OFFICE OF THE STATE ATTORNEY
TENTH JUDICIAL CIRCUIT

Legal Advisor

Volume 17, Issue 10 October 2003

JERRY HILL
STATE ATTORNEY

IMPORTANT BARTOW TELEPHONE NUMBERS:

Switchboard	534-4800
Misdemeanor Intake	534-4928
Misdemeanor	534-4926
Domestic Violence	534-4986
Victim Assistance	534-4989
Felony Intake	534-4987
Felony	534-4964
Investigations	534-4804
Violation of Probation	534-4803
Child Abuse/Neglect	534-4857
Homicide Division	534-4959
On Call Pager	819-1526
Worthless Checks	534-4874
Juvenile Division	534-4905
FAX	534-4945
WITNESS MANAGEMENT:	
Misdemeanor/Traffic	534-4021
Felony	534-4020

USING CHAPTER 948, FLORIDA STATUTES, TO LAW ENFORCEMENT'S ADVANTAGE

BY: DON RATTERREE

Our federal government has recently concluded something, which those of us in the system have known for years: a person on probation is more likely to violate the law than an ordinary citizen. A three-year federal study of seventeen states by the U.S. Dept. of Justice, Office of Justice Programs reported that 43 percent of felons placed on probation were re-arrested within three years. A second study by the U.S. Dept. of Justice showed that 23percent of state prisoners were probation violators. Offenders on probation or community control usually have a great desire to avoid contact with law enforcement because there are several ways to violate supervision. Most people on supervision realize that a violation could result in a trip to jail or prison so they try and hide their activities from law enforcement.

There is a little used, but valuable tool available to law enforcement officers in Chapter 948, Florida Statutes. This statute deals with Probation and Community Control. We are interested in F.S. 948.06 (1) because it deals with violations of probation and community control. The pertinent part of Section 6 reads as follows: "Whenever within the period of probation or community control there are reasonable grounds to believe that a probationer or offender in community control has violated his or her probation or community control in a material respect, **any law enforcement officer** who is aware of the probationary or community control status of the probationer or offender in community control or any parole or probation supervisor **may arrest** or request any county or municipal law enforcement officer to arrest such probationer or offender **without warrant**..."

There are a number of ways law enforcement can use F.S. 948 to its advantage. It allows officers to contact individuals who they may not normally be able to, and it allows warrantless searches and arrests by law enforcement. To take advantage of F.S. 948.06(1), an officer must first determine if the suspect is on some form of supervision covered by F.S. 948. This can be done by accessing *myflorida.com* or calling the probation office. Once an officer knows that the person is on supervision the officer must determine whether there was a material violation of that supervision.

A probationer can violate his or her supervision in a large number of material ways. For example, a person on probation for a drug offense will usually have some if not all of the following conditions. "You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed to you by a physician. Nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used." These conditions are taken directly from the current Polk County sentencing orders. Therefore, a probationer who possesses illegal drugs or hangs out at a known drug house is in material violation of the conditions

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Hardee County SAO

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Connie Strickland,
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Reyna Kassman, CSE

7th
Cindy Norris, Homicide
J.J. Branam, Felony Int.

15th
John Flynn, Lkld SAO

17th
Sheryl Phillips, VOPS

19th
Cindy Rhoden, Felony 2

20th
Peggy Murray, Admin.
Melody Stratton, Felony 3
Jason Phillips, OPS

22nd
Kathy Slappey, Invest.
Terri Gregg, Dom. Viol.

26th
Yvonne Moshier,
Misdemeanor Intake

29th
Chip Thullbery, Admin.

30th
Bonnie Parker, Felony Intake

USING CHAPTER 948, FLORIDA STATUTES, TO LAW ENFORCEMENT'S ADVANTAGE

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Don Ratterree is the Division Director of the Violation of Probation / Early Case Resolution Division. Don has been with our office since July 1996.

of probation and can be arrested without a warrant. If a person is on Drug Offender Probation, not only would the above conditions apply but most probationers on D.O.P. will also have a curfew. A violation of a person's curfew can be a material violation of supervision. Most curfews are set between 10 p.m. and 6 a.m., but you can check with the probation officer to get the actual curfew times.

Sex offenders also have a large number of special conditions of probation. An example of some of those conditions are: A curfew, cannot possess or look at any pornographic material, and if the victim was under 18 years of age, the probationer cannot live within 1000 feet of any school, daycare, playground, or park. A violation of any of these conditions would be material and allow an officer to arrest without a warrant.

Both drug and sex offenders on supervision will have another special condition that will assist law enforcement. Almost all of these probationers will have a condition that reads: "You shall submit your person, property, place of residence, vehicle or personal effects to a warrantless search at any time, by any probation or community control officer or **any law enforcement officer**."

Before 2001, the warrantless search provision was usually interpreted to mean that law enforcement could search only if the search had some bearing on the defendant's probation status. This interpretation was changed by the ruling of the United States Supreme Court in *U.S. vs. Knights*, 534 U.S. 112 (2001). In *Knights*, the Supreme Court ruled that a law enforcement officer may search an offender on supervision, subject to a search condition, when there is reasonable suspicion to believe that the probationer is engaged in criminal activity.

The *Knights* case involved a California man who was placed on probation for a drug offense. His probation included a provision, much like our own, allowing for warrantless searches by any probation or law enforcement officer. Local detectives developed reasonable suspicion to believe that Knights was involved in a recent arson and wanted to search his home for certain items. The detectives knew that Knights was on probation and that his probation contained a warrantless search provision. The detectives conducted a search of Knights' residence and found items which were used to convict Knights of arson. The Supreme Court in upholding Knights' conviction held that the warrantless search in this case passed the reasonableness test of the Fourth Amendment. The Court also held that because of the diminished expectation of privacy a probationer has, reasonable suspicion of criminal activity is sufficient to uphold the search. The Court did not address the issue of whether a search of an individual on supervision with a search condition would be proper without reasonable suspicion. The Supreme Court may decide that issue in some future case.

The ruling in the *Knights* case allows a law enforcement officer to conduct a warrantless search of a probationer, his car or residence if the following conditions are met:

A. The officer knows that the suspect is on some form of supervision.

USING FLORIDA STATUTES CHAPTER 948 TO LAW ENFORCEMENT'S ADVANTAGE

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B. The officer has checked and confirmed that one of the conditions of the suspect's supervision allows for warrantless searches by law enforcement. (**Be careful here because some older sentencing orders do not include the words law enforcement. Unless a defendant was placed on probation after June 1 of 2003 please follow the directions for warrantless searches outlined in the July issue of the Legal Advisor**)

C. The officer has reasonable suspicion to believe that the suspect is engaged in criminal activity. (Reasonable suspicion usually means that the arresting officer has reasonable, articulable suspicion that criminal activity is afoot, this is less than probable cause, but requires at least a minimal justification.)

Please be sure to take advantage of this valuable law enforcement tool.

I would like to commend both Officer Richard Rose and Officer Stephen Sherman of the Lakeland Police Department. The Officers took the time to come in and explain the facts of the case to me as well as thoroughly review their depositions and police reports prior to trial. Their hard work and extra effort resulted in a solid performance at the jury trial. The officers' demeanor and recollection during defense counsel's cross examination was outstanding. This was even more impressive as this involved a PRR case that was more than five years old. Their extra efforts tipped the scales against the defense witnesses' version of the facts and resulted in a verdict of guilty as charged.

Assistant State Attorney Kevin Humphries,

Felony Division 3

I just wanted to thank Sgt. Hans Lehman and Officer Mike Kellner of the Lakeland Police Department for taking the time to come sit down and talk with all of the Misdemeanor Divisions. They gave us a great presentation on the Drug Recognition Program and took the time to collaborate with us on how to make our DUI trials better. We really appreciate all their hard work.

Legal Intern Kelly McCabe,

Misdemeanor Division

I would like to thank the three detectives of the Polk County Sheriff's Office BSI Unit for their outstanding work on the Slaton case. All three of the deputies, put in a great deal of effort in assisting in the successful prosecution and conviction by jury verdict of a methamphetamine trafficker who, by his own admission, was moving in excess of thirty pounds of methamphetamine a month in Polk County alone before his arrest last year.

One of the detectives visited me on three occasions in the office to prepare for his crucial trial testimony, walked me through the undercover operation, and helped me get the details straight. Another educated me on the way HIDTA plans and executes such operations, assisted me in preparing for pre-trial motions, and prepared a partial transcript of tapes made during the operation for my use in trial, as well as maintaining custody of evidence during trial. All three detectives were in court for the closing arguments and present for the verdict, showing their level of commitment to this case. The defendant was sentenced to 15 years state prison followed by 10 years probation.

Assistant State Attorney Torie Avalon,

Felony Division 5

NEWS...

On Thursday, October 23, 2003, Police Chief Darrell Kirkland of the Winter Haven Police Department announced his retirement after having served thirty years as a law enforcement officer. His effective date of retirement will be January 30, 2004. We want to thank Chief Kirkland for all of his years of service to the Winter Haven Police Department and the citizens of Winter Haven. You will truly be missed. Congratulations and we wish you well.

Congratulations to Major Edgar Curtis "Buddy" Waters of the Winter Haven Police Department who has been chosen to serve as the city's interim police chief until a permanent replacement is found for Chief Kirkland.

Major Mary Mariani of the Winter Haven Police Department also announced her retirement after thirty years with the Winter Haven Police Department. She became the interim director of the police academy at Polk Community College. Congratulations and we wish you well.

Congratulations to Lt. Ray Ditty, a 27-year veteran of the Winter Haven Police Department who was recently promoted to Captain.

Congratulations to Sgt. Joey Yeako, a 19-year veteran of the Winter Haven Police Department who was recently promoted to Interim Lieutenant.

The State Attorney's Office will be closed on the following days:

Thanksgiving Holidays

Thursday, November 27, 2003

Friday, November 28, 2003

HARDEE COUNTY
124 South 9th Avenue
Wauchula, Fl 33873
Phone: (863) 773-6613
Fax: (863) 773-0115

HIGHLANDS COUNTY
411 South Eucalyptus
Sebring, Fl 33870
Phone: (863) 402-6549
Fax: (863) 402-6563

POLK COUNTY
P.O. Box 9000, Drawer SA
Bartow, Fl 33831-9000
Phone: (863) 534-4800
Fax: (863) 534-4945

CHILD SUPPORT ENFORCEMENT
215 N. Floral Avenue
Bartow, Fl 33830
Phone: (863) 519-4749
Fax: (863) 519-4759

LAKELAND OFFICE
930 E. Parker Street, Suite 238
Lakeland, Fl 33801
Phone: (863) 499-2596
Fax: (863) 499-2650

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...FROM THE COURTS...

LITTERING STATUTE IS CONSTITUTIONAL

In this Polk County case, the defendant was charged with and convicted of felony littering in violation of section 403.413, Florida Statutes. On appeal, he argued that section 403.413 was unconstitutional. The Second District rejected this argument and affirmed, holding that the statute is not void for vagueness. *Enriguez v. State*, 28 FLW D2195 (Fla. 2d DCA Sept. 17, 2003).

COURT AFFIRMS THAT VOLUNTARY INTOXICATION IS NO LONGER A DEFENSE

The defendant was charged with first-degree murder. He sought to assert the defense of voluntary intoxication and asked the trial court to rule that section 775.051, Florida Statutes, which eliminated voluntary intoxication as a defense to criminal charges was unconstitutional. The trial court denied his motion, and the defendant was convicted as charged. On appeal, the Second District affirmed, holding that section 775.051 does not violate a defendant's right to due process. *Barrett v. State*, 28 FLW D2237 (Fla. 2d DCA Sept. 26, 2003).

SOLE OCCUPANT OF VEHICLE DEEMED IN POSSESSION OF DRUGS

The defendant was charged with possession of cocaine. At his trial, the evidence established that when he was stopped he was the driver and sole occupant of a car, which he and his sister had rented. The cocaine was found in a closed black film cannister lodged between the driver's seat and the console of the car. The defendant was convicted as charged, but after the jury's verdict was received, the court granted a motion for judgment of acquittal. On appeal, the Second District reversed, holding that because the defendant was the sole occupant of the car, the evidence was sufficient to establish constructive possession. *State v. Odom*, 28 FLW D2326 (Fla. 2d DCA Oct. 10, 2003).

OFFICER'S INFORMATION WAS RECENT ENOUGH TO JUSTIFY STOP

The defendant was charged with DUI and filed a motion to suppress the results of a field sobriety test. The facts on which the motion was based were that an officer saw the defendant drive a motor scooter into a convenience store parking lot. Knowing that the defendant had a suspended license as recently as a month before, the officer called him over. In talking with him, he found that the defendant's license was reinstated but he also noticed an odor of alcohol on the defendant's breath. The officer administered field sobriety tests and arrested the defendant for DUI. The trial court denied the motion to suppress, and the defendant pled to the charge, reserving the right to appeal. On appeal, the Fourth District affirmed, holding that the information the officer had concerning the state of the defendant's driver license justified the officer's action in detaining the defendant. *Stone v. State*, 28 FLW D2415 (Fla. 4th DCA Oct. 22, 2003).