal constitutional standards, may have violated Wisconsin state regulations, is irrelevant to the case before us.

balancing test, but it does not preordain the necessity of recognizing exceptions to the warrant and probable-cause requirements.

[882] My application of the balancing test leads me to conclude that special law enforcement needs justify a search by a probation agent of the home of a probationer on the basis of a reduced level of suspicion. The acknowledged need for supervision, however, does not also justify an exception to the warrant requirement, and I would retain this means of protecting a probationer's privacy.[1] Moreover, the necessity for the neutral check provided by the warrant requirement is demonstrated by this case, in which the search was conducted on the basis of information that did not begin to approach the level of "reasonable grounds."

A

The probation officer is not dealing with an average citizen, but with a person who has been convicted of a crime.[2] This presence of an offender in the community creates the need for special supervision. I therefore agree that a probation agent must have latitude in observing a probationer if the agent is to carry out his supervisory responsibilities effectively. Recidivism[883] among probationers is a major problem, and supervision is one means of combating that threat. See *ante*, at 3169. Supervision also provides a crucial means of advancing rehabilitation by allowing a probation agent to intervene at the first sign of trouble.

One important aspect of supervision is the monitoring of a probationer's compliance with the conditions of his probation. In order to ensure compliance with those conditions, a probation agent may need to search a probationer's home to check for violations. While extensive inquiry may be required to gather the information necessary to establish probable cause that a violation has occurred, a "reasonable grounds" standard allows a probation agent to avoid this delay and to intervene at an earlier stage of suspicion. This standard is thus consistent with the level of supervision necessary to protect the public and to aid rehabilitation. At the same time, if properly applied, the standard of reasonable suspicion will protect a probationer from unwarranted intrusions into his privacy.

B

I do not think, however, that special law enforcement needs justify a modification of the protection afforded a probationer's privacy by the warrant requirement. The search in this case was conducted in petitioner's *home*, the place that traditionally has been regarded as the center of a person's private life, the bastion in which one has a legitimate expectation of privacy protected by the Fourth Amendment. See *Silverman v. United States*, 365 U.S. 505, 511, 81 S.Ct. 679, 683, 5 L.Ed.2d 734 (1961) ("At the very core [of the Fourth Amendment] stands the right of a man to retreat

1. There is no need to deny the protection by the warrant requirement simply because a search can be justified by less than probable cause. The Court recognizes that administrative warrants are issued on less than probable cause, but it concludes that this has never been the case for "judicial warrants." *Ante*, at 3170. This conclusion overlooks the fact that administrative warrants *are* issued by the judiciary. See, *e.g.*, *Camara v. Municipal Court*, 387 U.S. 523, 532, 87 S.Ct. 1727, 1732, 18 L.Ed.2d 930 (1967) ("These are questions which may be reviewed by a neutral magistrate"); *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 316, 98 S.Ct. 1816, 1822, 56 L.Ed.2d 305 (1978) (warrant requirement for inspection will not "impose serious burdens on . . . the courts"); *id.*, at 323, 98 S.Ct., at 1826 (warrant "would provide assurances from a neutral officer that the inspection is reasonable under the Constitution").

2. I find curious, however, the Court's reference to the constitutional standard of review for prison regulations, which neither party argued was applicable to this case. There is plainly no justification for importing automatically into the probation context these special constitutional standards, which are necessitated by the "essential goals" of "maintaining institutional security and preserving internal order and discipline" inside the walls of a prison. *Bell v. Wolfish*, 441 U.S. 520, 546, 99 S.Ct. 1861, 1878, 60 L.Ed.2d 447 (1979). A probationer is not in confinement.

into his own home and there be free from unreasonable governmental intrusion"). The Court consistently has held that warrantless searches and seizures in a home violate the Fourth Amendment absent consent or exigent circumstances. See, *e.g.*, *United States v. Karo*, 468 U.S. 705, 714–715, 104 S.Ct. 3296, 3302–3303, 82 L.Ed.2d 530 (1984); *Steagald v. United States*, 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981) (arrest warrant inadequate for |884search of home of a third party); *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) (warrantless arrest of suspect in his home unconstitutional).

> "It is axiomatic that the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.' *United States v. United States District Court*, 407 U.S. 297, 313 [92 S.Ct. 2125, 2134, 32 L.Ed.2d 752] (1972). And a principal protection against unnecessary intrusions into private dwellings is the warrant requirement imposed by the Fourth Amendment on agents of the government who seek to enter the home for purposes of search or arrest. It is not surprising, therefore, that the Court has recognized, as 'a "basic principle of Fourth Amendment law[,]" that searches and seizures inside a home without a warrant are presumptively unreasonable.' *Payton v. New York*, 445 U.S., at 586 [100 S.Ct., at 1380]." *Welsh v. Wisconsin*, 466 U.S. 740, 748–749, 104 S.Ct. 2091, 2097, 80 L.Ed.2d 732 (1984) (footnote omitted and citation omitted).

The administrative-inspection cases are inapposite to a search of a home. Each of the cases that this Court has found to fall within the exception to the administrative-warrant requirement has concerned the lesser expectation of privacy attached to a "closely regulated" business. See, *e.g.*, *New York v. Burger*, 482 U.S. 691, 107 S.Ct. 2636, 96 L.Ed.2d 601 (1987) (vehicle dismantlers); *Donovan v. Dewey*, 452 U.S. 594, 101 S.Ct. 2534, 69 L.Ed.2d 262 (1981) (mines); *United States v. Biswell*, 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972) (gun dealers). The reasoning that may justify an administrative inspection without a warrant in the case of a business enterprise simply does not extend to the invasion of the special privacy the Court has recognized for the home.

A probationer usually lives at home, and often, as in this case, with a family. He retains a legitimate privacy interest in the home that must be respected to the degree that it is not incompatible with substantial governmental needs. The Court in *New Jersey v. T.L.O.* acknowledged that the Fourth Amendment issue needs to be resolved in such a way |885as to "ensure that the [privacy] interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools." 469 U.S., at 343, 105 S.Ct., at 744. The privacy interests of probationers should be protected by a similar standard, and invaded no more than is necessary to satisfy probation's dual goals of protecting the public safety and encouraging the rehabilitation of the probationer.

The search in this case was not the result of an ordinary home visit by petitioner's probation agent for which no warrant is required. Cf. *Wyman v. James*, 400 U.S. 309, 91 S.Ct. 381, 27 L.Ed.2d 408 (1971). It was a search pursuant to a tip, ostensibly from the police, for the purpose of uncovering evidence of a criminal violation. There is nothing about the *status* of probation that justifies a special exception to the warrant requirement under these circumstances. If in a particular case there is a compelling need to search the home of a probationer without delay, then it is possible for a search to be conducted immediately under the established exception for exigent circumstances. There is no need to create a separate warrant exception for probationers. The existing exception provides a probation agent with all the flexibility the agent needs.

The circumstances of this case illustrate the fact that the warrant requirement does not create any special impediment to the achievement of the goals of probation.

27

The probation supervisor, Michael T. Lew, waited "[t]wo or three hours" after receiving the telephone tip before he proceeded to petitioner's home to conduct the search. App. 16. He testified that he was waiting for the return of petitioner's official agent who was attending a legal proceeding, and that eventually he requested another probation agent to initiate the search. *Id.*, at 16, 51. Mr. Lew thus had plenty of time to obtain a search warrant. If the police themselves had investigated the report of a gun at petitioner's residence, they would have been required to obtain a warrant. There simply was no compelling reason to abandon the safeguards provided by neutral review.

[886] The Court appears to hold the curious assumption that the probationer will *benefit* by dispensing with the warrant requirement. It notes that a probation officer does not normally conduct searches, as does a police officer, and, moreover, the officer is "supposed to have in mind the welfare of the probationer." *Ante*, at 3170. The implication is that a probation agent will be less likely to initiate an inappropriate search than a law-enforcement officer, and is thus less in need of neutral review. Even if there were data to support this notion, a *reduced* need for review does not justify a complete removal of the warrant requirement. Furthermore, the benefit that a probationer is supposed to gain from probation is rehabilitation. I fail to see how the role of the probation agent in "'foster[ing] growth and development of the client,'" *ibid.* quoting Wis.Admin.Code HSS § 328.04(2)(i) (1981), is enhanced the slightest bit by the ability to conduct a search without the checks provided by prior neutral review. If anything, the power to decide to search will prove a barrier to establishing any degree of trust between agent and "client."

The Court also justifies the exception to the warrant requirement that it would find in the Wisconsin regulations by stressing the need to have a probation agent, rather than a judge, decide how closely supervised a particular probationer should be. See *ante*, at 3169. This argument mistakes the nature of the search at issue. The probation agent retains discretion over the terms of a probationer's supervision—the warrant requirement introduces a judge or a magistrate into the decision only when a full-blown search for evidence of a criminal violation is at stake. The Court's justification for the conclusion that the warrant requirement would interfere with the probation system by way of an analogy to the authority possessed by parents over their children is completely unfounded. The difference between the two situations is too obvious to belabor. Unlike the private nature of a parent's interaction with his or her child, the probation system is a [887] governmental operation, with explicit standards. Experience has shown that a neutral judge can best determine if those standards are met and a search is justified. This case provides an excellent illustration of the need for neutral review of a probation officer's decision to conduct a search, for it is obvious that the search was not justified even by a reduced standard of reasonable suspicion.

C

The Court concludes that the search of petitioner's home satisfied the requirements of the Fourth Amendment "because it was carried out pursuant to a regulation that itself satisfies the Fourth Amendment's reasonableness requirement under well-established principles." *Ante*, at 3168. In the Court's view, it seems that only the single regulation requiring "reasonable grounds" for a search is relevant to its decision. *Ante*, at 3172, n. 8. When faced with the patent failure of the probation agents to comply with the Wisconsin regulations, the Court concludes that it "is irrelevant to the case before us" that the probation agents "may have violated Wisconsin state regulations." *Ibid.* All of these other regulations, which happen to define the steps necessary to ensure that reasonable grounds are present, can be ignored. This conclusion that the existence of a facial requirement for "reasonable grounds" automatically satisfies the constitutional pro-

tection that a search be reasonable can only be termed tautological. The content of a standard is found in its application and, in this case, I cannot discern the application of any standard whatsoever.

The suspicion in this case was based on an unverified tip from an unknown source. With or without the Wisconsin regulation, such information cannot constitutionally justify a search. Mr. Lew testified that he could not recall which police officer called him with the information about the gun, although he thought it "probably" was Officer Pittner. App. 16. Officer Pittner, however, did not remember making any 1888such telephone call. *Id.*, at 39. From all that the record reveals, the call could have been placed by anyone. It is even plausible that the information did not come from the police at all, but from someone impersonating an officer.

Even assuming that a police officer spoke to Mr. Lew, there was little to demonstrate the reliability of the information he received from that unknown officer. The record does not reveal even the precise content of the tip. The unknown officer actually may have reported that petitioner "had" contraband in his possession, *id.*, at 51, or he merely may have suggested that petitioner "may have had guns in his apartment." *Id.*, at 14. Mr. Lew testified to both at different stages of the proceedings. Nor do we know anything about the ultimate source of the information. The unknown officer's belief may have been founded on a hunch, a rumor, or an informant's tip. Without knowing more about the basis of the tip, it is impossible to form a conclusion, let alone a reasonable conclusion, that there were "reasonable grounds" to justify a search.

Mr. Lew failed completely to make the most rudimentary effort to confirm the information he had received or to evaluate whether reasonable suspicion justified a search. Conspicuously absent was any attempt to comply with the Wisconsin regulations that governed the content of the "reasonable grounds" standard. Wis.Admin. Code HSS § 328.21(7) (1981).[3] No observations of a staff member could 1889have been considered, as required by subsection (7)(a), for Mr. Lew did not consult the agent who had personal knowledge of petitioner's case. When information was provided by an informant, subsections (7)(c) and (d) required evaluation of the reliability of the information relied upon and the reliability of the informant. Mr. Lew proceeded in violation of these basic requirements. Subsection (7)(f) referred to "information provided by the client" and the explanatory notes stated that "the client should be talked to before the search. Sometimes, this will elicit information helpful in determining whether a search should be made." § 328.21 App., p. 250. This requirement, too, was ignored. Nor do any of the other considerations support a finding of reason-

3. The version of the regulations cited by the Court provided:

"(7) In deciding whether there are reasonable grounds to believe a client possesses contraband, or a client's living quarters or property contain contraband, a staff member should consider:

"(a) The observations of a staff member;

"(b) Information provided by an informant;

"(c) The reliability of the information relied on; in evaluating reliability, attention should be given to whether the information is detailed and consistent and whether it is corroborated;

"(d) The reliability of an informant; in evaluating reliability, attention should be given to whether the informant has supplied reliable information in the past, and whether the informant has reason to supply inaccurate information;

"(e) The activity of the client that relates to whether the client might possess contraband;

"(f) Information provided by the client which is relevant to whether the client possesses contraband;

"(g) The experience of a staff member with that client or in a similar circumstance;

"(h) Prior seizures of contraband from the client; and

"(i) The need to verify compliance with rules of supervision and state and federal law." Wis. Admin.Code HSS § 328.21(7) (1981).

The regulations governing the administration of Wisconsin's probation system have been amended recently. See *ante*, at 3166, n. 1. Under the new rule the word "should" has been changed to "shall" throughout this subsection. See Wis.Admin.Code HSS § 328.21(6) (1986).

able grounds to conduct the search. There is no indication that there had been prior seizures of contraband from petitioner, or that his case presented any special need to verify compliance with the law. See §§ 328.21(7)(h) and (i).

The majority acknowledges that it is "most unlikely" that the suspicion in this case would have met the normal "probable cause" standard. *Ante*, at 3171. It concludes, however, that this is not an "ordinary" case because of the need for supervision and the continuing relationship between the probationer and the probation agency. *Ibid.* In view of this continuing relationship, the regulations mandated consideration of factors that go beyond those normally considered in determining probable cause to include information provided by the probationer and the experience of the staff member with the probationer. But unless the agency adheres to the regulations, it is sophistic to rely on them as a justification for conducting a search on a lesser degree of suspicion. Mr. Lew drew on no special knowledge of petitioner in deciding to search his house. He had no contact with the agent familiar with petitioner's case before commencing the search. Nor, as discussed above, was there the slightest attempt to obtain information from petitioner. In this case, the continuing relationship between petitioner and the agency did not supply support for any suspicion, reasonable or otherwise, that would justify a search of petitioner's home.

II

There are many probationers in this country, and they have committed crimes that range widely in seriousness. The Court has determined that all of them may be subjected to such searches in the absence of a warrant. Moreover, in authorizing these searches on the basis of a reduced level of suspicion, the Court overlooks the feeble justification for the search in this case.

I respectfully dissent.

Justice STEVENS, with whom Justice MARSHALL joins, dissenting.

Mere speculation by a police officer that a probationer "may have had" contraband in his possession is not a constitutionally sufficient basis for a warrantless, nonconsensual search of a private home. I simply do not understand how five Members of this Court can reach a contrary conclusion. Accordingly, I respectfully dissent.

483 U.S. 1301

1301 **Michael K. DEAVER**

v.

UNITED STATES.

No. A–10.

July 1, 1987.

Defendant indicted for perjury brought application for stay of criminal trial pending disposition of his petition for certiorari. The Supreme Court, Chief Justice Rehnquist, as Circuit Justice, held that defendant was not entitled to stay of criminal proceedings against him pending disposition of his petition for certiorari seeking review of district court's denial of his motion to dismiss, predicated on claim that appointment of independent counsel violated separation of powers.

Application denied.

1. Criminal Law ⇐1084

Standards for granting stay pending disposition of petition for certiorari require circuit justice to determine whether four justices would vote to grant certiorari, to balance so-called stay equities, and to give some consideration as to predicting final outcome of case in Supreme Court. (Per Chief Justice Rehnquist, as Circuit Justice.)