

Tenth Circuit

# Legal Advisor

Jerry Hill, State Attorney



December 1993

*As we come to the end of the year, I want to thank each of you on behalf of my staff and the citizens of this Circuit for your service to us in fighting crime and protecting the public's safety.*

*May each of you know and celebrate the joy of this holiday season and a happy and prosperous new year.*

A handwritten signature in blue ink that reads 'Jerry Hill'. The signature is written in a cursive, flowing style.

# UNDER WHAT CIRCUMSTANCES CAN LAW ENFORCEMENT OFFICERS MAKE AN ARREST OUTSIDE OF THEIR JURISDICTION?

By Cass Castillo

## Evolution of Concepts

An underlying and basic rule of law regarding a police officer's right to make a lawful arrest is that an officer's arrest powers are limited to the boundaries of his jurisdiction.

The application of this rule to local authorities results in both county and municipal law enforcement officers having no official powers when they are outside of their municipality or county.

There have evolved, however, three exceptions to this general rule. Two of the exceptions were created by the legislature with the enactment of the "fresh pursuit doctrine" as codified in F.S. 901.25, and when an officer acts under the direction of another officer as codified in F.S. 901.18.

The third exception, known as a "citizen's arrest", was recognized

in 1984 by the Florida Supreme Court in the case of Phoenix v. State, 455 So. 2d 1024 (Fla. 1984).

## Fresh Pursuit

The fresh pursuit exception permits law enforcement officers who are attempting to arrest a person outside their jurisdiction to pursue that person outside their jurisdiction and effect the arrest.

In addition to authorizing the pursuit of a person who had committed either a felony or a misdemeanor, the exception also permits the pursuit of a person who has violated a county or municipal ordinance or a traffic violation.

Furthermore, F.S. 901.25(4) states that local law enforcement officers, when making an arrest in fresh pursuit continue to be liable for their actions in the same manner as they would if the arrest had occurred within the officer's own jurisdiction.

Additionally, F.S. 901.25(5) provides that officers involved in a fresh pursuit arrest continue to be fully protected regarding pension, retirement and worker's compensation just as if the arrest had occurred in his own jurisdiction.

For the convenience of readers, the relevant text of this statute is provided below.

**F.S. 901.25, Fresh pursuit, arrest outside jurisdiction**

(1) The term "fresh pursuit" as used in this act shall include fresh pursuit as defined by common law and also the pursuit of a person who has committed a felony. It shall also include the pursuit of a person suspected of having committed a felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. It shall also include the pursuit of a person who has violated a county or municipal ordinance or chapter 316 or has committed a misdemeanor.

(2) Any duly authorized state, county, or municipal arresting officer is authorized to arrest a person outside his jurisdiction when in fresh pursuit.

Such officer shall have the same authority to arrest and hold such a person in custody outside his jurisdiction, subject to the limitations hereafter set forth, as has any authorized arresting state, county, or municipal officer of this state to arrest and hold in custody a person not arrested in fresh pursuit.

(3) If an arrest is made in this state by an officer outside the county within which his jurisdiction lies, he shall immediately notify the officer in charge of the jurisdiction in which the arrest is made. Such officer in charge of the jurisdiction shall, along with the officer making the arrest, take the person so arrested before a county court judge or other committing magistrate of the county in which the arrest was made without unnecessary delay.

(4) The employing agency of the state, county, or municipal officer making the arrest shall be liable for all actions of said officer in the same fashion that it is liable for his actions made while making an arrest within his jurisdiction.

**Direction of another officer**

Under F.S. 901.18, police officers who are outside their jurisdiction but act under the direction of another police officer who has jurisdiction are authorized

to make arrests.

**F.S. 901.18, Officer may summon assistance**

A peace officer making a lawful arrest may command the aid of persons he deems necessary to make the arrest. A person commanded to aid shall render assistance as directed by the officer. A person commanded to aid a peace officer shall have the same authority to arrest as that peace officer and shall not be civilly liable for any reasonable conduct in rendering assistance to that officer.

**Citizens' Arrest**

A private citizen has a right to arrest a person who commits a felony or breach of peace in his presence.

A citizen is also permitted to arrest a person when a felony has been committed and when the arresting officer has probable cause to believe, and does believe, the person arrested to be guilty.

Phoenix v. State, Supra.

When legislature vested police officers with arrest powers it did not intend to divest officers of their

rights as private citizens. A police officer who is outside his jurisdiction maintains his right as a private citizen to make an arrest.

However, in an effort to prevent law enforcement officials from misusing the powers of their office in making a citizens' arrest, the courts of this state have held that law enforcement officers may not make a citizens' arrest under the "color of their office".

The color of office principle is a limitation on the power of police to conduct investigations and to gather evidence outside of their jurisdiction. Its purpose is to prevent police officers from using the power of their office to observe or otherwise gain access to evidence which is not available to a private citizen.

The phrase "color of office" refers to an officer actually holding himself out as a police officer to observe the unlawful activity or to gain access to evidence not available to a private citizen. Phoenix v. State, supra. This article doesn't address arrests made pursuant to mutual aid pacts.

# WHY THE WEEKLONG SUBPOENAS

By Wayne Durden

Several officers have recently expressed concerns and asked questions about trial subpoenas that are issued for an entire week when, in many cases, the officer's attendance is actually needed for only one day.

Subpoenas are being issued for an entire week because judges - both Felony and Misdemeanor - have directed that all jury trial cases to be tried during any given week be docketed for Monday morning of that week.

Only then does the judge decide which day of the week each case will be tried. Only then does the judge inform the Assistant State Attorney present in court and Witness management.

Witness Management makes a diligent and concerted effort to notify witnesses as soon as possible when they will be required to appear in court.

If you have not heard from Witness Management by 5:00 P.M.

on Monday of the trial week for which you have been subpoenaed, you should call the after-hours recorded message at 534-4020 for the specific date and time you are required to appear.

Upon receipt of your subpoena it is essential that you contact Witness Management and provide Witness Management with information on how to contact you.

Continue to keep in touch with Witness Management in the days or weeks preceding - and during - a trial week so you will know when to appear.

If you have special or unusual problems that would interfere with your attendance it is essential that you contact Witness Management as soon as you are aware of the conflict.

Witness Management will in turn notify the State Attorney's Office or direct you to the assistant state attorney handling the case.

**The defendant was entrapped**

The defendant was charged with dealing in stolen property and filed a motion to dismiss the information, asserting that he had been entrapped.

The facts on which the motion was based were that the Pasco County Sheriff's Office began an investigation of all pawn shops on the west side of the county after victims of thefts reported finding their property in certain pawn shops, including the defendant's.

Two confidential informants went to the defendant's pawn shop

and sold him a rifle which they represented as having been stolen.

The trial court granted the motion to dismiss, and on appeal, the Second District affirmed, holding that the defendant had been entrapped as a matter of law because law enforcement had no independent information that the defendant or his business ever knowingly purchased stolen property or was otherwise predisposed to commit the charged offense. State v. Howell, 18 FLW D2510 (Fla. 2nd DCA November 24, 1993).

**She who controls the purse controls the cocaine**

The defendant was charged with trafficking in cocaine.

At her trial, the evidence showed that she was a passenger in the back seat of a car that was stopped for a traffic violation.

When the driver of the vehicle was arrested, the officer asked the defendant to produce her driver's license in order to drive the car away.

As the defendant looked  
(See "Purse" next page)

### **Claim of late night lawn mowing justified detention**

The defendant was charged with burglary and filed a motion to suppress evidence.

The evidence on which the motion was based was that an officer stopped the defendant while the defendant was wheeling a lawnmower through a residential neighborhood at about 11 P.M..

The defendant told the officer that he had just finished a job, but the officer found that the mower was cold and clean of grass. When questioned further the defendant could not remember the address or the name of the person for which he had done the job.

The officer then drove the defendant around the neighborhood to look for the house, and when the defendant could not point it out, the officer asked him if he had stolen the lawnmower. The defendant admitted the theft and was arrested.

The trial court granted the motion to suppress, but on appeal, the Third District reversed, holding that the detention of the defendant was justified because the officer had a reasonable suspicion that the defendant had committed a criminal offense. State v. Williams, 18 FLW D2481 (Fla. 3rd DCA November 23, 1993).

### **Not everyone present when search warrant executed may be searched**

The defendant was charged with possession of cocaine and possession of drug paraphernalia and filed a motion to suppress.

The facts on which the motion

was based were that officers obtained a search warrant to search an apartment. When they arrived to execute the warrant they saw the defendant walk down the

(See "Search" next page)

**"Purse"**

through her purse, the officer noticed several ziplock bags containing marijuana. He arrested the defendant and upon searching the purse, found cocaine.

The defendant testified she did not know the cocaine was in the purse and that her purse had been on the armrest of the car while she was asleep. She stated she only

awoke when the officer was behind the vehicle.

The defendant was convicted as charged, and on appeal, the Supreme Court affirmed, holding that there was sufficient evidence to create a jury question as to whether the defendant had knowledge of the cocaine in her purse. Gartrell v. State, 18 FLW S605 (Fla. November 18, 1993).

**Failure to remit taxes to state is theft**

The defendant was charged with grand theft.

At his trial, the evidence showed that he owned a service station. As a result of selling gas, he collected more than \$37,000 in gas taxes which he failed to remit to the state.

He admitted that he used the tax proceeds to pay other business and personal debts. He was convicted as charged.

On appeal, he argued that the tax proceeds were his personal property and that his failure to remit them to the government merely created the relationship of debtor and creditor.

The Supreme Court rejected this argument and affirmed, holding that a retailer who collects taxes is an agent for the state with regard to these taxes and has no ownership interest in them. Cash v. State, 18 FLW S611 (Fla. December 2, 1993).



**"Search"**

steps from the apartment with the person who lived in the apartment.

The officers detained both men, and after searching the apartment where they found cocaine, they searched the defendant and found a cocaine pipe containing residue in his right front pocket.

At the time of the search, the officers had no other information which attached the defendant to the apartment.

The trial court denied the motion to suppress, and the defendant was convicted as charged.

On appeal, however, the Second District reversed, holding that officers may not search a person at the scene of the execution of a search warrant unless they have a reasonable suspicion that the person is involved in criminal activity. Calhoun v. State, 18 FLW D2468 (Fla. 2d DCA Nov. 17, 1993).

**Issuance of notice to appear justifies search**

The defendant was charged with possession of cocaine and filed a motion to suppress. The evidence on which the motion was based was that the defendant was placed under arrest for trespass and possession of alcohol by a minor.

The officer advised the defendant that he would be released on a notice to appear if there were no complications in the arrest. The officer then searched the defendant and found cocaine in his cap.

The trial court granted the motion to suppress on the grounds that the officer didn't have the authority to arrest since he had announced that he was going to issue a notice to appear.

On appeal, the Second District reversed, holding that an officer may conduct a search incident to arrest anytime the officer has probable cause to arrest even though the officer isn't taking the defendant into physical custody. State v. McCray, 18 FLW D2365 (Fla. 2d DCA Nov. 5, 1993).

Law enforcement and other public safety workers who have questions or need further information relating to the articles written by Cass Castillo and Wayne Durden may contact these assistant state attorneys at the following numbers: Castillo, 534-4959; Durden, 534-4834.

General inquiries relating to legal matters can be routed to appropriate sources by our receptionists at 534-4800.

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