Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

Vol. 14, No. 3 *March 2000*

Warrantless arrests of probation and community control violators

By Gary Allen

The April 1998 Legal Advisor alerted you to the change in Section 948.06, Florida Statutes, which allows law enforcement officers to arrest, without warrant, violators of probation and community control.

We have now had time to get feedback on the operation of the statute, and we have heard many "horror stories" that have caused problems for the Department of Corrections, the Clerk's Office, and the jails.

The purpose of this article is to assist you in avoiding a repetition of those problems.

The statute says that in order to make a warrrantless arrest of a violator of probation or community control, a law enforcement officer

INSIDE:

must satisfy each of the following requirements. The officer must:

1. have reasonable grounds to believe that an offender is on probation or community control, and

2. have reasonable grounds to believe that the offender has violated supervision in a material respect, and

3. forthwith return the offender to the court granting probation or community control.

Part one, reasonable grounds to believe that the defendant is on probation, must come from someone who actually has knowledge of the defendant's status.

The best source is the defendant's probation officer. Here are the Department of Corrections phone numbers for the Tenth Circuit during business hours:

Bartow.....534-7010
Lakeland North.....680-5571
Lakeland South.....499-2222
Lake Wales.....687-4111
Sebring.....386-6018
Wauchula.....733-4777
Winter Haven.....291-5225

After hours, call the Lakeland Probation and Restitution Center at 499-2220.

Problems have come from officers taking a girlfriend's, boyfriend's or other citizen's word that the defendant is under supervision.

Several defendants have been arrested and later turned out not to be on probation or community control.

Obviously, this is a bad situation.

Even if the defendant volunteers that he is on supervision, an effort should be made to verify this assertion.

Supervision could have been terminated without the defendant's knowledge.

Part two, reasonable grounds to believe that the defendant has materially violated the probation, presents two possibilities.

If you have arrested the defendant on a new law charge, that will certainly be a material violation and you will have met this requirement of the statute.

If you believe the probationer/ community controllee has committed a technical violation of his or her probation, you will be back in the same situation as in Part one — you must find out if the conduct you are observing really violates the defendant's supervision.

Examples of possible technical violations are: being out past a curfew, being out of county, drinking alcohol, etc.

Consider this situation. It's midnight and you see the defendant walking down the street.

You stop to talk, and the defendant volunteers that he is on community control and is supposed to be home. There you have reasonable grounds.

Otherwise only the probation officer can answer this for sure. If you can't contact the probation officer, you could do a field interrogation report and forward it to the appropriate probation officer for action.

Again, people have been arrested on technical violations without the arresting officer contacting the probation officer, and it was later found there was no violation.

This could be a potential source of liability.

Part three represents the most serious problem for the law enforcement officer.

The statute requires the arresting officer to forthwith bring the defendant before the court granting probation or community control.

Usually, you are in the same county as the defendant's supervision.

When you book the defendant into jail, you'll prepare the appropriate affidavit for book-in and it is forwarded to the Clerk's Office for filing. The wheels turn and you've done your part under the statute.

However, giant problems come up when the defendant is on probation in a different county.

For example, it's midnight and you pull over a carload of people.

You determine that the defendant is on probation in Hillsborough County. Also, you determine that the defendant is not supposed to be outside Hillsborough County

This is a technical violation, and parts one and two are satisfied.

In this case, the court granting probation is Hillsborough County.

If you arrest the defendant, it is your responsibility to bring the defendant to Hillsborough County to get the violation process going.

Believe it or not, we have had people sit in local jails on violations that turned out to be from other states.

Nobody in that other state was ever contacted to let them know the defendant was here or had violated supervision.

The arresting officer could also face liability for failure to follow through with this part of the statute.

When the situation comes up where you have only technical violations on an out-of-county, and especially an out-of-state probation, you may be better off simply doing a field interrogation report, releasing the defendant, and then forwarding the information to the appropriate probation officer.

In that case, it will be the probation officer's responsibility to determine if there is a violation and file the appropriate paperwork.

Please note: if you charge the defendant with violating his probation, in addition to new charges, the violation of probation should be put on a separate affidavit. The reason for this is that the violation of probation charge already has its own case number. The new charges will get a separate case number. This will prevent confusion in the Clerk's Office.

In fact, you can avoid problems with any of the three parts of the statute by doing an F.I.R. and letting the probation officer take the appropriate actions based on your information.

Finally, don't forget that these guidelines only apply to warrantless arrests of probation and community control violators.

Where there is an existing warrant for the defendant, you should copntinue to handle those cases as always.

FROM THE COURTS

Edited by Chip Thullbery

Seizure of drugs from pants was not a strip search

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

The facts on which the motion was based were that while conducting a neighborhood surveillance operation, an officer saw the defendant take some money from an individual and then reach into his crotch area for a plastic bag containing what the officer believed was crack cocaine.

The officer had another officer arrest the defendant, and after handcuffing himi, that officer pulled the defendant's waistband outward and extracted the bag of cocaine.

The trial court granted the defendant's motion on the grounds that the officer's actions amounted to a strip search which was not conducted in accordance with section 901.211, Florida Statutes.

On appeal, the Second District reversed, holding that the officer's taking of the bag was merely a seizure justified by probable cause and not a strip search.

State v. Days, 25 FLW D104 (Fla. 2d DCA Dec. 29, 1999).

Knowledge of child's age not necessary for child pornography conviction

The defendant ws charged with promoting sexual performance by a child and possessing pictures containing sexual performance by a child in violation of section 827.071, Florida Statutes.

At his trial, he moved for a judgment of acquittal on the grounds that the State had failed to prove that he knew the victim was a minor.

The trial court denied his motion, and he was convicted as charged.

On appeal, the Fourth District affirmed, holding that knowledge of the victim's age is not an element of a section 827.071 crime.

Nicholson v. State, 25 FLW D86 (Fla. 4th DCA Jan. 5, 2000).

Owner/passenger liable in vehicular homicide prosecution

The defendant was charged with vehicular homicide.

At his trial, the evidence established that he was the owner of and passenger in a truck which was driving at a speed between twenty and twenty-five miles an hour on an interstate highway without taillights when it was hit from behind by the victim.

The evidence also showed that the defendant had asked the driver to drive because he, the defendant, could not operate a stick shift and that an officer had earlier warned them to get off the highway because of the missing taillights.

The defendant was convicted as charged, and on appeal, the Fifth District affirmed, holding that the evidence was sufficient for the jury to find the defendant guilty as a principal.

Michael v. State, 25 FLW D152 (Fla. 5th DCA Jan. 7, 2000).

Being invited into a home is a complete defense to burglary

The defendant was charged with two counts of first degree murder and one count of armed burglary.

The evidence at his trial established that the victims invited him into their house and that he subsequently murdered them there.

He was convicted as charged.

On appeal, the Supreme Court reversed the armed burglary conviction, holding that if a defendant establishes that the premises he entered were open to the public or that he was an invitee or licensee, he has a complete defense to a charge of burglary.

The Court further held that the "remaining in" language in the burglary statute applies only when the remaining in is surreptitious.

Delgado v. State, 25 FLW S79

Officer's observation of object in mouth provided probable cause

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

The facts on which the motion was based were that while talking to the defendant during a consensual encounter, an officer saw an object in the defendant's mouth which was partially concealed by his upper lip.

Based on his training and experience, the officer believed the object to be crack cocaine.

The officer ordered the defendant to spit out the substance, and the defendant did so.

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

On appeal, the Fourth District affirmed, holding that the officer had probable cause to believe the defendant was in possession of cocaine.

Curtis v. State, 25 FLW D163 (Fla. 4th DCA Jan. 12, 2000)

Tenth Circuit
LEGAL ADVISOR
Editorial Staff

Jerry Hill.....Publisher
Chip Thullbery....Managing Editor
Mike Cusick..Legal Content Editor
Carl Weaver....Layout and Makeup

The "Tench Circuit Legal Advisor" is published by the Office of the State Attorney, Drawer SA, P.O. Box 9000, Bartow Fl 33830-9000 (863) 534-4800