Tenth Circuit Legal Advisor

Jerry Hill, State Attorney

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Police officers assisting probation offiicers in warrantless searches

By Cass Castillo

Recently a Trafficking in Methamphetamine case was no-billed because the contraband had been improperly seized by law enforcement.

The legal issue raised in the case focused on the role of police officers assisting a probation officer who is conducting a warrantless search of an individual who is on probation.

Because this is a recurring situation, a case study may be helpful to guide future action by police officers and probation officers.

THE FACTS

In May 2000, a police officer assisted several probation officers during a warrantless search of a probationer's home. The police officer's role was only to provide security for the probation officers.

However, during the search, a

(Continued on page 2)

INSIDE

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probation officer called the police officer into the probationer's bedroom and showed him several items of drug paraphernalia.

The probation officer then located a safe in the probationer's bedroom and a police canine alerted on the safe. The probationer was then requested by the probation officer to open the safe. Upon opening the safe, the probation officer discovered and removed nearly 400 grams of methamphetamine.

The probationer was then arrested and chargedby the probation officer with Violation of Probation and by the police officers with Trafficking in Methamphetamine.

CASE LAW

In *Grubbs v. State,* 373 So. 2d 905 (Fla. 1979), the Florida Supreme Court authorized the search of a probationer's person or residence by a probation officer without a warrant. However, the Court said that the seized evidence could only be used in a probation violation proceeding.

The Court further said that the seized evidence could only be used in a new criminal proceeding if there was compliance with customary Fourth Amendment requirements.

In *Lawson v. State,* (Fla. App. 4 Dist. 1999), the Court held that a defendant's Fourth Amendment rights were not violated when police officers used information gained in a valid administrative search to obtain a search warrant and seize evidence discovered during an administrative search.

APPLICATION OF CASE LAW

Applying the principles announced in the *Grubbs* and *Lawson* opinions to the preceding facts, it becomes obvious that the Trafficking in Methamphetamine case could not be charged. Because the police officers did not obtain a court authorized search warrant prior to their search of the defendant's property, the seized evidence could not be used to support a new criminal charge. The seized evidence could, however, be used in the violation of probation hearing.

CONCLUSION

The following procedure should be used by probation officers conducting administrative searches and by police officers who are asked to assist them:

1. Probation officers have a right to

search a probationer and also to have police officers available during the search for their personal safety.

2. The police officers cannot participate in the administrative search.

3. When a probation officer finds evidence of contraband, the probation officer shold stop the administrative search and immediately notify police.

4. The police officers can use the information provided by the probation officer to establish the probable cause for a court authorized search warrant.

5. The police officers can secure the premises (without searching) while awaiting arrival of the search warrant.

6. Once the warrant is obtained, the police officer should execute the search warrant in the same manner as other search warrants.

7. Evidence gathered pursuant to the court authorized search coould then be used in both the violation of probation hearing as well as a new criminal proceeding.

Legal Advisor
Editorial Staff

Jerry Hill....Publisher
Chip Thullbery....Managing Editor
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Drawer SA, P.O. Box 9000, Bartow FL 33831-9000 (863) 534-4800

FROM THE COURTS

Edited by Chip Thullbery

Perjury takes more than one witness

The defendant was charged with perjury.

At his trial, the evidence established that he had made a statement under oath that he was not present at a certain meeting. One witness then testified that the defendant was present at the meeting.

The defendant was convicted as charged.

On appeal, the Third District reversed, holding that a perjury conviction must be supported by more than the testimony of one witness.

Nogues v. State, 25 FLW D1313 (Fla. 3d DCA May 31, 2000).

Parents can consent to search of juvenile's room

The defendant, a juvenile, was charged with theft and filed a motion to suppress evidence.

The facts on which the motion was based were that when the defendant's father learned that the defendant was suspected of selling drugs and weapons, he gave permission to police to search his son's bedroom. The defendant, however, objected. Despite the objection, the police searched the room and found two stolen handguns.

The trial court granted the motion to suppress, but on appeal, the Fourth District reversed, holding that a parent may consent to a search of a juvenile's prpperty even if the juvenile objects.

State v. S.B., 25 FLW D1320 (Fla. 4th DCA May 31, 2000).

Entry into area not open to public was burglary

The defendant was charged with burglary.

At his trial, the evidence established that he reached out of his car through the drive-in window of a fast food restaurant and grabbed money out of the cash register.

He was convicted as charged.

On appeal, he argued that he was not guilty of burglary because the restaurant was open to the public at the time.

The Fifth District rejected this argument and affirmed, holding that since access to the

(Continued on page 5)

(Continued from page 4)
area behind the drive-in window was restricted, it did not constitute premises open to the public.

Fine v. State, 25 FLW D1289 (Fla. 4th DCA May 26, 2000).

Suspension of privilege to drive supported conviction

The defendant was charged with driving with a suspended license and filed a motion to dismiss, asserting that the state could not establish a *prima facie* case.

The facts on which the motion was based were that while the defendant's privilege to drive had been suspended, he had never had a driver's license.

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

On appeal, the Second District affirmed, holding that a suspension of a defendant's driving privilege, even if the defendant has never had a license, will support a conviction for driving on a suspended license.

Carroll v. State, 25 FLW D1271 (Fla. 2d DCA May 24, 2000).

Giving of real name after officer already knew it not a defense to resisting charge

The defendant, a juvenile, was charged with resisting an officer without violence.

At her trial, the evidence established that while an officer was investigating to determine if she was a runaway, she gave the officer a false name. However, after he discovered her true identity, she told him her real name.

She was convicted as charged.

On appeal, the Third District affirmed, holding that the giving of her real name after the officer had already discovered it was not a defense to a charge of resisting.

A.P. v. State, 25 FLW D1422 (Fla. 2d DCA June 14, 2000).