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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-0434**

State of Minnesota,  
Respondent,

vs.

Tara Marie Cournoyer,  
Appellant.

**Filed January 7, 2019  
Reversed in part and remanded  
Jesson, Judge**

Crow Wing County District Court  
File No. 18-CR-16-4795

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Donald F. Ryan, Crow Wing County Attorney, Stephanie Shook, Assistant County  
Attorney, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant  
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Considered and decided by Halbrooks, Presiding Judge; Jesson, Judge; and  
Bratvold, Judge.

**UNPUBLISHED OPINION**

**JESSON, Judge**

Appellant Tara Marie Cournoyer challenges probation conditions imposed by the  
district court when sentencing her on a controlled-substance crime conviction. She argues

that her Fourth Amendment rights were violated by the district court's conditions allowing (1) random chemical testing initiated by law enforcement and (2) suspicionless searches of her person, property and residence. Because the district court erred by imposing a condition that allowed police officers to initiate warrantless chemical testing, we reverse the portion of the district court's order imposing that condition. And because reasonable suspicion is required to conduct other warrantless searches of a probationer's person, property, workplace, or home, we remand to the district court to clarify its order relating to those searches.

### **FACTS**

Police stopped a vehicle in Crow Wing County after noticing that the vehicle's brake light was out. Appellant Tara Marie Cournoyer was a passenger in the vehicle. An officer gave the vehicle's occupants a ride to a gas station but as they were gathering their belongings, the officer noticed multiple baggies containing controlled substances. Officers ultimately searched Cournoyer's purse and found baggies containing drug residue,<sup>1</sup> which Cournoyer admitted belonged to her.

Cournoyer pleaded guilty to one count of fifth-degree controlled-substance crime. See Minn. Stat. § 152.025, subd. 2(1) (2016). At the plea hearing, defense counsel advised the district court that he would be submitting a sentencing memorandum arguing that law enforcement officers cannot conduct warrantless searches of probationers. He submitted a memorandum contending that only probation officers, not law enforcement officers, may

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<sup>1</sup> Additional drugs were found in the vehicle near where Cournoyer was sitting.

conduct warrantless searches of probationers because no statute authorizes a search overseen by police officers. The memorandum also contended that applying “blanket” conditions of probation was not supported by research in reducing recidivism.

A different judge sentenced Cournoyer to a stay of imposition for five years and supervised probation with terms and conditions. One of those conditions required that Cournoyer submit to “[r]andom testing at her own expense, at the request of any licensed peace officer, probation agent or correctional officer.” Another condition required that she “[s]ubmit to [r]andom [s]earches at the request of any licensed peace officer, probation agent or correctional officer.” In pronouncing these conditions at the sentencing hearing, the district court characterized them as “random spot check testing” and searches of “anything that [Cournoyer has] control over.” The district court also imposed the general condition of probation that she was to “[c]ooperate with the search of [her] person, residence, vehicle, workplace, property and things as directed by [her] probation officer.”

Defense counsel inquired of the court:

Q.: When the court says random spot check testing, are they saying suspicion-less searches or are they requiring at least reasonable suspicion?

A.: Random.

Q.: Can the court specify as to what random means?

A.: If they want to test her they can test her.

Defense counsel then renewed a constitutional objection to the search conditions, citing *State v. Anderson*, 733 N.W.2d 128 (Minn. 2007). This appeal follows.

## DECISION

Cournoyer challenges the district court's imposition of probation conditions that required her to submit to (1) random chemical testing that was not initiated by probation agents and (2) suspicionless searches of her person or property at the request of law enforcement, probation, or corrections officers. She contends that these conditions violated her Fourth Amendment rights. To address this argument, we first examine general authority for conditions of probation, as well as how probation conditions related to searches are scrutinized under the Fourth Amendment. We then determine whether each of the challenged conditions violated Cournoyer's right to be free from unreasonable searches and seizures.

### ***General probation conditions***

Under Minnesota law, with certain exceptions, when a district court stays the imposition of sentence, it may place the defendant on probation subject to terms and conditions. Minn. Stat. § 609.135, subd. 1(a)(2) (2016). Probation conditions reflect the penal objectives of deterring further criminal conduct, punishing the offender, rehabilitating the offender, and protecting the public against continued criminal behavior. Minn. Stat. § 609.02, subd. 15 (2016); *see also* Minn. Sent. Guidelines 3.A.2 (2016) (stating similar objectives of probation).

In addition, the Minnesota Judicial Branch Policy articulates standard conditions of probation, which are imposed in all felony convictions and to which Cournoyer was subject. *See* Minn. Judicial Council, *Minnesota Judicial Branch Policy 522, Standard Conditions of Probation* (Mar. 1, 2015). Those conditions, among other requirements,

state that a probationer must inform his or her probation officer of any contact with law enforcement or criminal charges, and “[c]ooperate with the search of [his or her] person, residence, vehicle, workplace, property, and things as directed by your probation officer.” *Id.*

The determination of probation conditions generally rests within the district court’s broad discretion over sentencing matters. *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989). But the conditions of probation imposed by the district court must be reasonably related to the purposes of sentencing and probation without being unduly restrictive. *Id.* Although the rights of probationers are subject to certain limitations, this court will carefully review the district court’s discretion in establishing probation conditions “when [those] conditions restrict fundamental rights.” *Id.* at 516.

#### ***Fourth Amendment requirements for probation searches***

When probation conditions involve searches, we examine constitutional requirements as well as statutes and policies. Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art I, § 10. Therefore, to address Cournoyer’s argument relating to illegal searches, we must examine Fourth Amendment principles as applied to probationary searches. Probationers “do not enjoy the absolute liberty to which every citizen is entitled.” *Griffin v. Wisconsin*, 483 U.S. 868, 874, 107 S. Ct. 3164, 3169 (1987) (quotation omitted). But “probation searches fall within the ambit of the Fourth Amendment, and must therefore comport with a standard of reasonableness.” *State v. Earnest*, 293 N.W.2d 365, 368 (Minn. 1980).

“The touchstone of the Fourth Amendment is reasonableness.” *United States v. Knights*, 534 U.S. 112, 118, 122 S. Ct. 587, 591 (2001). In *Knights*, the United States Supreme Court articulated a totality-of-the-circumstances test for probationary searches, holding that the reasonableness of such a search is determined by balancing the degree to which it intrudes on a person’s privacy versus the degree to which the search is needed to promote legitimate governmental interests. *Id.* at 118-19, 122 S. Ct. at 591. The Court concluded that “[t]he degree of individualized suspicion required of a search is a determination of when there is a sufficiently high probability that criminal conduct is occurring to make the intrusion on the individual’s privacy interest reasonable.” *Id.* at 121, 122 S. Ct. at 592. Thus, the Court held that, balancing governmental and private interests, reasonable suspicion was constitutionally required to conduct a search of a probationer’s home. *Id.* at 121, 122 S. Ct. at 592-93.

Following *Knights*, the Minnesota Supreme Court also concluded that a reasonable-suspicion standard satisfied the Fourth Amendment with respect to the search of a probationer’s home. *State v. Anderson*, 733 N.W.2d 128, 140 (Minn. 2007). The relevant probation condition in *Anderson*, which the supreme court presumed was validly imposed, required the probationer, “when ordered by [his] Agent, [to] submit to search of [his] person, residence, or any other property under [his] control.” *Id.* at 131, 139. The condition in *Anderson* did not mention searches ordered by law enforcement.

We now turn to the searches challenged by Cournoyer within the parameters established under *Knights* and *Anderson*.

***Condition allowing random drug testing by police officers***

Cournoyer argues that the district court's probation condition of warrantless drug testing by law enforcement without the supervision of probation agents violates her Fourth Amendment right to be free from unreasonable searches and seizures. The parties agree that in this context, Cournoyer's condition of random testing refers to testing for illegal substances, which is most often urine testing. A urine test is a search subject to the Fourth Amendment. *State v. Brooks*, 838 N.W.2d 563, 568 (Minn. 2013); see *State v. Thompson*, 886 N.W.2d 224, 230-31 (Minn. 2016) (holding in a related context that a urine test given under Minnesota's implied-consent law implicates a driver's privacy rights under the Fourth Amendment).

With this understanding, Cournoyer contends that the district court's probation condition allowing not only probation agents, but also law-enforcement officers, to initiate random testing, is unreasonable and does not comport with the Fourth Amendment standards governing probationary searches articulated in *Knights* and *Anderson*.<sup>2</sup> Defense counsel argued to the district court that, to pass muster under the Fourth Amendment, random testing was required to be performed at the direction of probation, not law

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<sup>2</sup> At oral argument, defense counsel advanced the additional argument that random suspicionless testing, when requested by *either* law enforcement or a probation agent, violated Cournoyer's Fourth Amendment rights. We note, however, that Cournoyer did not raise this issue before the district court and mentions it only in passing in her brief to this court. We therefore decline to address this argument. See *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989) (declining to consider an issue that was not adequately briefed or litigated).

enforcement. The state, on the other hand, argued that based on Cournoyer's past history of drug use, it was reasonable for police officers, as well as probation agents, to monitor her probation.

In this case, we conclude that the condition of random testing at the request of police, rather than probation officers, did not meet Fourth Amendment requirements for a reasonable search. The statutory authority governing probation, caselaw, and policy all support our conclusion.

The statutory scheme for probation provides that the district court “may place the defendant on probation with or without supervision” and “may order the supervision to be under the probation officer of the court.” Minn. Stat. § 609.135, subd. 1(a)(2). It also provides that the district court may order supervision “by some other suitable and consenting person.” *Id.* But the statute does not refer to supervision by police officers. *See id.*

Further, in *Anderson*, the supreme court recognized that a “special relationship” exists between probation officers and probationers. *Anderson*, 733 N.W.2d at 137 (citing *Earnest*, 293 N.W.2d at 368). Based on this relationship, the probation officer is required to work toward the probationer's rehabilitation, as well as protecting the public interest. *Earnest*, 293 N.W.2d at 368. To accomplish the goals of probation, the probation officer “must have thorough up-to-date knowledge of the probationer's personal habits,



relationships, and activities.” *Id.*<sup>3</sup> Conversely, police officers do not have such a responsibility to balance goals of rehabilitation and protecting the public.

Additional Minnesota law and policy recognize the unique role of the probation agent in monitoring court-imposed conditions. Referring to analogous intensive-supervised release conditions, the legislature has provided that the Minnesota Commissioner of Corrections “may impose appropriate conditions of release . . . including but not limited to unannounced searches of the inmate’s person, vehicle, premises, computer, or other electronic devices . . . by an intensive supervision agent.” Minn. Stat. § 244.05, subd. 6(b) (2016) (emphasis added). And the standard conditions of probation, which were incorporated in Cournoyer’s sentence, likewise required Cournoyer to cooperate with searches “as directed by [her] probation officer.” See *Policy 522, Standard Conditions of Probation* (emphasis added).

Here, the state has cited no authority to counter the statutes and policies that delineate the special role that probation officers play in monitoring court-imposed conditions. We discern neither legal authority nor exceptional facts to support a proposition that in this case, random testing by law enforcement, without the input of probation, constitutes a reasonable search under the Fourth Amendment.<sup>4</sup> The state argues

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<sup>3</sup> The supreme court decided *Earnest* under the former standard, which required probable cause to search a probationer’s residence. *Anderson*, 733 N.W.2d at 137. But its observations on the relationship between a probationer and probation officer remain relevant under the current reasonable-suspicion standard articulated in *Anderson*. See *id.* (noting that *Earnest* did not address the issue of “whether a warrantless probation search supported by less than probable cause would be reasonable”).

<sup>4</sup> We recognize that in *Knights*, the supreme court upheld a search of the probationer’s home conducted by a police officer. See *Knights*, 534 U.S. at 115, 122 S. Ct. at 589.

that the probation officer who wrote the presentence investigation believed that Cournoyer's risk level and prior long-term chemical use supported random testing by police officers because law enforcement would be most likely to encounter Cournoyer in day-to-day activities. But this argument does not recognize the special relationship between the probationer and the probation agent and the agent's role in monitoring the probationer's activities, which law enforcement does not share. And it disregards the standard conditions of probation, which specify cooperating with searches "as directed by [the] probation officer," not law enforcement. *See id.* Therefore, we conclude that the district court abused its discretion by imposing a condition that permitted random chemical testing initiated by police officers, and we reverse the portion of the district court's order imposing this condition.

***Conditions allowing other searches without reasonable suspicion***

The district court also imposed probation conditions allowing random searches of Cournoyer's home, person, vehicle, workplace, or property, and requiring her to cooperate with these searches as directed by probation. The parties agree that these conditions apply to searches that do not involve chemical testing. Cournoyer argues that the district court erred by imposing these probation conditions without articulating that reasonable suspicion is required to conduct such searches. The state acknowledges that under *Knights* and

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However, that decision did not involve a condition of random chemical testing and therefore does not resolve the issue before us relating to random chemical testing initiated by police without the assistance of probation officers. Although we do not address whether such testing is ever permissible, in this case, we cannot conclude that it was necessary to go beyond the requirements of probation as generally laid out in law and policy.

*Anderson*, reasonable suspicion is required for such searches. *See Knights*, 534 U.S. at 121, 122 S. Ct. at 593; *Anderson*, 733 N.W.2d at 140. We agree as well.

When sentencing an offender, the district court must “[s]tate precisely the terms of the sentence.” Minn. R. Crim. P. 27.03, subd. 4(A). Here, in sentencing Cournoyer, the district court made no findings on the reasonableness of the condition allowing random searches of her home, person, or property. It did not articulate the reasonable-suspicion standard required to initiate those searches. *See Anderson*, 733 N.W.2d at 140. Rather, the court specifically stated that random searches were permissible. We conclude that the district court abused its discretion in sentencing Cournoyer with conditions of “random” searches of her home, person, property, and “everything she has control over.” Therefore, a remand is required to clarify these conditions imposed by the district court.

Because the district court abused its discretion by imposing a probation condition that required Cournoyer to submit to random spot check chemical testing by police that was not initiated by probation, we reverse that portion of the district court’s order. We remand the portions of the district court’s order dealing with random searches of Cournoyer’s home, person, vehicles, workplace, and property, and the general condition requiring her to submit to such searches, to clarify that the district court correctly applied the reasonable-suspicion standard in ordering those conditions.

**Reversed in part and remanded.**