



SECOND CIRCUIT REVIEW

Expert Analysis

Court Clarifies the Scope of Parolees' Fourth Amendment Rights

Last month, in *United States v. Braggs*, — F.4th —, 2021 WL 2931403 (2d Cir. July 13, 2021), the U.S. Court of Appeals for the Second Circuit clarified the applicable standards governing the Fourth Amendment rights of parolees. In a unanimous opinion written by Judge Richard C. Wesley, and joined by Judge Robert D. Sack and Judge Steven J. Menashi, the Second Circuit held that parole officers' searches of parolees are governed by the "special needs" exception to the Fourth Amendment's default requirement that a law enforcement-related search be conducted pursuant to a showing of probable cause and a warrant. Thus, the government must show that a parole officer's search of a parolee was rationally and reasonably related to the parole officer's duties.

The Second Circuit's decision clarifies that (1) lower courts should



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continue to apply the Second Circuit's particular test for satisfying the "special needs" exception in cases where a parole officer searches a parolee and not the jurisprudence governing a police officer's search of a parolee; and (2) neither state law nor state agency directives are determinative of whether a parolee search is reasonable. While the Second Circuit's decision provides some guidance to lower courts on how to assess whether a parole officer's search of a parolee is reasonable, lower courts in more complicated cases will need to decide how much deference to provide to parole officers' testimony as to the reasons for the search.

Relevant Factual Background

Defendant/appellee Shammar Braggs was convicted of possession of a controlled substance in New

York state court and sentenced to a term of imprisonment. He was subsequently released on parole under the supervision of the New York State Department of Corrections and Community Supervision (DOCCS). Prior to his release, Braggs was required to sign a consent form allowing his parole officer to visit his residence or place of employment and search Braggs, his residence, and his property. Pursuant to DOCCS Directive No. 9404, an internal DOCCS guidance document, parole officers in New York are permitted to conduct searches "when there is an articulable reason to conduct the search that demonstrates a risk to public safety or the parolee's re-entry into the community."

While Braggs was on parole, DOCCS received an anonymous tip that Braggs may have firearms in his house and relayed the information to Braggs' parole officer. Based solely on that tip, parole officers searched Braggs' home to ensure he was in compliance with his release conditions, which included a prohibition on Braggs possessing any firearms or drugs.

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During the search, parole officers recovered firearms and drugs, and Braggs was arrested by the Buffalo Police Department. After his arrest, Braggs admitted to officers that he owned the firearms.

Because Braggs had a prior felony conviction, federal prosecutors in the Western District of New York charged him with, among other offenses, being a convicted felon in possession of a firearm. Braggs moved to suppress any evidence from the search and his post-arrest admission as fruits of a parolee search that violated his Fourth Amendment rights.

The District Court Decision

After a suppression hearing, Magistrate Judge Michael J. Roemer issued a report and recommendation to District Court Judge William M. Skretny, recommending that he hold that the parole officer's search violated Braggs' Fourth Amendment rights and suppress all evidence obtained as a result of that allegedly illegal search.

Judge Roemer first explained that Supreme Court and Second Circuit case law has established that parole officers typically do not need to obtain a warrant and show probable cause to justify the reasonableness of their parolee searches under the Fourth Amendment. Instead, Judge Roemer held that courts apply the "special needs" exception in evaluating the reasonableness of a parolee search. Judge Roemer proceeded to note that the Second Circuit held in *United States v. Grimes* that a

parolee search satisfies the special needs exception to the extent the search "was rationally and reasonably related to the performance of the parole officer's duty," a standard adopted from New York state court decisional law addressing the scope of authority accorded parole officers in New York to conduct parolee searches. 225 F.3d 254, 258-59 (2d Cir. 2000) (quoting *People v. Huntley*, 43 N.Y.2d 175, 181 (1977)).

Judge Roemer ruled that DOCCS Directive No. 9404 was binding authority on whether the search in this case satisfied the *Grimes* standard. Judge Roemer found the directive required that a parole officer provide an "articulable reason" for a search—a standard Judge Roemer equated with the reasonable suspicion standard in Fourth

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Amendment jurisprudence. Judge Roemer thus held that a parolee search conducted by a parole officer in New York is rationally and reasonably related to the parole officer's duty only to the extent it is conducted with reasonable suspicion. Accordingly, while Judge Roemer found that Braggs' parole officer provided "wholly credible" testimony concerning his reliance on the anonymous tip as the basis for conducting the search, Judge Roemer recommended that the

district court grant the motion to suppress based on Fourth Amendment case law providing that the government cannot show reasonable suspicion simply by relying on an anonymous tip.

Judge Skretny adopted Magistrate Judge Roemer's report and recommendation in an order. The government appealed.

The Second Circuit Decision

On appeal, the Second Circuit observed that the "case involves two strands of our Fourth Amendment jurisprudence that appear to have been either muddled or overlooked as of late." *Braggs*, 2021 WL 2931403, at *3. These two issues are (1) the appropriate standard under federal law that a court should apply when determining the reasonableness of a parolee search; and (2) the extent to which a federal court should consider "state law in prescribing the metes and bounds" of its inquiry into whether the parolee search was conducted in a reasonable manner.

As to the first issue, the Second Circuit noted that the parties sharply disagreed on the applicability of the Supreme Court's post-*Grimes* decision in *Samson v. California*, 547 U.S. 843 (2006). In *Samson*, the Supreme Court held that a California police officer's suspicionless search of a parolee was categorically reasonable because California law explicitly permitted suspicionless searches of parolees and parolees in the state expressly consent to this condition prior to their release. The government

thus argued that *Samson* established that suspicionless parolee searches are categorically reasonable. Braggs argued that *Samson* did not apply because the Supreme Court in that decision relied on California law's broad authorization of suspicionless parolee searches, which are not expressly authorized under New York law. Braggs argued that Judge Roemer properly held that the relevant New York state guidance, DOCCS Directive No. 9404, supplied the required level of suspicion needed to justify a parolee search in the state.

The Second Circuit rejected both parties' arguments. The Second Circuit first rejected the government's position and held that *Samson* was inapplicable to the parolee search here because *Samson* involved a search conducted by a police officer, rather than a search conducted by a parole officer. Accordingly, the Second Circuit held that the "special needs" standard from *Grimes* remains good law for parolee searches conducted by parole officers.

The Second Circuit, however, also disagreed with Braggs and the district court on the second issue: the extent to which a trial court should consult state law in applying the *Grimes* standard. The Second Circuit held that the district court erred in adopting the "articulable reason" standard from DOCCS Directive No. 9404 as the requisite level of suspicion the government needed to prove to show the search was rationally and reasonably related to the parole

officer's duties. The Second Circuit further held that while state law and guidance may "inform the contours of the government intrusion, both in terms of the legitimate state interests and the parolee's diminished expectation of privacy," *Braggs*, 2021 WL 2931403, at *2 (quoting *United States v. Henley*, 941 F.3d 646, 650 (3d Cir. 2019)), a federal court cannot exclude evidence from a search that was conducted a manner inconsistent with such guidance merely because evidence recovered from the search may be inadmissible under state law. Rather, the Second Circuit held that the district court should have applied only the more general standard set forth in *Grimes*—that is, whether a search is rationally and reasonably related to a New York parole officer's duties—in evaluating the reasonableness of the search at issue in the case.

Applying the *Grimes* standard, the Second Circuit held that the search at issue was rationally and reasonably related to the parole officer's duties. The Second Circuit explained that the government satisfied the special needs standard by showing that the parole officer searched Braggs' residence "to determine whether Braggs was complying with the relevant [parole release] condition" based on information the parole officer received from the anonymous tip and because Judge Roemer found that the parole officer offered "wholly credible" testimony to the effect that he conducted the search based on the tip. *Braggs*, 2021 WL

2931403, at *4. As a result, the Second Circuit reversed the district court's grant of Braggs' motion to suppress.

Conclusion

The Second Circuit's decision clarifies the standard lower courts must apply in determining whether a parolee search was reasonable. The Second Circuit's decision is favorable to parolees in that it did not adopt the government's position that such searches are categorically reasonable under *Samson*. The decision, however, does limit the extent to which lower courts can scrutinize the reasonableness of the search with reference to state law and state agency policies. In more complicated cases, lower courts are likely to grapple with the extent to which they must defer to a parole officer's testimony as to the reasons for the search and what other factors they can rely on in determining whether a search is reasonable.